
New York Supreme Court
Appellate Division—Third Department

ANTHONY S. HOFFMANN, MARCO CARRIÓN, COURTNEY GIBBONS,
LAUREN FOLEY, MARY KAIN, KEVIN MEGGETT, CLINTON MILLER,
SETH PEARCE, VERITY VAN TASSEL RICHARDS,
and NANCY VAN TASSEL,

Docket No.:
CV-22-2265

Petitioners-Appellants,

For an Order and Judgment Pursuant to Article 78 of the
New York Civil Practice Law and Rules

– against –

THE NEW YORK STATE INDEPENDENT REDISTRICTING COMMISSION,
INDEPENDENT REDISTRICTING COMMISSION CHAIRPERSON KEN
JENKINS, INDEPENDENT REDISTRICTING COMMISSIONER ROSS
BRADY, INDEPENDENT REDISTRICTING COMMISSIONER JOHN
CONWAY III, INDEPENDENT REDISTRICTING COMMISSIONER
IVELISSE CUEVAS-MOLINA, INDEPENDENT REDISTRICTING
COMMISSIONER ELAINE FRAZIER, INDEPENDENT REDISTRICTING
COMMISSIONER LISA HARRIS, INDEPENDENT REDISTRICTING
COMMISSIONER CHARLES NESBITT, and INDEPENDENT
REDISTRICTING COMMISSIONER WILLIS H. STEPHENS,

Respondents-Respondents,

(For Continuation of Caption, See Inside Cover)

RECORD ON APPEAL

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** Pro Hac Vice Admission Pending*

(For Continuation of Counsel, See Inside Cover)
Albany County Clerk's Index No. 904972-22

– and –

TIM HARKENRIDER, GUY C. BROUGHT, LAWRENCE CANNING, PATRICIA CLARINO, GEORGE DOOHER, JR., STEPHEN EVANS, LINDA FANTON, JERRY FISHMAN, JAY FRANTZ, LAWRENCE GARVEY, ALAN NEPHEW, SUSAN ROWLEY, JOSEPHINE THOMAS, and MARIANNE VIOLANTE,
Intervenors-Respondents.

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¹In accordance with the Stipulation and Order of Substitution Pursuant to N.Y. C.P.L.R. §1019, filed December 7, 2022, Respondent David Imamura has been substituted by Ken Jenkins.

New York Supreme Court
Appellate Division—Third Department

ANTHONY S. HOFFMANN, MARCO CARRIÓN, COURTNEY GIBBONS,
LAUREN FOLEY, MARY KAIN, KEVIN MEGGETT, CLINTON MILLER,
SETH PEARCE, VERITY VAN TASSEL RICHARDS,
and NANCY VAN TASSEL,

Petitioners-Appellants,

For an Order and Judgment Pursuant to Article 78 of the
New York Civil Practice Law and Rules

– against –

THE NEW YORK STATE INDEPENDENT REDISTRICTING COMMISSION,
INDEPENDENT REDISTRICTING COMMISSION CHAIRPERSON KEN
JENKINS, INDEPENDENT REDISTRICTING COMMISSIONER ROSS
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IVELISSE CUEVAS-MOLINA, INDEPENDENT REDISTRICTING
COMMISSIONER ELAINE FRAZIER, INDEPENDENT REDISTRICTING
COMMISSIONER LISA HARRIS, INDEPENDENT REDISTRICTING
COMMISSIONER CHARLES NESBITT, and INDEPENDENT
REDISTRICTING COMMISSIONER WILLIS H. STEPHENS,

Respondents-Respondents,

– and –

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

Respondents-Respondents.

STATEMENT PURSUANT TO CPLR 5531

1. The index number of the case in the court below is 904972-22.
2. By Decision and Order dated August 1, 2022, the Verified Petition was amended to add Petitioners Marco Carrion, Mary Kain, Kevin Meggett, Clinton Miller, and Verity Van Tassel Richards. (R.259). By Decision and

Order dated September 1, 2022, the caption was amended to add Intervenor-Respondents Tim Harkenrider, Guy C. Brought, Lawrence Canning, Patricia Clarino, George Dooher, Jr., Stephen Evans, Linda Fanton, Jerry Fishman, Jay Frantz, Lawrence Garvey, Alan Nephew, Susan Rowley, Josephine Thomas, and Marianne Violante. (R.341). By Stipulation and Order dated December 7, 2022 the caption was amended to substitute Respondent Independent Redistricting Chairperson Kenneth Jenkins for Respondent Independent Redistricting Commission Chairperson David Imamura (R.398)

3. The action was commenced in Supreme Court, Albany County.
4. The action was commenced on or about June 28, 2022 by filing a Verified Petition. (R. 24). An Amended Verified Petition was filed on or about August 4, 2022. (R.265). Issue was joined by service of a Verified Answer on or about August 26, 2022 by Respondent Independent Redistricting Commissioners David Imamura, Ivelisse Cuevas-Molina, and Elaine Frazier. (R.298). A motion to dismiss was filed on or about August 26, 2022 by Respondent Independent Redistricting Commissioners Ross Brady, John Conway III, Lisa Harris, Charles Nesbitt, and Willis H. Stephens. (R.315). A motion to dismiss was filed on or about September 2, 2022 by the Intervenor-Respondents. (R. 339).
5. The nature and object of the action is an Article 78 proceeding to compel Respondents to timely prepare and submit to the legislature a second redistricting plan and the necessary implementing legislation for such a plan corresponding to the 2020 federal census.
6. This appeal is from a Decision and Order of the Honorable Peter A. Lynch, granted September 12, 2022.
7. This appeal is on the full reproduced record.

TABLE OF CONTENTS

	Page
Statement Pursuant to CPLR § 5531	i
Notice of Appeal, dated October 17, 2022, with Affidavits of Services	1
Decision and Order of the Honorable Peter A. Lynch, dated September 12, 2022, Appealed From, with Notice of Entry	8
Verified Petition for Writ of Mandamus, dated June 28, 2022	24
Proposed Order to Show Cause, filed June 28, 2022.....	46
Affirmation of James R. Peluso, Esq., for Petitioner, in Support of Verified Petition, dated June 28, 2022	49
Exhibit 1 to Peluso Affirmation - Petition, dated February 3, 2022, from the action captioned <i>Harkenrider v. Hochul</i> , Index No. E2022-0116CV	51
Exhibit 2 to Peluso Affirmation - Amended Petition from <i>Harkenrider v. Hochul</i> , Index No. E2022-0116CV	118
Exhibit 3 to Peluso Affirmation - Decision and Order, dated March 31, 2022, from <i>Harkenrider v. Hochul</i> , Index No. E2022-0116CV	201

	Page
Exhibit 4 to Peluso Affirmation - Decision, dated April 8, 2022, <i>Harkenrider v. Hochul</i> , CAE 22-00506	219
Exhibit 5 to Peluso Affirmation - Preliminary Order, dated April 29, 2022, from <i>Harkenrider v. Hochul</i> , Index No. E2022-0116CV	223
Exhibit 6 to Peluso Affirmation - Decision and Order, dated May 20, 2022, from <i>Harkenrider v. Hochul</i> , Index No. E2022-0116CV	225
Signed Order to Show Cause, dated June 30, 2022 ...	256
Decision and Order of the Honorable Peter A. Lynch, dated August 1, 2022	259
Amended Verified Petition for Writ of Mandamus, dated August 4, 2022	265
Proposed Order to Show Cause, filed August 4, 2022.....	289
Affirmation of James R. Peluso, Esq., for Petitioner, in Support of Amended Verified Petition, dated August 4, 2022	292
Exhibit 1 to Peluso Affirmation - Petition, dated February 3, 2022, from the action captioned <i>Harkenrider v. Hochul</i> , Index No. E2022-0116CV (Reproduced herein at pp. 51-117)	294

	Page
Exhibit 2 to Peluso Affirmation - Amended Petition from <i>Harkenrider v. Hochul</i> , Index No. E2022-0116CV (Reproduced herein at pp. 118-200)	294
Exhibit 3 to Peluso Affirmation - Decision and Order, dated March 31, 2022, from <i>Harkenrider v. Hochul</i> , Index No. E2022-0116CV (Reproduced herein at pp. 201-218)	294
Exhibit 4 to Peluso Affirmation - Decision, dated April 8, 2022, <i>Harkenrider v.</i> <i>Hochul</i> , CAE 22-00506 (Reproduced herein at pp. 219-222)	294
Exhibit 5 to Peluso Affirmation - Preliminary Order, dated April 29, 2022, from <i>Harkenrider v. Hochul</i> , Index No. E2022-0116CV (Reproduced herein at pp. 223-224)	294
Exhibit 6 to Peluso Affirmation - Decision and Order, dated May 21, 2022, from <i>Harkenrider v. Hochul</i> , Index No. E2022-0116CV (Reproduced herein at pp. 225-255)	294
Signed Order to Show Cause, dated August 5, 2022	295
Verified Answer of Respondents, David Imamura, Ivelisse Cuevas-Molina, and Elaine Frazier, dated August 26, 2022	298

	Page
Notice of Motion to Dismiss, by Respondents, Independent Redistricting Commissioners Ross Brady, John Conway III, Lisa Harris, Charles Nesbitt and Willis H. Stephens, (Moving Respondents), dated August 26, 2022.....	315
Affirmation of Timothy Hill, Esq., for Moving Respondents, in Support of Motion to Dismiss, dated August 26, 2022	317
Exhibit 1 to Hill Affirmation - Amended Verified Petition for Writ of Mandamus, dated August 4, 2022 (Reproduced herein at pp. 265-288)	320
Affirmation of Timothy Hill, Esq., for Moving Respondents, in Opposition to Order to Show Cause, dated August 26, 2022.....	321
Proposed Order to Show Cause Regarding the Harkenrider Intervenors' Motion to Dismiss, filed September 2, 2022	324
Affirmation of Bennet J. Moskowitz, Esq., for Proposed Intervenor-Respondents Tim Harkenrider, Guy C. Brought, Lawrence Canning, Patricia Clarino, George Dooher, Jr., Stephen Evans, Linda Fanton, Jerry Fishman, Jay Frantz, Lawrence Garvey, Alan Nephew, Susan Rowley, Josephine Thomas, and Marianne Violante (Proposed Interevors), filed September 2, 2022	326
Exhibit 1 to Moskowitz Affirmation - Letter Filed with the Steuben County Supreme Court in <i>Harkenrider v. Hochul</i> , Index No. E2022-0116CV	328

	Page
Signed Order to Show Cause Regarding the Harkenrider Intervenors’ Motion to Dismiss, dated September 2, 2022.....	339
Notice to County Clerk – CPLR §8019(c), to Change Caption, dated September 7, 2022 with Copy of Decision and Order, dated September 1, 2022 Granting Intervention.....	341
Affirmation of Aaron M. Mukerjee, Esq., in Support of Petitioners’ Opposition to Intervenor- Respondents’ Motion to Dismiss, dated September 8, 2022.....	350
Exhibit 1 to Mukerjee Affirmation - Letter from Speaker Carl E. Heastie, dated September 6, 2022.....	352
Response to Order to Show Cause, by Respondents David Imamura, Ivelisse Cuevas-Molina, and Elaine Frazier, dated September 8, 2022	353
Affidavit of David Imamura, sworn to on September 8, 2022	358
Exhibit A to Imamura Affidavit - Letter from Speaker Carl E. Heastie, dated September 6, 2022 (Reproduced herein at p. 352)	362
Exhibit B to Imamura Affidavit - Reappointment Letter Signed by Senate Majority Leader and Temporary President Andrea Stewart- Cousins, dated August 1, 2022	363
Certified Transcript of the September 12, 2022 Hearing	364

	Page
Stipulation and Order of Substitution Pursuant to N.Y. CPLR § 1019, dated December 7, 2022	398
Certification Pursuant to CPLR § 2105	401

NOTICE OF APPEAL, DATED OCTOBER 17, 2022,
WITH AFFIDAVITS OF SERVICES [1 - 7]

FILED: ALBANY COUNTY CLERK 10/17/2022 10:45 AM

NYSCEF DOC. NO. 178

INDEX NO. 904972-22

RECEIVED NYSCEF: 10/17/2022

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ALBANY

-----X

Anthony S. Hoffmann; Marco Carrión; Courtney Gibbons;
Lauren Foley; Mary Kain; Kevin Meggett; Clinton Miller;
Seth Pearce; Verity Van Tassel Richards; and Nancy Van
Tassel,

Index No. 904972-22

NOTICE OF APPEAL

Petitioners,

For an Order and Judgment Pursuant to Article 78 of the
New York Civil Practice Law and Rules

-against-

The New York State Independent Redistricting
Commission; Independent Redistricting Commission
Chairperson David Imamura; Independent Redistricting
Commissioner Ross Brady; Independent Redistricting
Commissioner John Conway III; Independent Redistricting
Commissioner Ivelisse Cuevas-Molina; Independent
Redistricting Commissioner Elaine Frazier; Independent
Redistricting Commissioner Lisa Harris; Independent
Redistricting Commissioner Charles Nesbitt; and
Independent Redistricting Commissioner Willis H.
Stephens,

Respondents,

-and-

Tim Harkenrider; Guy C. Brought; Lawrence Canning;
Patricia Clarino; George Dooher, Jr.; Stephen Evans; Linda
Fanton; Jerry Fishman; Jay Frantz; Lawrence Garvey; Alan
Nephew; Susan Rowley; Josephine Thomas; and Marianne
Violante,

Intervenor-Respondents.

-----X

PLEASE TAKE NOTICE that the Petitioners Anthony S. Hoffmann, Marco Carrión,
Courtney Gibbons, Lauren Foley, Mary Kain, Kevin Meggett, Clinton Miller, Seth Pearce, Verity
Van Tassel Richards, and Nancy Van Tassel, hereby appeal to the Appellate Division of the

Supreme Court, Third Judicial Department, from the Decision and Order of the Supreme Court, County of Albany (Lynch, P.), dated September 12, 2022 and entered in the Albany County Clerk's Office on September 14, 2022, and from each and every part thereof.

Dated: October 17, 2022

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INDEX NO. 904972-22

RECEIVED NYSCEF: 10/17/2022

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ALBANY

-----X
Anthony S. Hoffmann; Courtney Gibbons; Lauren Foley;
Seth Pearce; and Nancy Van Tassel,

Petitioners,

Index No. 904972-22

For an Order and Judgment Pursuant to Article 78 of the
New York Civil Practice Law and Rules,

AFFIDAVIT OF SERVICE

-against-

The New York State Independent Redistricting Commission;
Independent Redistricting Commission Chairperson David
Imamura; Independent Redistricting Commissioner Ross
Brady; Independent Redistricting Commissioner John
Conway III; Independent Redistricting Commissioner
Ivelisse Cuevas-Molina; Independent Redistricting
Commissioner Elaine Frazier; Independent Redistricting
Commissioner Lisa Harris; Independent Redistricting
Commissioner Charles Nesbitt; and Independent
Redistricting Commissioner Willis H. Stephens,

Respondents.

-----X

STATE OF NEW YORK)
) ss.:
COUNTY OF ALBANY)

JESSICA L. FEREDAY, being duly sworn, deposes and says:

That deponent is not a party to the action and is over the age of 18 years. That on the 17th day of October, 2022, deponent served a true an correct copy of Notice of Appeal dated October 17, 2022 (Doc. 178) and Informational Statement (Doc. 179) *via* filing electronically using the NYSCEF system in this action and also *via* electronic mail, upon the following:

All Attorneys of record *via* NYSCEF

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Allison N. Douglis, Esq.: adouglis@jenner.com

FILED: ALBANY COUNTY CLERK 10/18/2022 02:09 PM

NYSCEF DOC. NO. 180

INDEX NO. 904972-22

RECEIVED NYSCEF: 10/18/2022

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TROUTMAN PEPPER HAMILTON SANDERS LLP
 Bennet J. Moskowitz, Esq.: Bennet.moskowitz@troutman.com
 Misha Tseytlin, Esq.: Misha.tseytlin@troutman.com

And that an October 17, 2022, I served a true and correct copy of the Notice of Appeal (Doc. 178) and Informational Statement (Doc. 179) dated October 17, 2022, by mailing same in sealed envelope with postage prepaid thereon, in an official depository of the U.S. Postal Service within the State of New York, addressed to the last known address as indicated below and via electronic mail to the following:

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breakell@nyirc.gov

Karen Blatt, Co-Executive Director
 NYS Independent Redistricting Commission
 302A Washington Avenue Extension
 Albany, NY 12203
blattk@nyirc.gov

David Imamura, Chair
 NYS Independent Redistricting Commission
 302A Washington Avenue Extension
 Albany, NY 12203
imamurad@nyirc.gov

Sworn to before me this
 18th day of October, 2022


 Notary Public


 Jessica L. Fereday

KYLE E. McMAHON
 NOTARY PUBLIC, STATE OF NEW YORK
 Registration No. 01MC6402021
 Qualified in Rensselaer County
 Commission Expires December 23, 2023

FILED: ALBANY COUNTY CLERK 10/24/2022 10:50 AM

NYSCEF DOC. NO. 181

INDEX NO. 904972-22

RECEIVED NYSCEF: 10/24/2022

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ALBANY****Job #: 11455**

Anthony S. Hoffman, Marco Carrion, Courtney Gibbons, et al.

Plaintiff

vs

The New York State Independent Redistricting Commission, et al.

Defendant

INDEX NUMBER: 904972-22

Date Filed: 10/17/2022

Client's File No.: 2238505-AP

Court Date:

AFFIDAVIT OF SERVICE

STATE OF NEW YORK, COUNTY OF SCHENECTADY, SS.:

Earl L. Page IV, being sworn says:

Deponent is not a party herein; is over the age of 18 years and resides in the State of New York.

On 10/17/2022, at 5:17 PM at 5409 Hanna Court, Schenectady, NY 12303 Deponent served the within Notice of Appeal, Notice of Entry, and Informational Statement with Exhibits on: DOUGLAS BREAKELL (herein after called the recipient) therein named.

 #1 SUITABLE AGE PERSONBy delivering thereat a true copy of each to **Stacey Breakell (Wife)** a person of suitable age and discretion. Said premises is within the state. **#2 MAILING**On 10/18/2022, deponent enclosed a copy of same in a postpaid envelope properly addressed to defendant at **5409 Hanna Court, Schenectady, NY 12303** and deposited the envelope in an official depository, personally or via agency, under the exclusive care and custody of the U.S. Postal Service within New York State. The envelope bore the legend "personal and confidential" and did not indicate on the outside, thereof by return address or otherwise that the communication was from an attorney or concerned an action against the defendant.
| 5409 Hanna Court, Schenectady, NY 12303 **#3 DESCRIPTION**Sex: Female Color of skin: White Color of hair: Blonde
Age: 36 - 50 Yrs. Height: 5ft 4in - 5ft 8in Weight: 100-130 Lbs. Comments: **#4 MILITARY SERVICE**

I asked the person spoken to whether defendant was in active military service of the United States or the State of New York in any capacity whatever and received a negative reply. The source of my information and the grounds of my belief are the conversations and observations above narrated.

Sworn to before me on 10/18/2022

ASHLEY M. NUNEZ
Notary Public, State of New York
Qualified in Kings County
No. 01NU6401435
Commission Expires November 27, 2023

Earl L. Page IV

FILED: ALBANY COUNTY CLERK 10/24/2022 10:50 AM

NYSCEF DOC. NO. 182
STATE OF NEW YORK COUNTY OF ALBANY
SUPREME COURT

INDEX NO. 904972-22
RECEIVED NYSCEF 10/24/2022
Index Number: 904972-22
Date Filed: 10/17/2022

ANTHONY S. HOFFMANN; MARCO CARRION; COURTNEY GIBBONS; LAUREN FOLEY; MARY KAIN' KEVIN MEGGETT; CLINTON MILLER; SETH PEARCE; VERITY VAN TASSEL RICHARDS; AND NANCY VAN TASSEL,
FOR AN ORDER AND JUDGMENT PURSUANT TO ARTICLE 78 OF THE NEW YORK CIVIL PRACTICE LAW AND RULES

vs

THE NEW YORK STATE INDEPENDENT REDISTRICTING COMMISSION, ET AL

Respondent

STATE OF NEW YORK, COUNTY OF WESTCHESTER, SS.:

AFFIDAVIT OF SERVICE

Darryl Wilson, being sworn deposes and states that, the Deponent is not a party herein, is over the age of 18 years and resides in the State of New York.

That on 10/19/2022, at 8:47 AM at 1 RICHMOND HILL, IRVINGTON, NY 10533, Deponent served the within **NOTICE OF APPEAL, NOTICE OF ENTRY AND INFORMATIONAL STATEMENT WITH EXHIBITS**, with the index number and the filing date of the action were endorsed upon the face of the papers so served herein. On: DAVID IMAMURA, therein named, (hereinafter referred to as "subject").

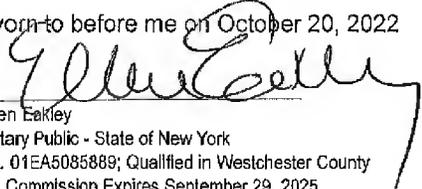
By delivering a true copy of each to said subject **personally**; Deponent knew the person so served to be the person described in as said subject therein. A description of is as follows:

Sex: Male **Color of skin:** Light **Color of hair:** Black **Age:** 35-50
Height: 5ft9in-6ft0in **Weight:** 161-200 Lbs. **Other:**

In addition, Stated that he knew about this because he accepted service digitally he stated his name and accepted the documents

I asked the person spoken to, on whether the subject was in active military service or financially dependent upon any one who is in the military service of the United States or of the State of NEW YORK in any capacity whatever and received a negative reply. The source of my information and belief are the conversations above narrated. Upon that information and belief I assert that the recipient is not in the military service of NEW YORK State or of the United States as that term is defined in either the State or in Federal statutes.

Sworn to before me on October 20, 2022


Ellen Eakley
Notary Public - State of New York
No. 01EA5085889; Qualified in Westchester County
My Commission Expires September 29, 2025



Client's File No.: 2238506


Process Server, Please Sign
Darryl Wilson
Lic#
Job #: 2237878

DECISION AND ORDER OF THE HONORABLE PETER A. LYNCH,
 DATED SEPTEMBER 12, 2022,
 APPEALED FROM, WITH NOTICE OF ENTRY [8 - 23]

FILED: ALBANY COUNTY CLERK 09/14/2022 11:52 AM
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INDEX NO. 904972-22
 RECEIVED NYSCEF: 09/12/2022

THE STATE OF NEW YORK
 SUPREME COURT COUNTY OF ALBANY

Anthony S. Hoffman; Courtney Gibbons;
 Lauren Foley; Seth Pearce; and Nancy
 Van Tassel, Marco Carrión, Mary Kain, Kevin Meggett,
 Reverend Clinton Miller, and Verity Van Tassel Richards,

Petitioners,

-against-

The New York State Independent redistricting
 Commission; Independent Redistricting Commission
 Chairperson David Imamura; Independent Redistricting
 Commissioner Ross Brady; Independent Redistricting
 Commissioner John Conway III; Independent Redistricting
 Commissioner Ivelisse Cuevas-Molina; Independent
 Redistricting Commissioner Elaine Frazier; Independent
 Redistricting Commissioner Lisa Harris; Independent
 Redistricting Commissioner Charles Nesbitt; and
 Independent Redistricting Commissioner Willis H. Stephens,

Respondents,

And

Tim Harkenrider, Guy C. Brought, Lawrence Canning,
 Patricia Clarino, George Dooher, Jr., Stephen Evans,
 Linda Fanton, Jerry Fishman, Jay Frantz, Lawrence Garvey,
 Alan Nephew, Susan Rowley, Josephine Thomas, and
 Marianne Violante's,

Intervenor-Respondents.

DECISION AND ORDER
 Index No. 904972-22
 RJJ No. 01-22-ST2408
 (Hon. Lynch, J.)

INTRODUCTION

This is an Article 78 proceeding in the form of mandamus (CPLR § 7803(1)) to compel Respondents to timely prepare and submit to the legislature a second redistricting plan and the necessary implementing legislation for such plan corresponding to the 2020 federal census pursuant to Article III, Sections 4 and 5(b) of the New York Constitution. Petitioners seek a new redistricting plan for successive elections, after the 2022 election, until such time as a new redistricting plan is adopted following the 2030 federal census.

Intervenors-Respondents and Respondents, Independent Redistricting Commissioners: Ross Brady; John Conway III; Lisa Harris; Charles Nesbitt and Willis H. Stephens, all moved to dismiss the proceeding, claiming the redistricting process based on the 2020 federal census is complete, governing all elections until the redistricting process begins anew following the 2030 federal census. This claim is predicated on the constitutional framework providing for redistricting every ten (10) years based on the then current census. Respondents David Imamura, Ivelisse Cuevas-Molina, and Elaine Frazier do not oppose the relief requested in the Petition.

The IRC failed to submit a second redistricting plan for the legislature's review before February 28, 2022. The question is whether the IRC has the authority to now submit a second redistricting plan corresponding to the 2020 federal census. I think not!

PRIOR REDISTRICTING LITIGATION

The factual history of the 2022 redistricting is well laid out in Matter of Harkenrider v. Hochul, 204 A.D. 3d 1366 [4th Dept. 2022], modified 2022 N.Y. LEXIS 874 [2022]. A few points bear mention.

First, the Court recognized the makeup of the IRC as follows:

“From a procedural standpoint, the Constitution — as amended in 2014 — requires that, every ten years commencing in 2020, an

"independent redistricting commission" comprising 10 members — eight of whom are appointed by the majority and minority leaders of the senate and assembly and the remaining two by those eight appointees — shall be established (*see* NY Const, art III, § 5-b [a])." (Id. at 16) (Emphasis added)

Next, the Court recognized the IRC's failure to submit a second redistricting plan to the Legislature, to wit:

"In December 2021 and January 2022, however, **negotiations** between the IRC members **deteriorated** and the IRC, **split along party lines**, was unable to agree upon consensus maps. According to the IRC members appointed by the minority party, after agreement had been reached on many of the district lines, the majority party delegation of the IRC **declined to continue negotiations on a consensus map**, insisting they would proceed with discussions only if further negotiations were based on their preferred redistricting maps.

As a result of their disagreements, the IRC submitted, as a first set of maps, **two proposed redistricting plans to the legislature — maps from each party delegation** — as is constitutionally permitted if a single consensus map fails to garner sufficient votes (*see* NY Const, art III, § 5-b [g]). The legislature voted on this first set of plans without amendment as required by the Constitution and rejected both plans. **The legislature notified the IRC of that rejection, triggering the IRC's obligation to compose — within 15 days — a second redistricting plan for the legislature's review** (*see* NY Const, art III § 4 [b]). On January 24, 2022 — the day before the 15-day deadline but more than one month before the **February 28, 2022 deadline**—the IRC announced that it was **deadlocked** and, as a result, would not present a second plan to the legislature." (Id. at 6-7) (Emphasis added)

The Court recognized the failure to submit a second redistricting plan resulted from lack of bipartisan work by IRC Members.

Petitioners claim the Legislature contemplated non-action by the IRC, alleging:

"The Legislature had anticipated this possibility and passed legislation in 2021 (the "2021 Legislation") purportedly filling a gap in the New York constitutional language by authorizing the

Legislature to pass a redistricting plan in the event that the IRC failed to submit redistricting plans. See L 2021, ch 633 (stating that “if the commission does not vote on any redistricting plan or plans, for any reason . . . each house shall introduce such implementing legislation with any amendments each house deems necessary”).¹

The Supreme Court found that the 2021 legislation was unconstitutional. The Appellate Division vacated that finding and held the 2021 legislation was not void ab initio, recognized the legislature’s authority to enact the plan, but ultimately found the maps were invalid due to unconstitutional partisan gerrymandering in violation of Const. Article III §4 (c) (5) (204 A.D. 3d 1366, 1369-1370). The Court of Appeals disagreed, holding the legislature was without authority to undertake the drawing of the district lines in the first instance, since two redistricting plans had not been first submitted to and rejected by the legislature in accord with the procedure set forth in Article III §4 (Matter of Harkenrider v. Hochul, 2022 N.Y. LEXIS 874, p. 19-20 [2022]).

The Appellate Division held that the Constitution was “silent” relative to the procedure to follow in the event of an IRC impasse (204 A.D. 3d 1366, 1369). The Court of Appeals, once again, disagreed, and recognized that the Constitution did, in fact, provide a judicial remedy, holding,

“...that the Constitution dictates that the IRC-based process for redistricting established therein “*shall* govern redistricting in this state *except* to the extent that a court is required to order the adoption of, or changes to, a redistricting plan as a remedy for a violation of law” (NY Const art III, § 4 [e]).”

¹ NYSCEF Doc. No. 47 Amended Petition ¶ 8.

By providing a judicial remedy upon the adoption of NY Const Art III, § 4 [e], the Legislature was not unmindful of the potential that political differences which could undermine the integrity of the redistricting process.

The Court of Appeals implemented a remedy, holding,

“We therefore remit the matter to Supreme Court which, with the assistance of the special master and any other relevant submissions (including any submissions any party wishes to promptly offer), shall adopt constitutional maps with all due haste.” (Id. 36-37)

Upon remitter, Petitioners Courtney Gibbons, Seth Pearce, Nancy Van Tassel, Verity Van Tassel Richards participated in the public review process by filing a letter with the Court seeking the following relief:

“...we urge this court to ensure that the map drawn by the Special Master only be used for the 2022 congressional election.”²

By Decision and Order dated May 20, 2022, corrected by Decision and Order dated June 2, 2022, the Court (McAllister, J.) certified the 2022 Congressional Maps prepared by the Special Master “as being the official approved 2022 Congressional map...”³ The Court did not limit the maps to the 2022 election.

CONSTITUTION

The Constitution requires IRC to propose redistricting plans every ten years commencing in two thousand twenty-one, with the first plan to be submitted no later than January 15, 2022. In turn, an approved redistricting plan is in full force and effect until the next plan is approved

² NYSCEF Doc. No. 68 p. 1 – letter dated May 18, 2022 - Harkenrider v. Hochul, Index No. E2022-0116CV – Letter on behalf of DCCC and New York Voters **Lauren Foley**, Belinda de Gaudemar, Lauren Furst, **Courtney Gibbons**, **Seth Pearce**, Leah Rosen, Susan Schoenfeld, **Nancy Van Tassel**, **Verity Van Tassel Richards**, and Ronnie White, Jr. (emphasis added to identify Petitioners herein).

³ See Harkenrifer et al v. Hochul et al, Supreme Court, Steuben County Index No. E2022-0116CV – NYSCEF Doc. No. 670 @ p. 5 and NYSCEF doc. No. 696.

based upon the subsequent federal decennial census taken in a year ending in zero unless modified pursuant to court order, i.e., ten (10) years.

NY Const. Article III, Section 4 (b) and (e) provide, inter alia:

“(b) The independent redistricting commission established pursuant to section five-b of this article shall **prepare a redistricting plan to establish senate, assembly, and congressional districts every ten years commencing in two thousand twenty-one**, and shall submit to the legislature such plan and the implementing legislation therefore on or before January first or as soon as practicable thereafter but no later than **January fifteenth in the year ending in two beginning in two thousand twenty-two**. The redistricting plans for the assembly and the senate shall be contained in and voted upon by the legislature in a single bill, and the congressional district plan may be included in the same bill if the legislature chooses to do so. The implementing legislation shall be voted upon, without amendment, by the senate or the assembly and if approved by the first house voting upon it, such legislation shall be delivered to the other house immediately to be voted upon without amendment. If approved by both houses, such legislation shall be presented to the governor for action. If either house shall fail to approve the legislation implementing the first redistricting plan, or the governor shall veto such legislation and the legislature shall fail to override such veto, each house or the governor if he or she vetoes it, shall notify the commission that such legislation has been disapproved. **Within fifteen days of such notification and in no case later than February twenty-eighth, the redistricting commission shall prepare and submit to the legislature a second redistricting plan and the necessary implementing legislation for such plan.** Such legislation shall be voted upon, without amendment, by the senate or the assembly and, if approved by the first house voting upon it, such legislation shall be delivered to the other house immediately to be voted upon without amendment. If approved by both houses, such legislation shall be presented to the governor for action.

(e) The 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 **except to the extent that a court is required to order the adoption of, or changes to, a redistricting plan as a remedy for a violation of law.**

A reapportionment plan and the districts contained in such plan shall be in force until the effective date of a plan based upon the subsequent federal decennial census taken in a year ending in zero unless modified pursuant to court order.” (Emphasis added)

Notwithstanding the intent of the Constitution that approved plans be in place for 10 years, Petitioners seek judicial relief to limit the plans adopted on May 20, 2022, to the 2022 election, and to compel the IRC to submit a second plan based on the 2020 census for consideration by the legislature and to be implemented in the 2024 Congressional election and thereafter in successive elections.

MOTION TO DISMISS⁴

Movants seek to dismiss the Petition on both procedural and substantive grounds, to wit: (1) the petition is an improper collateral attack on the Decision and Order dated May 20, 2022, corrected by Decision and Order dated June 2, 2022, referenced above;⁵ (2) that the requested relief violates the Constitution;⁶ (3) that the proceeding is time-barred;⁷

STATEMENT OF LAW

First, the Court will address the claims that this proceeding is an improper collateral attack on the Decision and Order of the Supreme Court, Steuben County. Next, the Court will address the timeliness of the proceeding. Last, the Court will address the constitutional question on the merits, in context of a motion to dismiss for failure to state a cause of action.

⁴ Oral argument of the record took place this date.

⁵ NYSCEF Doc. No. 70 – Intervenor Memo of Law Point 1, p. 11-13.

⁶ NYSCEF Doc. No. 70 – Intervenor Memo of Law Point 1, p. 13-18; NYSCEF Doc. No. 109 – Memo of Law Points 1 and 2.

⁷ NYSCEF Doc. No. 70 – Intervenor Memo of Law Point 1, p.18-21. NYSCEF Doc. No. 109 – Memo of Law Point 3.

COLLATERAL ATTACK

There is no question that several Petitioners, as members of the public, participated in the Steuben County litigation by writing a letter to the Court. Petitioners were not, however, parties to that litigation.⁸ Resolution of the so-called collateral attack claim, necessitates a determination of whether the subject claim is barred under res judicata or whether the issue is barred by collateral estoppel. They are not.

In Simmons v. Trans Express, 37 N.Y.3d 107, 111-112 [2021], the Court held, inter alia:

"Under res judicata, or claim preclusion, a valid final judgment bars future actions between the same parties on the same cause of action. One linchpin of res judicata is an identity of parties actually litigating successive actions against each other: the doctrine applies only when a claim *between the parties has been previously brought to a final conclusion*. Importantly, the claim preclusion rule extends beyond attempts to relitigate identical claims. We have consistently applied a transactional analysis approach in determining whether an earlier judgment has claim preclusive effect, such that once a claim is brought to a final conclusion, *all other claims arising out of the same transaction or series of transactions* are barred, even if based upon different theories or if seeking a different remedy. This rule is grounded in public policy concerns, including fairness to the parties, and is intended to ensure finality, prevent vexatious litigation and promote judicial economy"...

Collateral estoppel, or issue preclusion, is related to, but distinct from, the doctrine of res judicata. Collateral estoppel prevents "a party from **relitigating in a subsequent action or proceeding an *issue* clearly raised in a prior action or proceeding and decided against that party . . . whether or not the . . . causes of action are the same." (Internal quotations and citations omitted; emphasis added)**

⁸ In his May 20, 2022, Decision and Order, Justice McAllister noted that he had received approximately 3000 comments. See Harkenrifer et al v. Hochul et al, Supreme Court, Steuben County Index No. E2022-0116CV – NYSCEF Doc. No. 670 @ p. 2.

Here, the submission of a letter to the Court as part of a public comment process, did not afford Petitioners a full and fair adjudication on the merits of the subject claim. Frankly, Justice McAllister did not even address the issue of whether the approved 2022 Congressional Map was limited to the 2022 election.⁹ The claims and issue raised here are not barred.

TIMELINESS OF ACTION

Movants claim that the limitations period began on January 24, 2022, the date of the IRC deadlock, and/or no later than February 28, 2022, the last day that the IRC was authorized to submit a second redistricting plan under the Constitution, rendering the commencement of the proceeding untimely. I disagree.

The statute of limitations for an Article 78 proceeding is four months (CPLR 217 (1)). The issue, however, is not what the limitations period is. Rather, the issue is when did it begin to accrue.

CPLR § 203 (a) provides:

“Accrual of cause of action and interposition of claim. The **time** within which an action must be commenced, except as otherwise expressly prescribed, **shall be computed from the time the cause of action accrued** to the time the claim is interposed.” (Emphasis added)

In Utica Mut. Ins. Co. v. Avery, 261 A.D.2d 802, 803 [3d Dept. 1999], the Court held,

⁹ See Harkenrider et al v. Hochul et al, Supreme Court, Steuben County Index No. E2022-0116CV – NYSCEF Doc. No. 670.

“A cause of action accrues upon the occurrence of all events essential to the claim such that the plaintiff would be entitled to judicial relief.”

(See also, Guglielmo v. Unanue, 244 A.D.2d 718, 721 [3d Dept. 1997], where the Court held,

“The Statute of Limitations is triggered upon accrual of the cause of action (CPLR 203 [a]). Either under contract or tort, accrual occurs when ... the party would be entitled to obtain relief in court and when the claim becomes enforceable.”)

Since a Court will not render an advisory opinion, to obtain relief, there must be a justiciable controversy (see In Re Workmen’s Compensation Fund, 224 N.Y. 13 [1918] [Cardozo, J.] where the Court held, “The function of the courts is to determine controversies between litigants... They do not give advisory opinions.”) As of January 24, 2022, and/or February 28, 2022, there simply wasn’t a justiciable controversy between Petitioners and the IRC.

Once the IRC announced a deadlock, the Legislature adopted its own redistricting map, and the new law was signed by the Governor on February 3, 2022, in advance of the February 28, 2022, date set forth in the constitution. It wasn’t until May 20, 2022, that the new 2022 Congressional Maps went into effect. At that time, a justiciable controversy existed between Petitioners and the IRC, commencing the limitations period. This proceeding was commenced on June 28, 2022, and it is timely.

CAUSE OF ACTION

Movant’s moved to dismiss the Petition pursuant to CPLR R 3211 (a) (5) (7) and 7804 (f).¹⁰ The review standard requires that the allegations be deemed true for purposes of the motion (See Lichtensteiger v. Housing & Development Administration, 40 A.D.2d 810 [1st Dept. 1972];

¹⁰ NYSCEF Doc. Nos. 69-70, 106.

Chanko v. Am. Broad Companies, Inc., 27 N.Y. 3d 46, 52 [2016]; Conklin v Laxen, 180 A.D.3d 1358, 1362 [4th Dept. 2020]; Piller v Tribeca Dev. Group LLC, 156 A.D.3d 1257, 1261 [3d Dept. 2017]).

In Wedgewood Care Ctr. v. Kravitz, 2021 N.Y. App. Div. LEXIS 4836, p. 9 [2d Dept. 2021], the court recognized,

“Dismissal of the complaint is warranted if the plaintiff fails to assert facts in support of an element of the claim, or if the factual allegations and inferences to be drawn from them do not allow for an enforceable right of recovery.”

However, “allegations consisting of bare legal conclusions as well as factual claims flatly contradicted by documentary evidence are not entitled to any such consideration, nor to that arguendo advantage”. (Emphasis added; internal quotations and citations omitted)

Here, the facts are not in dispute, and resolution as a matter of law is appropriate.

As set forth above, on May 20, 2022, the Court certified the 2022 Congressional maps in accord with the Court of Appeals remittal and NY Const. Article III, Section 4 (e). The Constitution clearly states that the redistricting shall take place “every ten years commencing in two thousand twenty-one.” In this Court’s view, the Congressional maps approved by the Court on May 20, 2022, corrected by Decision and Order dated June 2, 2022, are in full force and effect, until redistricting takes place again following the 2030 federal census. While the constitution does provide for judicial relief, the requested relief to restrict the 2022 maps to the 2022 election violates the constitutional mandate that an approved map be in effect until a subsequent map is adopted after the federal decennial census. In turn, there is no authority for the IRC to issue a second redistricting plan after February 28, 2022, in advance of the federal census in 2030, in the first instance, let alone to mandate such plan be prepared.

FILED: ALBANY COUNTY CLERK 09/14/2022 11:52 AM

NYSCEF DOC. NO. 172

INDEX NO. 904972-22

RECEIVED NYSCEF: 09/12/2022

The point made is that the Constitutional mandate that approved redistricting maps be in place for a reasoned period, ten years, is to provide stability in the election process. Petitioner's sought-after relief runs afoul of that intent, for it would provide a path to an annual redistricting process, wreaking havoc on the electoral process. Moreover, Petitioner fails to account for the record demonstration of the IRC's inherent inability to reach a consensus on a bipartisan plan. Put another way, directing the IRC to submit a second plan would be futile! Hence, the judicial remedy exists within the Constitutional structure.

It is the judgment of this Court, that there is no enforceable remedy available to Petitioners to limit the 2022 Congressional redistricting map to the 2022 election, nor to compel the IRC to submit a second redistricting plan corresponding to the 2020 federal census. Motion to dismiss is granted.

CONCLUSION

For the reasons more fully stated above, the motions to dismiss the Petition are Granted. This memorandum constitutes both the decision and order of the Court.¹¹

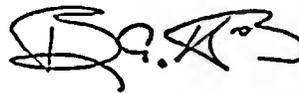
Dated: Albany, New York
September 12, 2022



PETER A. LYNCH, J.S.C

PAPERS CONSIDERED:

All e-filed pleadings, with exhibits.¹²



09/14/2022

¹¹ Compliance with CPLR R 2220 is required.

¹² Including e-filings in Harkenrifer et al v. Hochul et al, Supreme Court, Steuben County Index No. E2022-0116CV.

FILED: ALBANY COUNTY CLERK 09/14/2022 11:52 AM

NYSCEF DOC. NO. 172

INDEX NO. 904972-22

RECEIVED NYSCEF: 09/12/2022

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FILED: ALBANY COUNTY CLERK 09/14/2022 11:52 AM

NYSCEF DOC. NO. 172

INDEX NO. 904972-22

RECEIVED NYSCEF: 09/12/2022

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ALBANY

-----X

Anthony S. Hoffmann; Marco Carrión; Courtney Gibbons;
Lauren Foley; Mary Kain; Kevin Meggett; Clinton Miller;
Seth Pearce; Verity Van Tassel Richard; and Nancy Van
Tassel,

Index No. 904972-22

Petitioners,

-against-

NOTICE OF ENTRY

The New York State Independent Redistricting
Commission; Independent Redistricting Commission
Chairperson David Imamura; Independent Redistricting
Commissioner Ross Brady; Independent Redistricting
Commissioner John Conway III; Independent Redistricting
Commissioner Ivelisse Cuevas-Molina; Independent
Redistricting Commissioner Elaine Frazier; Independent
Redistricting Commissioner Lisa Harris; Independent
Redistricting Commissioner Charles Nesbitt; and
Independent Redistricting Commissioner Willis H.
Stephens,

Respondents,

-and-

Tim Harkenrider; Guy C. Brought; Lawrence Canning;
Patricia Clarino; George Dooher, Jr.; Stephen Evans; Linda
Fanton; Jerry Fishman; Jay Frantz; Lawrence Garvey; Alan
Nephew; Susan Rowley; Josephine Thomas; and Marianne
Violante,

Intervenor-Respondents.

-----X

PLEASE TAKE NOTICE that a Decision And Order, NYSCEF No.172, a copy of which
is attached as **Exhibit A**, was duly signed in this special proceeding by the Hon. Peter A. Lynch,
J.S.C., on September 12, 2022, and duly entered in the Office of the Clerk of Albany County on
September 14, 2022.

FILED: ALBANY COUNTY CLERK 09/15/2022 00:48 AM

NYSCEF DOC. NO. 178

INDEX NO. 904972-22

RECEIVED NYSCEF: 09/15/2022

Dated: New York, New York
September 15, 2022

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TO: All Counsel of Record via NYSCEF

VERIFIED PETITION FOR WRIT OF MANDAMUS,
DATED JUNE 28, 2022 [24 - 45]

FILED: ALBANY COUNTY CLERK 06/28/2022 06:15 PM
NYSCEF DOC. NO. 1

INDEX NO. 904972-22
RECEIVED NYSCEF: 06/28/2022

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ALBANY

-----X
Anthony S. Hoffmann; Courtney Gibbons;
Lauren Foley; Seth Pearce; and Nancy Van Tassel,

Index No. _____

Petitioners,

**VERIFIED PETITION FOR
WRIT OF MANDAMUS**

For an Order and Judgment Pursuant to Article 78 of the
New York Civil Practice Law and Rules

-against-

The New York State Independent Redistricting
Commission; Independent Redistricting Commission
Chairperson David Imamura; Independent Redistricting
Commissioner Ross Brady; Independent Redistricting
Commissioner John Conway III; Independent Redistricting
Commissioner Ivelisse Cuevas-Molina; Independent
Redistricting Commissioner Elaine Frazier; Independent
Redistricting Commissioner Lisa Harris; Independent
Redistricting Commissioner Charles Nesbitt; and
Independent Redistricting Commissioner Willis H.
Stephens,

Respondents.

-----X

Petitioners Anthony S. Hoffmann, Courtney Gibbons, Lauren Foley, Seth Pearce, and
Nancy Van Tassel by and through their counsel, Emery Celli Brinckerhoff Abady Ward & Maazel
LLP, Dreyer Boyajian LLP, and Elias Law Group LLP, for their Verified Petition for an Order and
Judgment Pursuant to Article 78 of the New York Civil Practice Law and Rules (“CPLR”) against
Respondents the New York State Independent Redistricting Commission (the “IRC”), IRC Chair
David Imamura, and IRC Commissioners Ross Brady, John Conway III, Ivelisse Cuevas-Molina,
Elaine Frazier, Lisa Harris, Charles Nesbitt, and Willis H. Stephens, allege as follows:

PRELIMINARY STATEMENT

1. Petitioners bring this writ of mandamus to compel Respondents to “prepare and
submit to the legislature a second redistricting plan and the necessary implementing legislation for

such plan” as is required by Article III, Sections 4 and 5(b) of the New York Constitution, in order to ensure a lawful plan is in place immediately following the 2022 elections and can be used for subsequent elections this decade.

2. In 2014, New York voters approved constitutional amendments (the “Redistricting Amendments”) to reform the congressional and state legislative redistricting processes.

3. The Redistricting Amendments, now codified in Article III, Sections 4 and 5(b) of the New York Constitution, altered many aspects of the redistricting process, from changing the legislative procedures used to approve new districts and mandating new substantive criteria for maps to creating a process for judicial review of adopted plans.

4. Notably, the Redistricting Amendments provided for the creation of an independent redistricting commission (the “IRC”), whose members would be appointed in a bipartisan fashion and would reflect the diversity of the state. The Redistricting Amendments require the IRC to submit proposed redistricting plans for consideration by the Legislature in accordance with a carefully crafted process that includes extensive public comment.

5. Following the 2020 census, the IRC held numerous public hearings both virtually and in person across the State of New York, as required by Article III, Section 4(b). N.Y. Const. art. III, § 4(b).

6. Following this months-long process, the Democratic and Republican members of the IRC could not agree on a single redistricting plan, and so each delegation submitted a first set of redistricting maps in January 2022. The Legislature rejected both sets of maps, as it was entitled to do under Article III, Section 4. *Id.*

7. At that point, the IRC abandoned its constitutional duty. Rather than prepare and submit a second round of maps as was constitutionally required by Article III, Section 4(b), the

members of the IRC instead declared that they could not reach agreement. Although the option of sending separate plans to the Legislature—as they had done the first time around—remained available, certain members of the IRC refused to meet, thereby denying a quorum. Paralyzed, the IRC failed to send a second round of plans to the Legislature.

8. The Legislature had anticipated this possibility and passed legislation in 2021 (the “2021 Legislation”) purportedly filling a gap in the New York constitutional language by authorizing the Legislature to pass a redistricting plan in the event that the IRC failed to submit redistricting plans. *See* L 2021, ch 633 (stating that “if the commission does not vote on any redistricting plan or plans, for any reason . . . each house shall introduce such implementing legislation with any amendments each house deems necessary”).

9. Pursuant to that statutory authority, the Legislature stepped into the void left by the IRC’s inaction, introducing and adopting congressional, State Senate, and State Assembly maps to ensure that New York’s 2022 primary elections could proceed as scheduled.

10. But on April 27, 2022, the New York Court of Appeals held the 2021 Legislation unconstitutional to the extent that it allowed the Legislature to pass a redistricting plan in the absence of a second set of plans submitted by the IRC. Consequently, the Court of Appeals invalidated the statute as well as the Legislature’s congressional and State Senate plans. *See Harkenrider v. Hochul*, 2022 N.Y. Slip Op. 02833, 2022 WL 1236822, at *1 (N.Y. Apr. 27, 2022) (nullifying district maps because IRC failed to complete “mandatory process for submission of electoral maps to the legislature”). The Steuben County Supreme Court then moved the primary date for congressional and State Senate elections and ordered that judicially drawn maps be implemented in advance of the new date. The State Assembly map was invalidated on similar grounds as the congressional and State Senate maps soon after, though the Legislature’s State

Assembly map will remain in effect for the 2022 elections due to timing issues. *See Nichols v. Hochul*, 2022 Slip Op. 03809, 2022 WL 2080172, at *1 (1st Dep’t June 10, 2022).

11. The Court of Appeals’ decision makes clear that the IRC did not complete its constitutionally required redistricting duties because it failed to submit a second set of plans. And by striking down the 2021 Legislation, the Court of Appeals also made clear that the Legislature was powerless to enact a new redistricting plan once the IRC refused to submit a second set of plans.

12. Through the Redistricting Amendments, New Yorkers demanded that the state’s redistricting process be democratic, transparent, and conducted by the IRC and the Legislature pursuant to certain procedural and substantive safeguards. They did so to ensure that their voices would be heard in the redistricting process—directly through the IRC public-input process and indirectly through their elected legislators. That process was crafted to ensure the substantive outcomes the voters sought; namely, maps drawn without partisan intent that respect the Empire State’s communities of interest. *See* N.Y. Const. art. III, § 4(c)(5). Instead of achieving this result during the past redistricting cycle, New Yorkers ended up with a judicial map-drawing process for congressional and State Senate districts that was not transparent, did not adequately consider the views of minority voters, and tore apart longstanding communities of interest.¹

13. In other words, as a direct result of the IRC’s refusal to carry out its constitutional duty, New York voters, including Petitioners, one of whom submitted comments and testimony to

¹ On June 10, 2022, the Court of Appeals invalidated the State Assembly map passed by the Legislature and remanded to the Supreme Court of New York County “for consideration of the proper means for redrawing” the map. *See Nichols*, 2022 WL 2080172, at *1-2. The Supreme Court has not yet determined how the State Assembly map will be created.

the IRC during its public hearing process, have yet to vindicate their rights under the Redistricting Amendments.

14. The Court of Appeals has already determined which district plans will be in place during the 2022 elections. Subsequent elections this decade should occur under plans adopted pursuant to the constitutionally mandated process for the IRC and Legislature. Accordingly, Petitioners ask this Court to issue a writ of mandamus pursuant to Article 78 of the CPLR ordering the IRC and its commissioners to fulfill their constitutional duty under Article III, Sections 4 and 5 of the New York Constitution by submitting a second round of proposed congressional and state legislative districting plans for consideration by the Legislature, in order to ensure that a lawful plan is in place immediately following the 2022 elections and can be used for subsequent elections this decade.

PARTIES

15. Petitioners are citizens of the United States and registered to vote in New York. They intend to vote for congressional and state legislative candidates in the primary and general elections in 2024, 2026, 2028, and 2030.

16. Petitioner Anthony S. Hoffmann submitted comments to and testified in front of the IRC following the 2020 census.² Mr. Hoffmann has been a resident of Greenwich Village for over fifty years. He testified at a public meeting on July 26, 2021, that the residents on the East

² See NYS Independent Redistricting Commission, *Bronx and New York Counties Public Meeting*, YouTube (July 26, 2021), https://www.youtube.com/watch?v=WQo4aFhlH_E (video at 49:40 – 53:00); see also New York State Independent Redistricting Commission: New York County Public Hearing, Part 2 (Nov. 10, 2021), <https://totalwebcasting.com/view/?func=VIEW&id=nysirc&date=2021-11-10&seq=1> (video at 33:24–38:10).

and West Sides of Manhattan had different interests and encouraged the IRC to keep the Tenth Congressional District—which previously included much of Manhattan’s West Side—intact.

17. Mr. Hoffmann again testified on November 10, 2021, in support of one proposed map and against another map, and once again encouraged the IRC to recognize the West Side of Manhattan as a community of interest distinct from that of the East Side of Manhattan. While the legislatively enacted map reflected this comment, the court-drawn map pairs these communities together.

18. Respondents the New York State Independent Redistricting Commission and its members—Chairman David Imamura, Commissioner Ross Brady, Commissioner John Conway III, Commissioner Ivelisse Cuevas-Molina, Commissioner Elaine Frazier, Commissioner Lisa Harris, Commissioner Charles Nesbitt, and Commissioner Willis H. Stephens—are responsible under Article III, Sections 4 and 5 of the New York Constitution for proposing congressional and state legislative redistricting plans to the Legislature. As explained in further detail below, Respondents’ submission of proposed plans to the Legislature is a necessary step in the congressional and state legislative redistricting processes, and thus Respondents’ failure to propose plans as required by Article III, Section 4(b) has prevented New York from completing its constitutional process for redrawing its congressional and state legislative districts.

VENUE

19. Venue is proper in Albany County because that is where Respondents “refused to perform the dut[ies] specifically enjoined upon [them] by law”; because “material events . . . took place” in Albany County, as described in the paragraphs below; and because Respondents’ principal offices are located in Albany County. CPLR § 506(b); *see also id.* § 7804(b) (providing

that a proceeding brought pursuant to Article 78 must be brought in the supreme court of the county specified in CPLR § 506(b)).

LEGAL BACKGROUND

20. Every ten years, the district lines for New York’s congressional, State Senate, and State Assembly seats are redrawn to adjust for population variances based on the results of the decennial U.S. census. *See* N.Y. Const. art. III, § 4(a). Newly drawn maps must be approved by the Legislature and signed by the Governor before they become effective. *See id.* art. III, § 4(b). In 2014, New York voters amended the state constitution, establishing new procedural and substantive requirements for redistricting.

I. The Redistricting Amendments established a new redistricting process that imposes mandatory obligations on the IRC.

21. New Yorkers adopted procedural changes by creating an independent redistricting commission with authority to draw districting plans and to submit those plans to the Legislature for its approval, rejection, or amendment. N.Y. Const. art. III, §§ 4(b), 5-b. The IRC is comprised of ten commissioners who are appointed in bipartisan fashion. Each party’s legislative leaders must appoint four commissioners. *Id.* art. III, § 5-b. A bipartisan majority of the resulting eight commissioners must then appoint the remaining two. *Id.* The Redistricting Amendments require that, “to the extent practicable,” commissioners “reflect the diversity of the residents of this state with regard to race, ethnicity, gender, language, and geographic residence.” *Id.* art. III, § 5-b(c).

22. When both houses of the Legislature are controlled by the same political party, a seven-vote majority in the IRC is required to approve a redistricting plan and send it to the Legislature, with one exception. *Id.* If the IRC “is unable to obtain seven votes to approve a

redistricting plan on or before January first . . . or as soon as practicable thereafter,” it must submit to the Legislature the plan or plans that received the most votes. *Id.* art. III, § 5-b(g).

23. The IRC must submit its first approved plans to the Legislature for a vote “on or before January first or as soon as practicable thereafter but no later than January fifteenth.” *Id.* art. III, § 4(b). Each house of the Legislature must then vote on the IRC’s submissions “without amendment.” *Id.*

24. If the Legislature does not approve the IRC’s first proposed maps, then the IRC must repeat the process again. The Redistricting Amendments provide that “[w]ithin fifteen days of [the] notification [of disapproval of the first plan] and in no case later than February twenty-eighth, the redistricting commission shall prepare and submit to the legislature a second redistricting plan and the necessary implementing legislation for such plan.” *Id.*

25. Upon receipt of the second round of IRC maps, the Legislature must vote on the maps “without amendment.” *Id.* Should that vote fail, the IRC process is complete, and the Legislature assumes the redistricting pen to draw its own plans “with any amendments each house of the legislature deems necessary.” *Id.*

26. The Redistricting Amendments are silent on what should occur if the IRC fails to submit a second set of maps to the Legislature.

27. The 2021 Legislation provided that, “if the [IRC] d[oes] not vote on any redistricting plan or plans, for any reason, by the date required for submission of such plan,” the Legislature could proceed to introduce redistricting legislation. *See* L 2021, ch 633; *see also Harkenrider*, 2022 WL 1236822, at *9 (describing statute as “authorizing the legislature to move forward on redistricting even if the IRC fails to submit maps”).

28. The 2021 Legislation also required that “the [IRC] . . . submit to the legislature all plans in its possession, both completed and in draft form, and the data upon which such plans are based,” L 2021, ch 633, presumably to ensure that the Legislature could benefit from the IRC record in adopting new redistricting plans.

29. The Redistricting Amendments also included several new substantive requirements that map-drawers must consider when drawing district lines. Districts shall not result “in the denial or abridgement” of minority voting rights and “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)(1), (5). Additionally, map-drawers must consider “the maintenance of cores of existing districts,” “pre-existing political subdivisions,” and “communities of interest.” *Id.* art. III, § 4(c)(5).

II. The Redistricting Amendments also created a process for remedying legal deficiencies in redistricting plans.

30. The Redistricting Amendments provide that “[a]n apportionment by the legislature, or other body, shall be subject to review by the supreme court, at the suit of any citizen.” N.Y. Const. art. III, § 5.

31. The Redistricting Amendments also provide that “[i]n any judicial proceeding relating to redistricting of congressional or state legislative districts, any law establishing congressional or state legislative districts found to violate the provisions of [Article III] shall be invalid in whole or in part.” *Id.* Furthermore, “[i]n the event that a court finds such a violation, *the legislature shall have a full and reasonable opportunity to correct the law’s legal infirmities.*” *Id.* (emphasis added).

FACTUAL BACKGROUND

III. The IRC failed to fulfill its constitutional duties.

32. The newly established IRC convened in the spring of 2021, pursuant to the requirements of the Redistricting Amendments. The IRC held hearings in the summer and fall of 2021 to aid its drawing of the state's congressional and state legislative boundaries.

33. On January 3, 2022, following months of meetings, hearings, and legwork, the IRC voted on plans to submit to the Legislature. No plans garnered the seven required votes, and, consistent with the New York Constitution, the IRC submitted the plans that received the most votes—a Republican-proposed set of maps and a Democratic-proposed set of maps, each of which received five votes.³ On January 10, 2022, the Legislature rejected both sets of maps and notified the IRC.

34. Subsequently, the IRC refused to submit a second set of redistricting plans and the necessary implementing legislation “[w]ithin fifteen days of such notification and in no case later than February twenty-eighth,” as required by Article III, Section 4(b) of the New York Constitution.

35. On January 24, 2022, Chair Imamura announced that the IRC was deadlocked and would not submit a second round of recommended plans to the Legislature. Republican Vice Chair

³ *Letter from Karen Blatt to Legislative Leaders*, N.Y. State Indep. Redistricting Comm’n (Jan. 3, 2022), https://www.nyirc.gov/storage/plans/20220103/planA_cover_letter.pdf; *Letter from Jack Martins et al.*, N.Y. State Indep. Redistricting Comm’n (Jan. 3, 2022), https://www.nyirc.gov/storage/plans/20220103/planB_cover_letter.pdf.

Martins claimed that the IRC's Democratic commissioners refused to develop a new proposal,⁴ while Chair Imamura stated that the Republican commissioners simply refused to meet.⁵

36. The Democratic commissioners said in a statement, "We have repeatedly attempted to schedule a meeting by [January 25, 2022], and our Republican colleagues have refused. This is the latest in a repeated pattern of Republicans obstructing the Commission doing its job. We have negotiated with our Republican colleagues in good faith for two years to achieve a single consensus plan. At every step, they have refused to agree to a compromise."⁶ They added, "The Republicans are intentionally running out the clock to prevent the Commission from voting on second maps by its deadline."⁷

37. Ultimately, January 25, 2022 and February 28, 2022 came and went without any action by the IRC. At that point, it was not clear whether the redistricting process had failed, as the 2021 Legislation at least facially gave the Legislature the opportunity to pass a new redistricting map.

IV. The Legislature and Governor enacted new district maps.

38. Following the IRC's failure to vote on and submit a second round of maps, the Legislature assumed control over the redistricting process.⁸ Pursuant to the 2021 Legislation, the

⁴See Joshua Solomon, *Independent Redistricting Commission Comes to a Likely Final Impasse*, Times Union (Jan. 24, 2022), <https://www.timesunion.com/state/article/Independent-Redistricting-Commission-comes-to-a-16800357.php>.

⁵See Rachel Vick, *Redistricting Deadline Leaves Electoral Lines in Limbo*, Queens Daily Eagle (Jan. 25, 2022), <https://queenseagle.com/all/redistricting-deadline-leaves-electoral-lines-in-limbo>.

⁶ *Id.*

⁷ *Id.*

⁸See Nick Reisman, *New York Lawmakers to Draw Redistricting Maps, Expect Vote Next Week*, Spectrum News (Jan. 26, 2022), <https://spectrumlocalnews.com/nys/central-ny/ny-state-of-politics/2022/01/26/new-york-lawmakers-to-draw-redistricting-maps--expect-vote-next-week>.

Legislature passed new congressional, State Senate, and State Assembly plans on February 3, 2022. Governor Kathy Hochul signed the three plans into law later that day. *See* A9167/S8196, A9039-A/S8172-A, A9168/S8197, S8185-A/A9040-A, 2022 Leg., Reg. Sess. (N.Y. 2022).

39. That same day, a group of Republican voters filed a petition in the New York Supreme Court in Steuben County, claiming that the new congressional plan was unconstitutional. *See generally* Pet., *Harkenrider v. Hochul*, No. E2022-0116CV (Steuben Cnty. Sup. Ct. Feb. 3, 2022), NYSCEF Doc. No. 1 (attached to Affirmation of James R. Peluso (June 28, 2022) (“Peluso Aff.”) as Ex. 1). The *Harkenrider* petitioners alleged that the plan was procedurally defective because the Legislature lacked the authority to enact it after the IRC failed to submit a second set of proposed plans to the Legislature. *Id.* ¶¶ 186–197. The petitioners further alleged that, because the enacted congressional plan was procedurally invalid, New York’s prior congressional map remained in place, rendering the state’s congressional districts unconstitutionally malapportioned. *Id.* ¶¶ 198–207. The petitioners also alleged that the legislatively enacted congressional plan was a partisan gerrymander in violation of the New York Constitution. *Id.* ¶¶ 208–15. They later amended their petition to challenge the Legislature’s State Senate plan on the same bases. *See generally* Am. Pet., *Harkenrider*, No. E2022-0116CV (Steuben Cnty. Sup. Ct. Feb. 14, 2022), NYSCEF Doc. No. 33 (attached to Peluso Aff. as Ex. 2).

40. On March 3, one month after the *Harkenrider* petition was filed, the Steuben County Supreme Court held its first hearing on the matter. The Steuben County Supreme Court proceeded to hold a trial from March 14 to 16.

41. On March 31, 2022, the Steuben County Supreme Court enjoined use of the legislatively enacted congressional, State Senate, and State Assembly plans for the 2022 elections. *See* Decision & Order at 17–18, *Harkenrider*, No. E2022-0116CV (Steuben Cnty. Sup. Ct. Mar.

31, 2022), NYSCEF Doc. No. 243 (attached to Peluso Aff. as Ex. 3). The court held that the Legislature violated the New York Constitution by enacting redistricting legislation after the IRC failed to submit a second round of proposed maps. *Id.* at 10. It also held that the enacted congressional plan was drawn with unconstitutional partisan intent under Article III, Section 4(c)(5) of the New York Constitution. *Id.* at 14.

42. The Steuben County Supreme Court ordered that “the Legislature shall have until April 11, 2022 to submit bipartisanly supported maps to this court for review,” and further ordered that it would appoint a neutral expert to draw new maps if the Legislature failed to produce bipartisan maps by that date. *Id.* at 18.

43. Soon after, the Fourth Department of the New York Supreme Court, Appellate Division stayed the Steuben County Supreme Court’s order, allowing primary processes and petitioning to continue under the Legislature’s congressional and State Senate plans. *See Order, Harkenrider v. Hochul*, No. CAE 22-00506 (4th Dep’t Apr. 8, 2022) (attached to Peluso Aff. as Ex. 4). Two weeks later, on April 21, the Fourth Department reversed the Steuben County Supreme Court’s holding that the new plans were procedurally invalid—but nonetheless struck down the congressional map as an unconstitutional partisan gerrymander. *See Harkenrider v. Hochul*, 204 A.D.3d 1366, 1369–70, 1374 (4th Dep’t 2022).

V. The Court of Appeals invalidated the 2021 Legislation and the Legislature’s plans.

44. On April 27, 2022—one week before the New York State Board of Elections’ deadline certify ballots for the state’s primary elections—the New York Court of Appeals held that the 2021 Legislation was unconstitutional and invalidated the enacted congressional and State Senate plans.

45. The Court of Appeals explained that “the legislature and the IRC deviated from the constitutionally mandated procedure” required by the “plain language” of the Redistricting Amendments. *Harkenrider*, 2022 WL 1236822, at *5. It described the “mandatory process for submission of electoral maps to the legislature,” as follows:

The IRC “shall prepare” and “shall submit” to the legislature a redistricting plan with implementing legislation, that IRC plan “shall be voted upon, without amendment,” by the legislature, and—in the event the first plan is rejected—the IRC “shall prepare and submit to the legislature a second redistricting plan and the necessary implementing legislation,” which again “shall be voted upon, without amendment.”

Id. at *1, *6 (quoting N.Y. Const. art. III, § 4(b)). The Court of Appeals emphasized that “the detailed amendments leave no room for legislative discretion regarding the particulars of implementation.” *Id.* at *8.

46. The Court of Appeals explained that the 2021 Legislation was unconstitutional because “the drafters of the [Redistricting Amendments] and the voters of this state intended compliance with the IRC process to be a constitutionally required precondition to the legislature’s enactment of redistricting legislation.” *Id.* at *9. In other words, “the IRC’s fulfillment of its constitutional obligations was unquestionably intended to operate as a necessary precondition to, and limitation on, the legislature’s exercise of its discretion in redistricting.” *Id.* at *7.

47. The Court of Appeals ordered the Steuben County Supreme Court to draw new congressional and State Senate maps for the 2022 elections with the help of a special master. *See id.* at *13. In so ordering, the Court of Appeals explained that “it will likely be necessary to move the congressional and senate primary elections to August.” *Id.* at *12.

48. Even though the Redistricting Amendments included a provision requiring that the Legislature be given a “full and reasonable opportunity to correct . . . legal infirmities,” N.Y.

Const. art. III, § 5, the Court of Appeals held that “[t]he procedural unconstitutionality of the congressional and senate maps is, at this juncture, incapable of a legislative cure” because the IRC had not sent a second set of maps. *Harkenrider*, 2022 WL 1236822, at *12.

49. More than a month later, on June 10, the First Department of the Appellate Division relied on the Court of Appeals’ *Harkenrider* decision to invalidate the Legislature’s State Assembly plan based on “procedural infirmities in the manner in which it was adopted.” *Nichols*, 2022 WL 2080172, at *1. The court declined to delay the June 28, 2022, State Assembly primary election, however, and remanded the case to the New York County Supreme Court “for consideration of the proper means for redrawing the state assembly map.” *Id.*

VI. Despite widespread objections, the Steuben County Supreme Court adopted a congressional plan that unnecessarily shifts residents into new districts and divides long-recognized communities of interest.

50. Two days after the Court of Appeals’ decision invalidating the legislatively enacted congressional and State Senate plans, the Steuben County Supreme Court ordered that New York’s congressional and State Senate primary elections would occur on August 23, 2022, rather than the originally scheduled date of June 28, 2022. Prelim. Order at 2, *Harkenrider*, No. E2022-0116CV (Steuben Cnty. Sup. Ct. Apr. 29, 2022), NYSCEF Doc. No. 301 (attached to Peluso Aff. as Ex. 5).

51. Unlike the constitutionally mandated IRC and legislative redistricting process, the Steuben County Supreme Court’s process for adopting new congressional and State Senate plans provided no meaningful opportunity for the public to comment on maps submitted to the court without traveling to Bath *in person*—a hardship for the vast majority of New Yorkers, including minority voters who live hours away in New York City, voters who do not own cars, and voters who were not able to take an entire day off work to participate in the court’s hearing. Steuben County is not only geographically removed from New York’s major metropolitan areas, it is one

of the *least* racially diverse areas of the state. Indeed, while New York State’s non-Hispanic White population is 55.3%, Steuben County’s is 93.4%.⁹

52. Article III, Section 5-b(c) of the New York Constitution requires that IRC commissioners “reflect the diversity of the residents of this state with regard to race, ethnicity, gender, language, and geographic residence” and mandates that “to the extent practicable the appointing authorities shall consult with organizations devoted to protecting the voting rights of minority and other voters concerning potential appointees to the commission.” By contrast, the Steuben County Supreme Court’s special master was not selected on diversity-related criteria.

53. And while the IRC public comment process played out over the course of many months as part of an iterative map-drawing process, comments regarding the special master’s proposed map were due just two days after it was released—which was followed by the map’s ordered implementation just two days later, on May 20, 2022.

54. In a report justifying his map, the special master stated that “[c]ommunities of interest are notoriously difficult to precisely define. Even within a specific minority community there may be issues of what are the boundaries of particular neighborhoods and which neighborhoods most appropriately belong together.” Rep. of the Special Master at 20, *Harkenrider*, No. E2022-0116CV (Steuben Cnty. Sup. Ct. May 21, 2022), NYSCEF Doc. No. 670 (attached to Peluso Aff. as Ex. 6). The special master went on to state that it was “impossible to incorporate most of the suggestions” he received due in part to his desire to minimize county splits.

⁹ Compare *Quick Facts: Steuben County, New York*, U.S. Census Bureau, <https://www.census.gov/quickfacts/steubencountynewyork> (last visited June 15, 2022), with *QuickFacts: New York*, U.S. Census Bureau, <https://www.census.gov/quickfacts/NY> (last visited June 15, 2022).

Id. at 17.¹⁰ And while the special master apparently considered the comments previously submitted to the IRC, he also considered unidentified “suggestions given directly to [him] prior to [his] drafting of a preliminary map.” *Id.* at 18. Those comments were apparently not part of the public record, further underscoring the lack of transparency in the judicial map-drawing process.

55. It is no surprise, then, that the failure to follow New York’s constitutionally required map-drawing process resulted in a congressional plan that splits longstanding minority communities of interest for reasons that remain unclear. For example, the special master’s plan split Prospect Heights, a predominantly working-class Black community in Brooklyn, and combined part of that community with wealthy Manhattan residents in the Financial District and Tribeca. The special master’s plan also failed to keep Bedford-Stuyvesant, Fort Greene, East New York, and Canarsie together, even though those areas had historically been grouped together in a single congressional district once represented by Shirley Chisholm, the first Black woman elected to Congress. And even though “hundreds of citizens” requested that Co-Op City—historically the largest housing cooperative in the world—be placed in the Sixteenth Congressional District, the special master declined to do so based in part on unspecified “other criteria.” *Id.* at 20.

56. In short, the IRC’s failure to send a second set of maps to the Legislature not only stymied the constitutional procedure enacted by New York voters, but also resulted in a map that does not properly reflect the substantive redistricting criteria contained in the Redistricting Amendments.

¹⁰ The IRC and Legislature must consider communities of interest *and* political boundary lines when drawing districts, but the New York Constitution does not specify which consideration shall take precedence. *See* N.Y. Const. art. III, § 4(c)(5).

PETITION FOR WRIT OF MANDAMUS AGAINST RESPONDENTS**Failure to Fulfill Constitutional Duty Under
Article III, Sections 4 and 5 of the New York Constitution**

57. Petitioners reallege and reincorporate by reference all prior paragraphs of this Verified Petition and the paragraphs in the count below as though fully set forth herein.

58. A writ of mandamus is available where a government “body or officer failed to perform a duty enjoined upon it by law.” CPLR § 7803(1).

59. Article III, Section 4(b) of the New York Constitution requires that, if the Legislature “shall fail to approve the legislation implementing the [IRC’s] first redistricting plan, or the governor shall veto such legislation and the legislature shall fail to override such veto,” then “[w]ithin fifteen days of [the notification of rejection] and in no case later than February twenty-eighth, the [IRC] *shall* prepare and submit to the legislature a second redistricting plan and the necessary implementing legislation for such a plan.” N.Y. Const. art. III, § 4(b) (emphasis added).

60. After the Legislature rejected the IRC’s first set of congressional and state legislative plans, the IRC refused to prepare and submit a second set of plans.

61. Under the 2021 Legislation, “if the [IRC] d[id] not vote on any redistricting plan or plans, for any reason, by the date required for submission of such plan,” the Legislature could proceed to introduce redistricting legislation. L 2021, ch 633.

62. The Court of Appeals subsequently declared the 2021 Legislation “unconstitutional to the extent that it permits the legislature to avoid a central requirement of the” Redistricting Amendments. *Harkenrider*, 2022 WL 1236822, at *9. The Court of Appeals then invalidated the Legislature’s congressional and State Senate plans and ordered that new plans be drawn before the 2022 primary elections.

63. The First Department of the Appellate Division subsequently relied on the Court of Appeals' decision to invalidate the Legislature's State Assembly plan. *See Nichols*, 2022 WL 2080172, at *1.

64. As the Court of Appeals stated, "No one disputes that this year, during the first redistricting cycle to follow adoption of the 2014 amendments, the IRC and the legislature failed to follow the procedure commanded by the State Constitution. A stalemate within the IRC resulted in a breakdown in the mandatory process for submission of electoral maps to the legislature." *Harkenrider*, 2022 WL 1236822, at *1.

65. The Court of Appeals was correct: The IRC failed to complete its mandatory duty to submit a second set of congressional and state legislative plans to the Legislature for consideration.

PRAYER FOR RELIEF

WHEREFORE, Petitioners pray for relief as follows:

- A. Grant Petitioners' Verified Petition for a Writ of Mandamus by commanding the New York State Independent Redistricting Commission and its commissioners to fulfill their constitutional duty under Article III, Sections 4 and 5 of the New York Constitution by submitting a second round of proposed congressional and state legislative districting plans for consideration by the Legislature, in order to ensure that a lawful plan is in place immediately following the 2022 elections and can be used for subsequent elections this decade.
- B. Grant such other and further relief as this Court may find just and proper.

Dated: June 28, 2022

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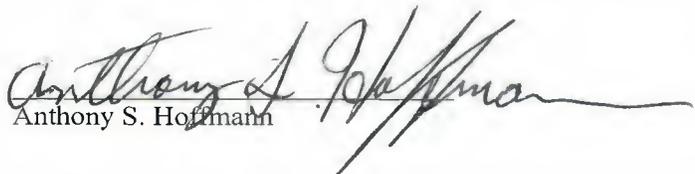
**Pro hac vice applications forthcoming*

VERIFICATION

State of New York)
 : ss.:
County of Queens)

Anthony S. Hoffmann, being duly sworn, deposes and says:

1. I am a petitioner in the above-entitled action.
2. I am united in interest and plead together with the other Petitioners in this action.
3. I have read the contents of the foregoing Petition.
4. The information stated therein is true to my own knowledge except as to those matters stated to be alleged upon information and belief, and as to those matters I believe the information to be true.


Anthony S. Hoffmann

Sworn to before me this

28th th day of June, 2022



Notary Public

JONATHAN TRATTNER
Notary Public - State of New York
NO. 01TR6416407
Qualified in Queens County
My Commission Expires Apr 19, 2025

This remote notarial act involved the use of communication technology.

VERIFICATION

State of New York)

: ss.:

County of Queens)

Seth Pearce, being duly sworn, deposes and says:

- 5. I am a petitioner in the above-entitled action.
- 6. I am united in interest and plead together with the other Petitioners in this action.
- 7. I have read the contents of the foregoing Petition.
- 8. The information stated therein is true to my own knowledge except as to those matters stated to be alleged upon information and belief, and as to those matters I believe the information to be true.

Signed by: Seth Pearce
Date & Time: Jun 28, 2022 16:39:32 EDT
Seth Pearce

Sworn to before me this

28 th day of June, 2022

Notary Public



This remote notarial act involved the use of communication technology.

PROPOSED ORDER TO SHOW CAUSE,
FILED JUNE 28, 2022 [46 - 48]

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ALBANY

-----X

Anthony S. Hoffmann; Courtney Gibbons;
Lauren Foley; Seth Pearce; and Nancy Van Tassel,

Index No. _____

Petitioners,

ORDER TO SHOW CAUSE

For an Order and Judgment Pursuant to Article 78 of the
New York Civil Practice Law and Rules

Oral argument requested

-against-

The New York State Independent Redistricting
Commission; Independent Redistricting Commission
Chairperson David Imamura; Independent Redistricting
Commissioner Ross Brady; Independent Redistricting
Commissioner John Conway III; Independent Redistricting
Commissioner Ivelisse Cuevas-Molina; Independent
Redistricting Commissioner Elaine Frazier; Independent
Redistricting Commissioner Lisa Harris; Independent
Redistricting Commissioner Charles Nesbitt; and
Independent Redistricting Commissioner Willis H.
Stephens,

Respondents.

-----X

UPON reading and filing the annexed Verified Petition of Petitioners Anthony S. Hoffmann, Courtney Gibbons, Lauren Foley, Seth Pearce, and Nancy Van Tassel, dated June 28, 2022, and the Affirmation of James R. Peluso and the exhibits attached thereto, and the accompanying Memorandum of Law, dated June 28, 2022, and upon due consideration:

LET THE RESPONDENTS OR RESPONDENTS' COUNSEL SHOW CAUSE before this court, at the Albany County Courthouse located at 20 Eagle Street, Albany, New York, on July 29, 2022 at 9:30 a.m., or as soon thereafter as counsel may be heard, why a judgment should not be entered in this proceeding:

1. Granting judgment, pursuant to Article 78 of the New York Civil Practice Law and Rules (“CPLR”), compelling the New York State Independent Redistricting Commission and its commissioners to fulfill their constitutional duty under Article III, Sections 4 and 5 of the New York Constitution by submitting a second round of proposed congressional and state legislative districting plans for consideration by the Legislature, in order to ensure that a lawful plan is in place immediately following the 2022 elections and can be used for subsequent elections this decade; and

2. Grant such other and further relief as this Court may find just and proper.

And it is further ORDERED, that service of a copy of this order on the Attorney General, Independent Redistricting Commission Chairperson David Imamura, Independent Redistricting Commissioner Ross Brady, Independent Redistricting Commissioner John Conway III, Independent Redistricting Commissioner Ivelisse Cuevas-Molina, Independent Redistricting Commissioner Elaine Frazier, Independent Redistricting Commissioner Lisa Harris, Independent Redistricting Commissioner Charles Nesbitt, and Independent Redistricting Commissioner Willis H. Stephens, by personal or electronic mail service, together with the papers upon which it is granted, on or before the 30th day of June, 2022, be deemed good and sufficient service upon Respondents thereof; and it is further

ORDERED that answering papers shall be served on Petitioners’ counsel by electronic service on or before the 15th day of July, 2022; and it is further

ORDERED that reply papers, if any, shall be served on Respondents’ counsel by electronic service on or before the 26th day of July, 2022.

ENTER:

J.S.C.

EMERY CELLI BRINCKERHOFF
& ABADY, LLP

/s/ Matthew D. Brinckerhoff
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**Pro hac vice applications forthcoming*

AFFIRMATION OF JAMES R. PELUSO, ESQ., FOR PETITIONER, IN SUPPORT OF VERIFIED PETITION, DATED JUNE 28, 2022 [49 - 50]

FILED: ALBANY COUNTY CLERK 06/28/2022 06:15 PM

NYSCEF DOC. NO. 3

INDEX NO. 904972-22

RECEIVED NYSCEF: 06/28/2022

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ALBANY

-----X

Anthony S. Hoffmann; Courtney Gibbons;
Lauren Foley; Seth Pearce; and Nancy Van Tassel,

Index No. _____

Petitioners,

**ATTORNEY AFFIRMATION
OF JAMES R. PELUSO
IN SUPPORT OF
VERIFIED PETITION**

-against-

The New York State Independent Redistricting Commission; Independent Redistricting Commission Chairperson David Imamura; Independent Redistricting Commissioner Ross Brady; Independent Redistricting Commissioner John Conway III; Independent Redistricting Commissioner Ivelisse Cuevas-Molina; Independent Redistricting Commissioner Elaine Frazier; Independent Redistricting Commissioner Lisa Harris; Independent Redistricting Commissioner Charles Nesbitt; and Independent Redistricting Commissioner Willis H. Stephens,

Respondents.

-----X

JAMES R. PELUSO, an attorney admitted to practice in the courts of this State, and not a party to the within action, affirms the following to be true under the penalties of perjury pursuant to CPLR § 2106:

1. I am an attorney at law duly admitted to practice before this Court and partner with the law firm of Dreyer Boyajian LLP.
2. I submit this Affirmation to present to the Court certain unreported court opinions and pleadings underlying said authority in support of Petitioners' Verified Petition submitted herewith, which materials are attached hereto as described below.
3. A true and correct copy of the Petition, dated February 3, 2022, from the action captioned *Harkenrider v. Hochul*, No. E2022-0116CV (Sup Ct, Steuben County, Feb. 3, 2022), is annexed hereto as "Ex. 1."

4. A true and correct copy of the Amended Petition, dated February 14, 2022, from the action captioned *Harkenrider v. Hochul*, No. E2022-0116CV (Sup Ct, Steuben County, Feb. 14, 2022) and attached as Exhibit B to an Order to Show Cause in that action, is annexed hereto as “Ex. 2.”

5. A true and correct copy of the Decision and Order, dated March 31, 2022, from the action captioned *Harkenrider v. Hochul*, No. E2022-0116CV (Sup Ct Steuben County, Mar. 31, 2022), is annexed hereto as “Ex. 3.”

6. A true and correct copy of the Decision, dated April 8, 2022, from the action captioned *Harkenrider v. Hochul*, No. CAE 22-00506 (4th Dept, Apr. 8, 2022), is annexed hereto as “Ex. 4.”

7. A true and correct copy of the Preliminary Order, dated April 29, 2022, from the action captioned *Harkenrider v. Hochul*, No. E2022-0116CV (Sup Ct, Steuben County, Apr. 29, 2022) is annexed hereto as “Ex. 5.”

8. A true and correct copy of the Decision and Order, dated May 21, 2022, from the action captioned *Harkenrider v. Hochul*, No. E2022-0116CV (Sup Ct, Steuben County, May 21, 2022) is annexed hereto as “Ex. 6.”

Dated: June 28, 2022
Albany, New York

By: /s/ James R. Peluso
James R. Peluso

EXHIBIT 1 TO PELUSO AFFIRMATION -
PETITION, DATED FEBRUARY 3, 2022, FROM THE
ACTION CAPTIONED HARKENRIDER V. HOCHUL,
INDEX NO. E2022-0116CV [51 - 117]

~~FILED: STEUBEN COUNTY CLERK 06/22/2022 06:15 PM~~

NYSCEF DOC. NO. 1

INDEXED: N02022497262X

RECEIVED NYSCEF: 06/08/2022

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. _____

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 Wynthrop 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/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 Prcp. 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 Benger, 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 Bengler, 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 Off 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.

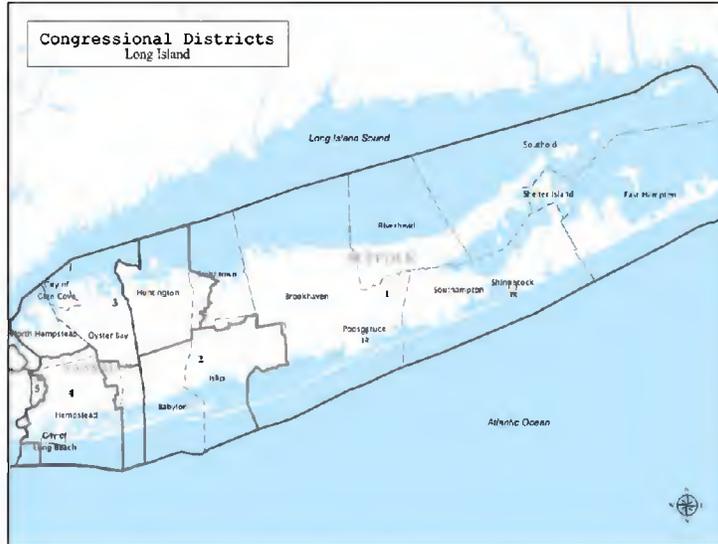
116. In particular, the Legislature placed areas with high concentrations of Republican voters into new Congressional District 2 while moving solidly Democrat communities into Congressional District 1—all of the Republican communities in Brookhaven on the south shore are now in District 2, whereas the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

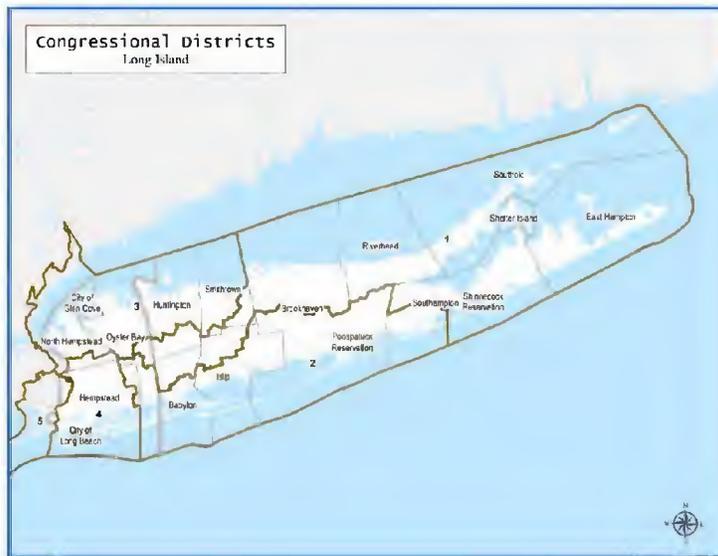
118. The result of this blatant gerrymandering has turned Congressional District 1 from a strong Republican district, solely in Suffolk County, into a lean Democratic district, unnecessarily sprawling across two counties.

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/>.

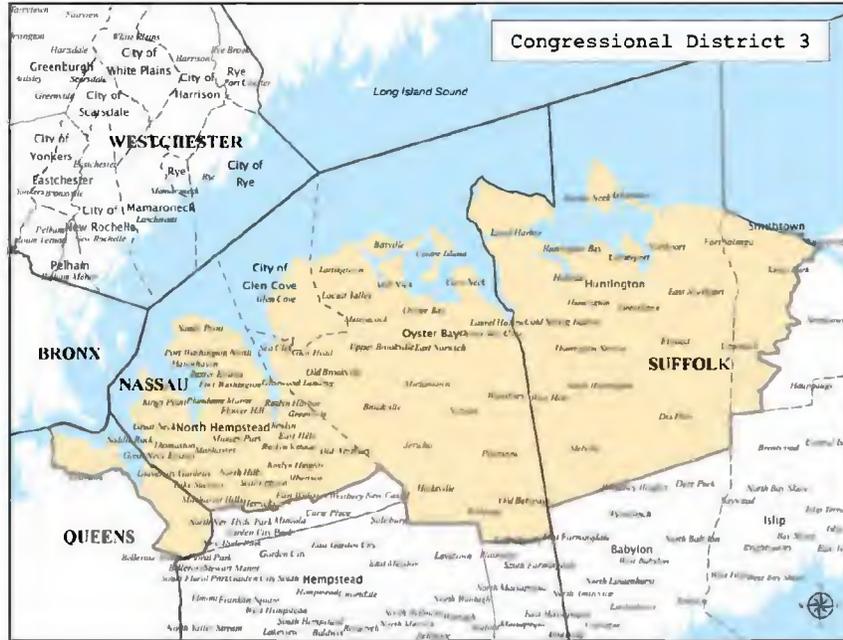
120. The new Congressional District 3 is dramatically different from the old map in order to accomplish the Legislature’s partisan goals.

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.

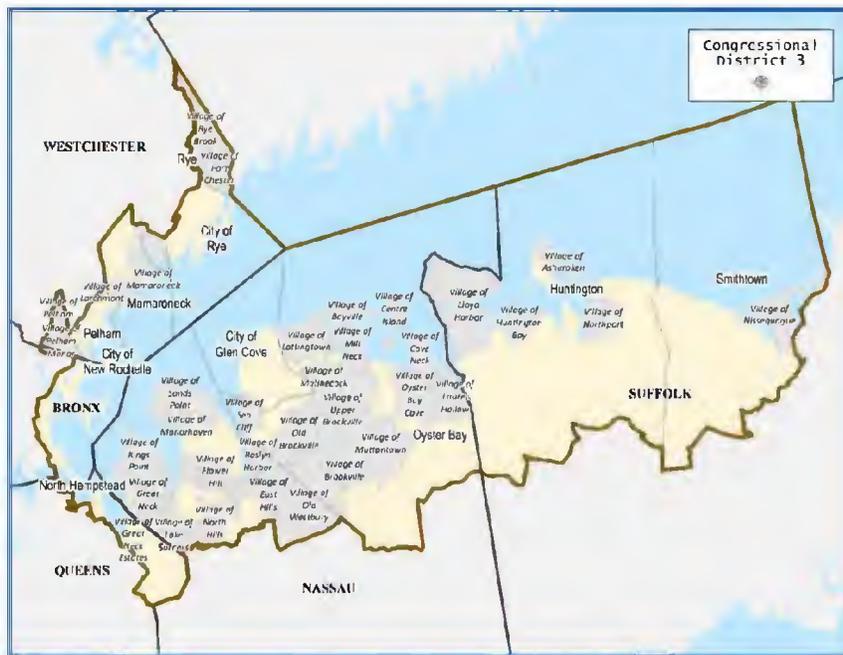
122. This combination of Westchester, with a district largely populated on Suffolk and Nassau counties, makes no sense. These communities have no nexus and share no communities of interest.

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.

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/16jFKDH-_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:

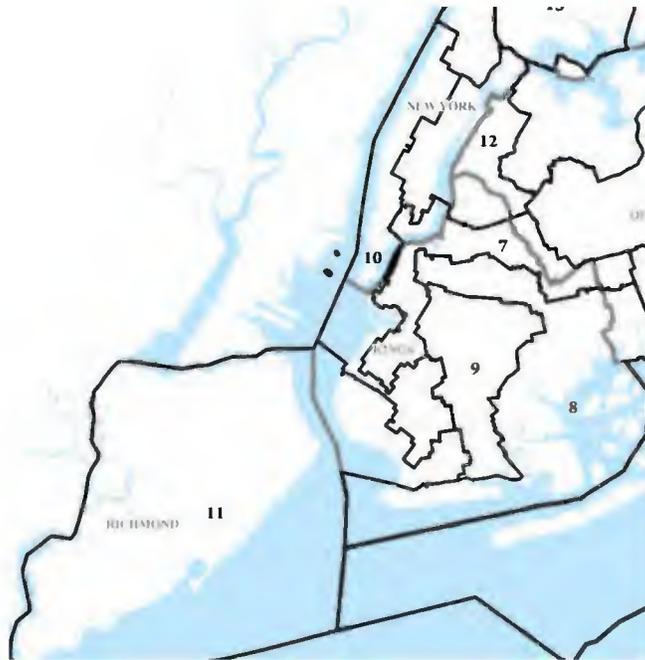


133. These redrawn Brooklyn districts are blatant gerrymanders, with bizarre, roving boundaries crossing multiple bodies of water and snaking between each other for no discernible reason besides partisan advantage.

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



Map of Old Congressional District 10



Map of New Congressional District 10

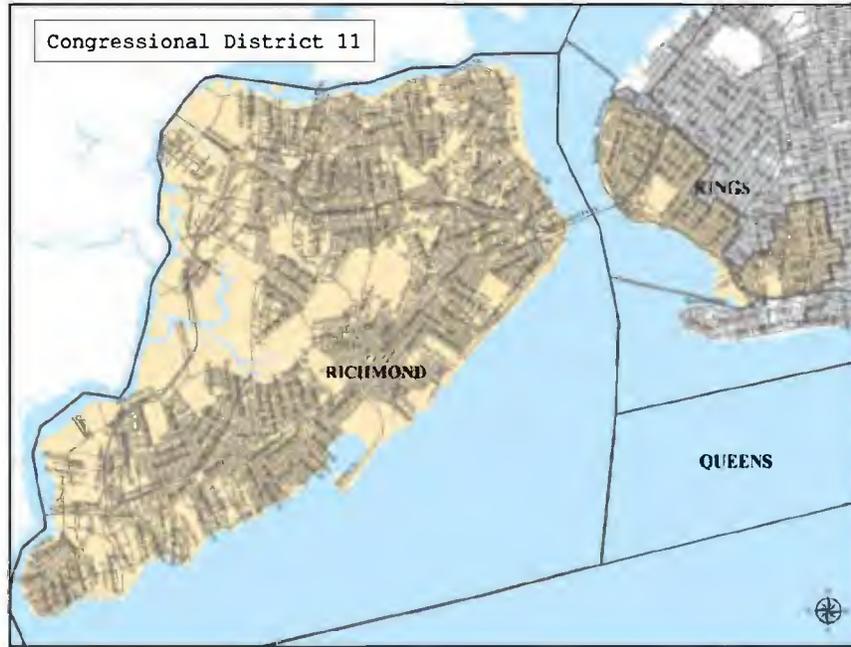


Overlay of Old Congressional District 10 and New Congressional District 10²⁷

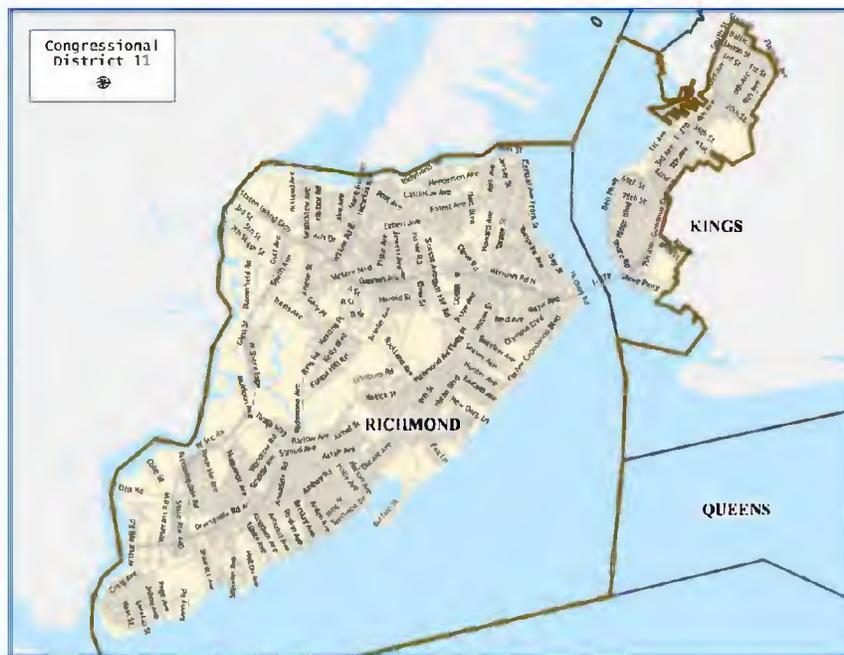


²⁷ Nicholas Fandos, *How N.Y. Democrats Came Up With Their Gerrymandered Districts on Their New Map*, N.Y. Times (Jan. 31, 2022), available at <https://www.nytimes.com/2022/01/31/nyregion/nyc-congressional-district-nadler.html>.

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.

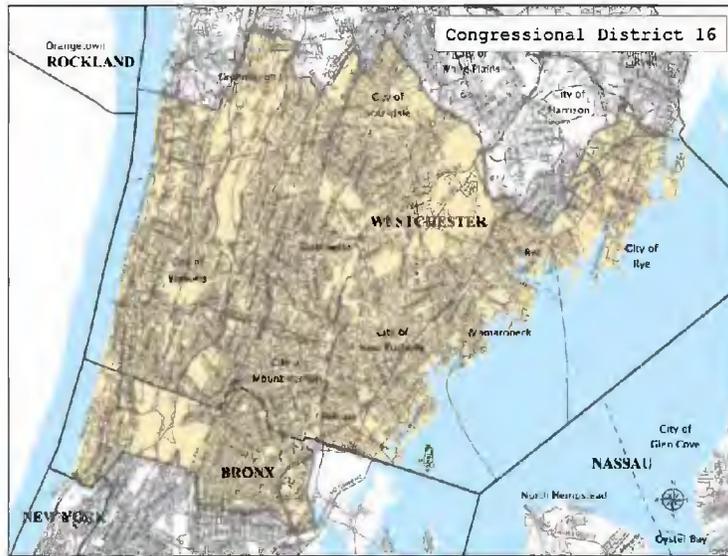
137. Furthermore, the gerrymander of Congressional District 16 removes Republican voters from Congressional District 18 into a strong Democratic district, making Congressional District 18 a safer Democratic district, without jeopardizing the Democratic Party’s interests in Congressional District 16.

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.

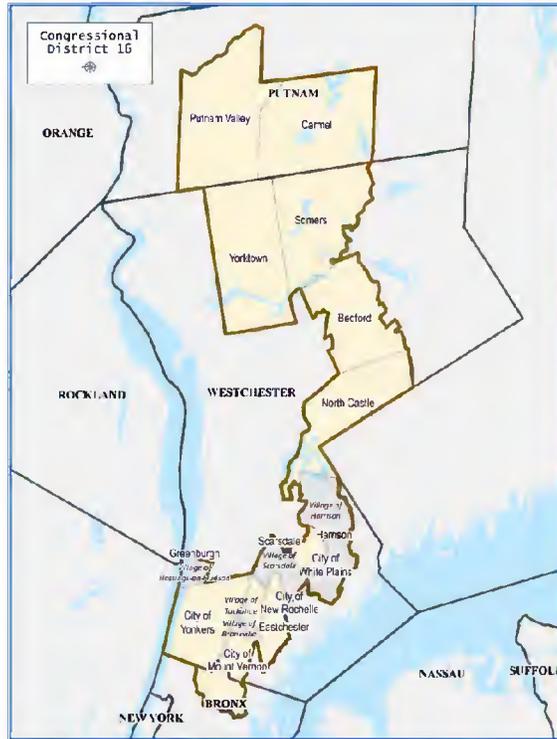
139. The legislative Democrats made these shifts not only to shore up their party’s chances in Congressional District 18, but also to protect incumbent Democratic Congressman Sean Maloney, the newly elected chair of the Democratic Congressional Campaign Committee.

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.

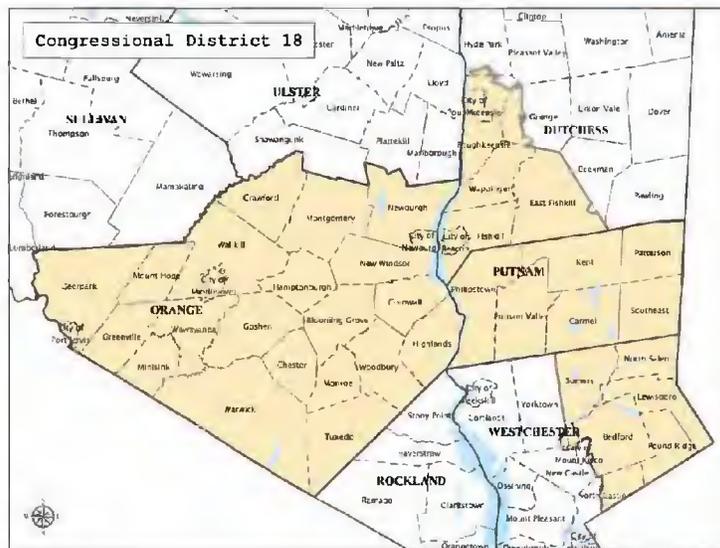
Map of Old Congressional District 16



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.

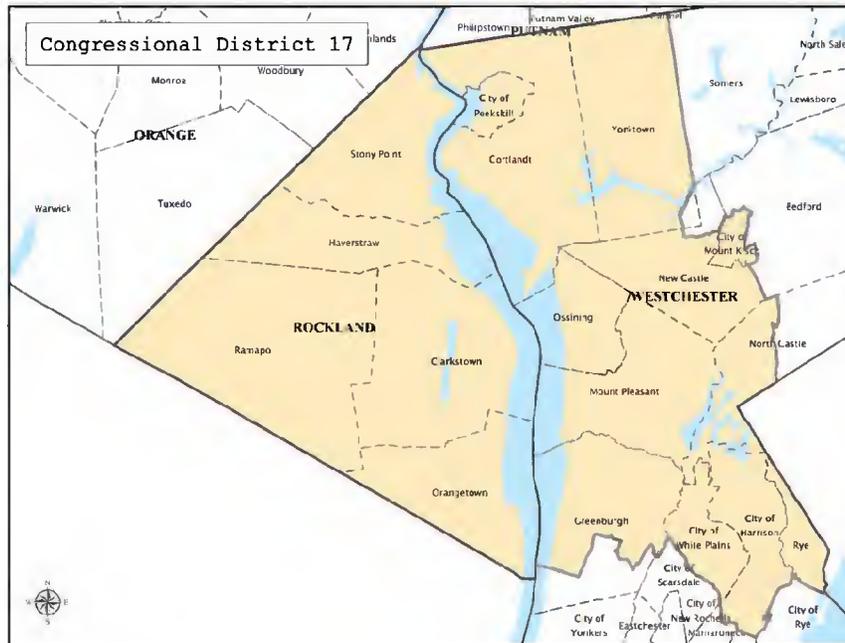
144. The District also includes part of the strongly Democrat city of White Plains.

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.

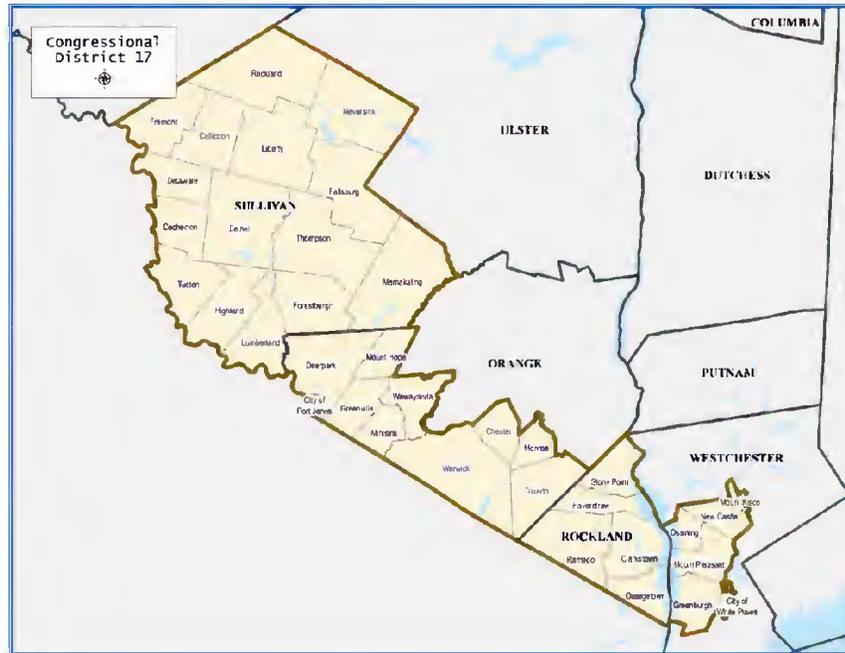
146. The resulting new District cracks those conservative communities, spreading Republican voters among multiple districts to decrease their voting power, without jeopardizing any Democratic districts.

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.

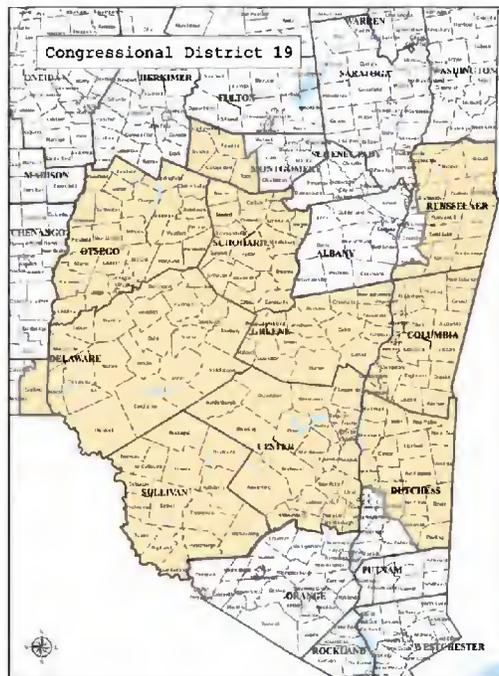
150. In Ulster County, the District picks up Democrats while specifically avoiding communities with large numbers of Republican voters.

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



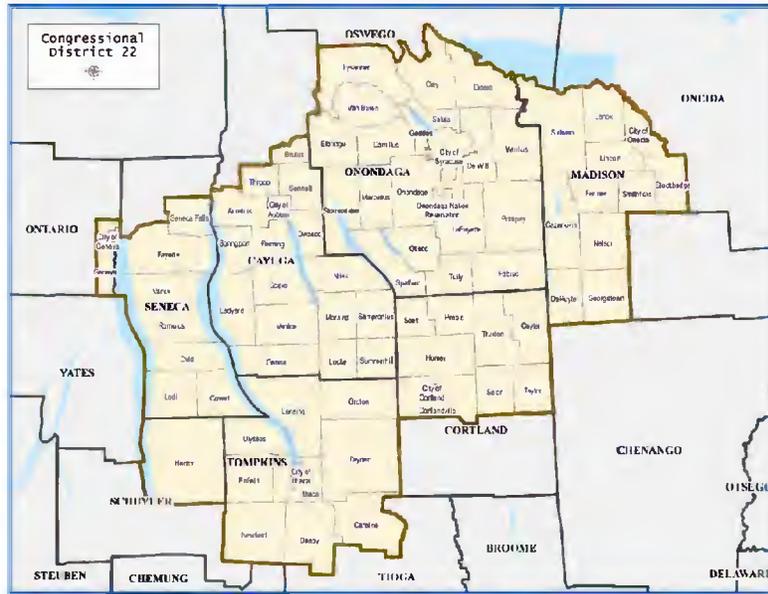
156. In Congressional District 22, the Legislature removed Republican areas and replaced them with Tompkins County, including the city of Ithaca, to flip the district from a competitive Republican district to a strong Democratic one.

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



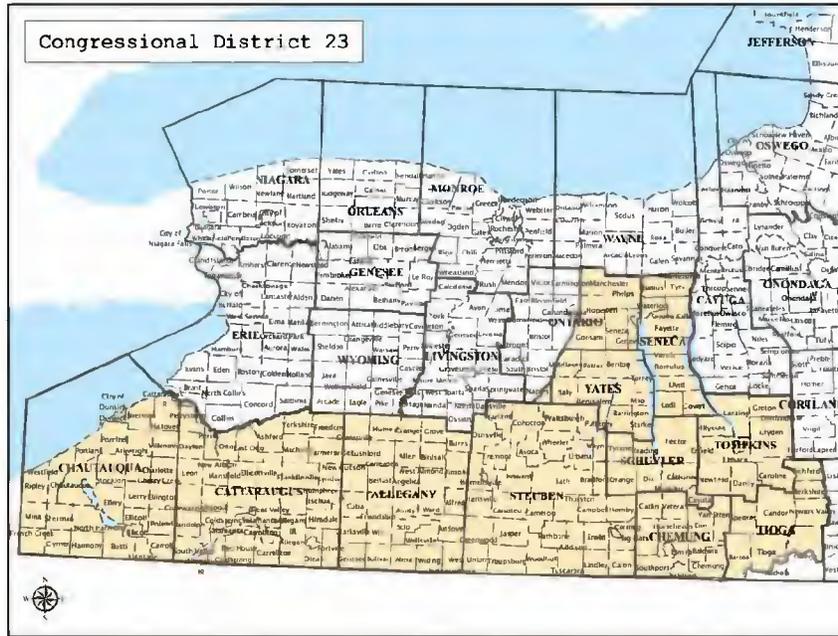
158. The Legislature gerrymandered Congressional District 23 by “packing” as many Republican votes into this district as it could, for partisan gain.

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.

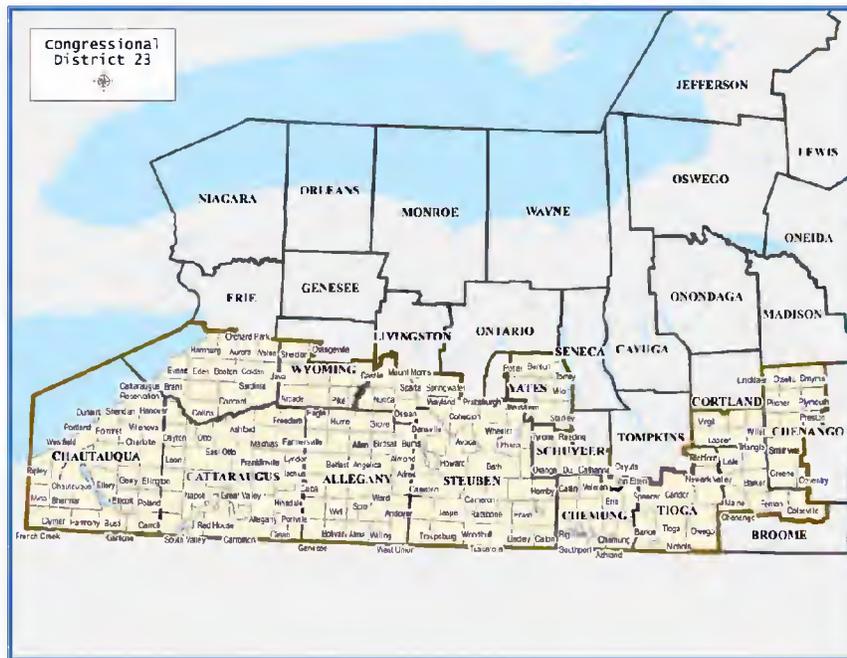
160. The old district also included some heavily Democratic areas in Tompkins County, but the Legislature removed those areas, as noted above, placing them in Congressional District 22, in order to flip that district.

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 “[i]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;

F. Suspending or enjoin the operation of any other state laws that would undermine this Court's ability to offer effective and complete relief to Petitioners for the November 2022 elections and related primaries.

G. Awarding Petitioners all of their reasonable attorneys' fees and costs; and

H. Awarding such other and further relief as this Court may deem just and proper.

Dated: New York, New York

February 3, 2022

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EXHIBIT 2 TO PELUSO AFFIRMATION -
AMENDED PETITION FROM HARKENRIDER V. HOCHUL,
INDEX NO. E2022-0116CV [118 - 200]

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF STEUBEN

-----X

TIM HARKENRIDER, GUY C. BROUGHT,
LAWRENCE CANNING, PATRICIA CLARINO,
GEORGE DOOHER, JR., STEPHEN EVANS, LINDA
FANTON, JERRY FISHMAN, JAY FRANTZ,
LAWRENCE GARVEY, ALAN NEPHEW, SUSAN
ROWLEY, JOSEPHINE THOMAS, and MARIANNE
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 Wythrop 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 Benger, 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 Benger, 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, f 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.

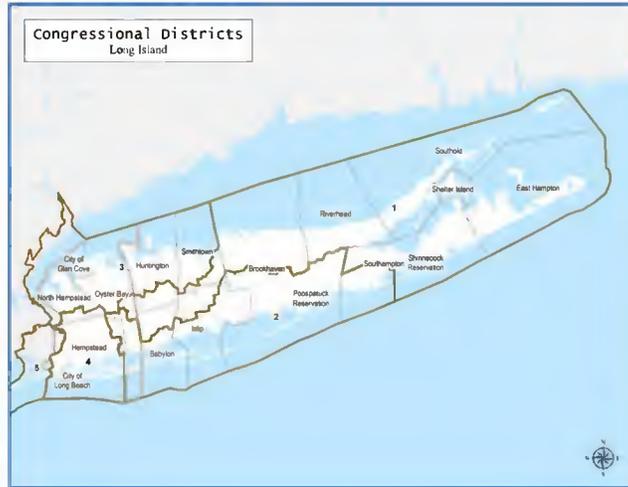
129. Similarly, the redrawing shifted District 2 from a safe Republican district into an outright uncompetitive Republican stronghold.

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



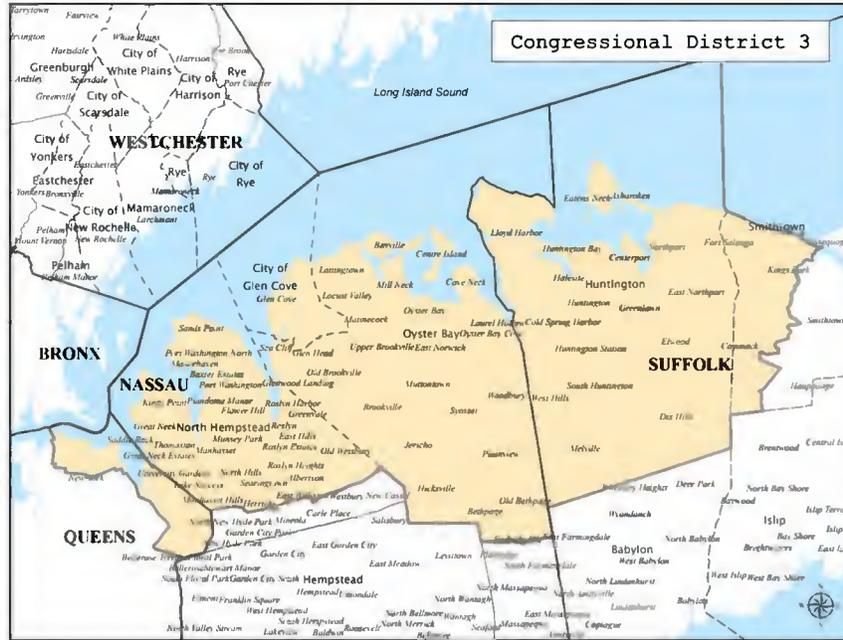
130. The new Congressional District 3 is dramatically different from the old map in order to accomplish the Legislature’s partisan goals.

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.

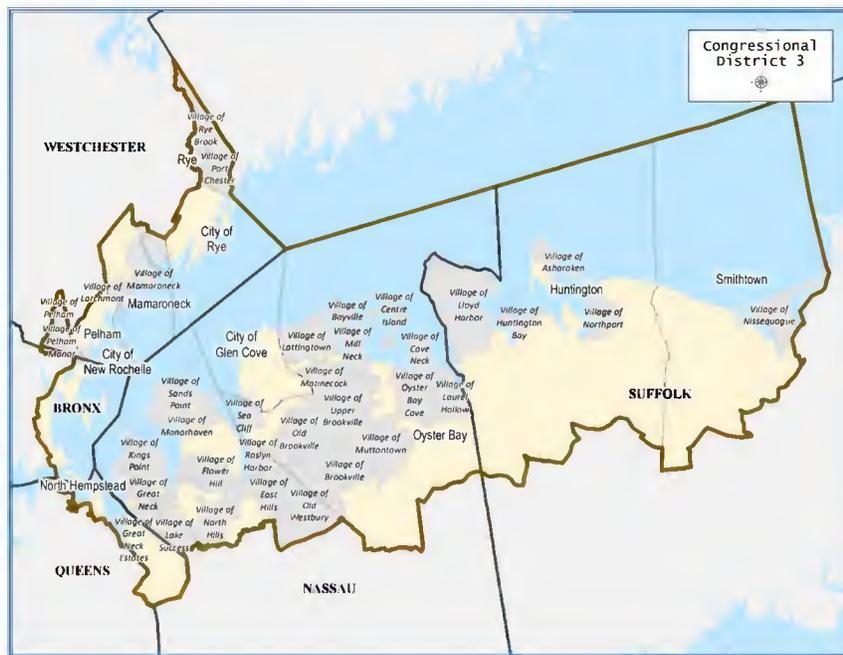
132. This combination of Westchester, with a district largely populated on Suffolk and Nassau counties, makes no sense. These communities have no nexus and share no communities of interest.

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.

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:

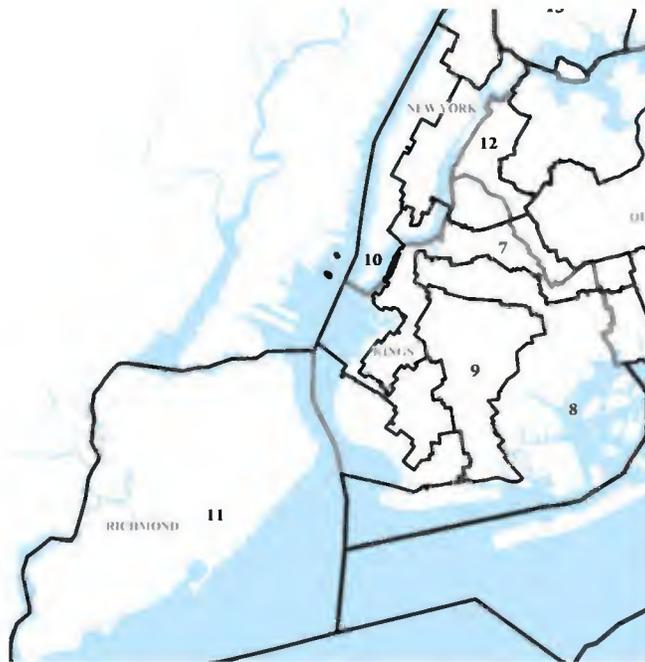


143. These redrawn Brooklyn districts are blatant gerrymanders, with bizarre, roving boundaries crossing multiple bodies of water and snaking between each other for no discernible reason besides partisan advantage.

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



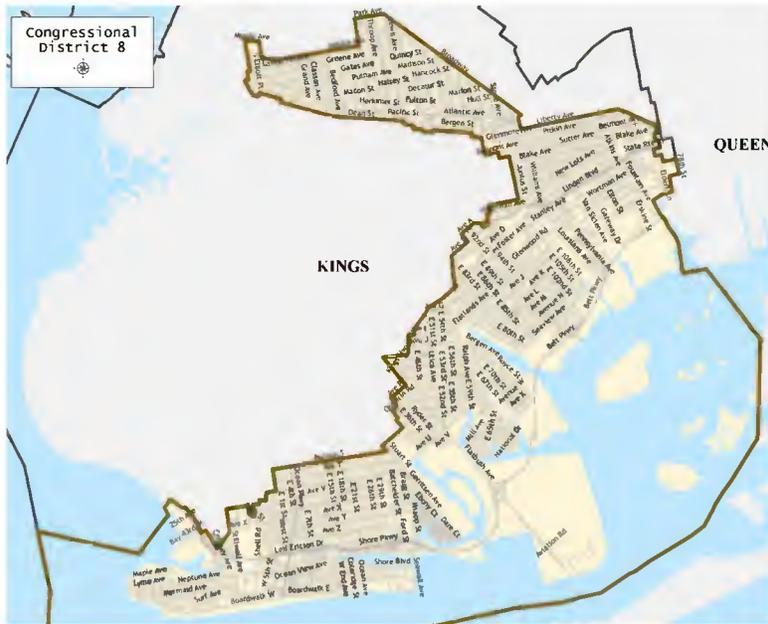
Map of New Congressional Districts 8, 9, 10, & 11



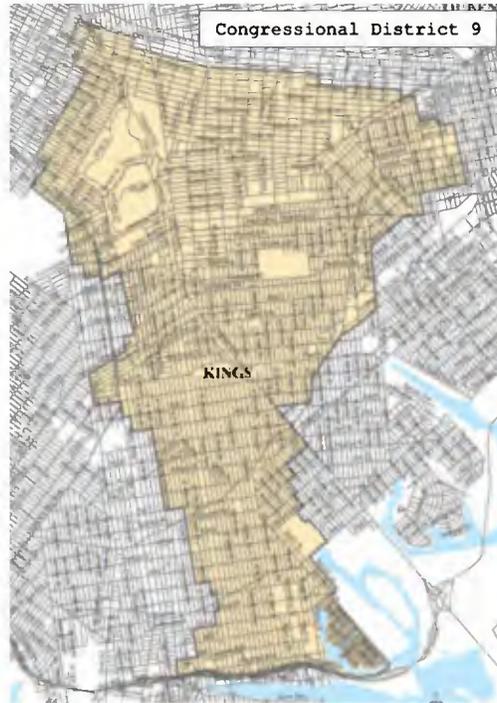
Map of Old Congressional District 8



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

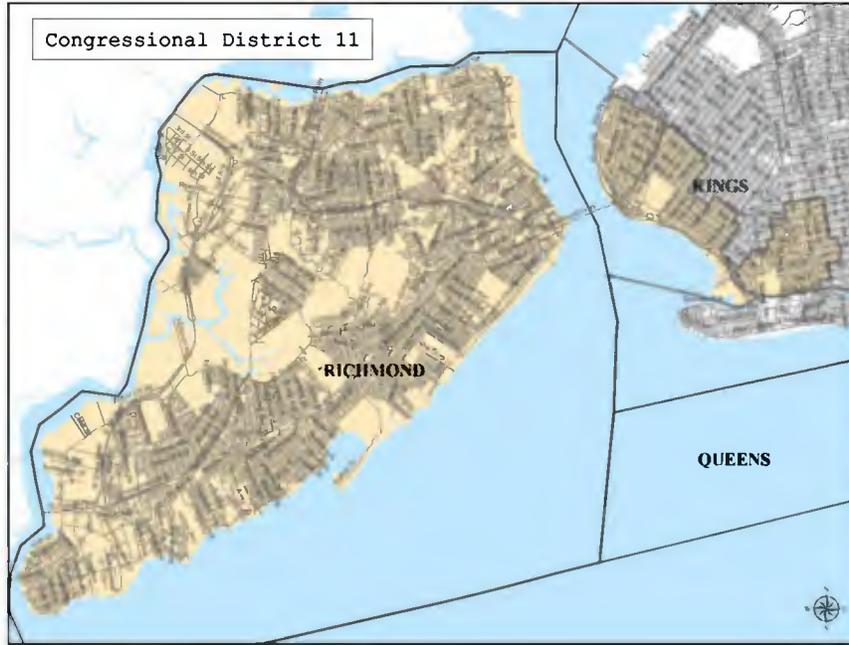


Overlay of Old Congressional District 10 and New Congressional District 10³¹

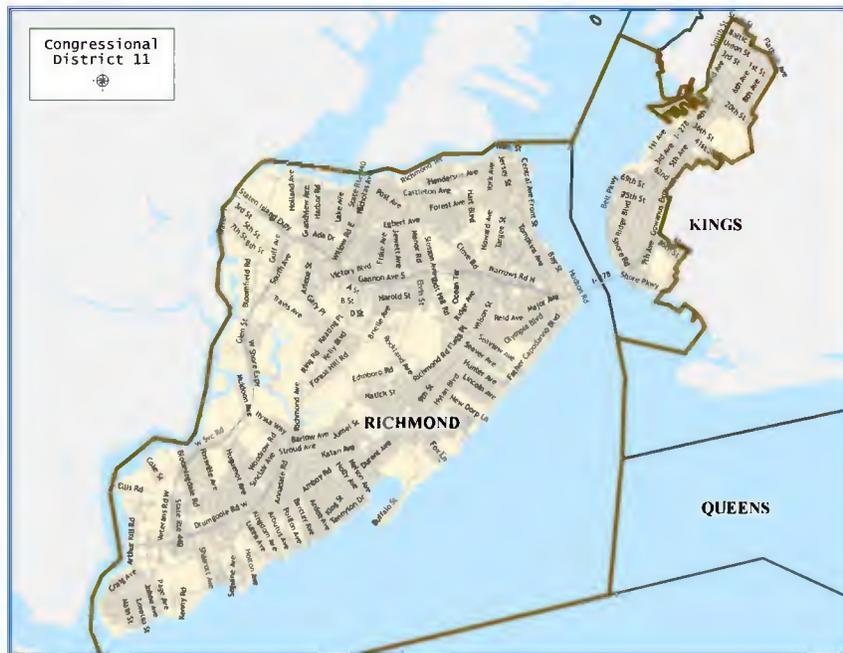


³¹ Nicholas Fandos, *How N.Y. Democrats Came Up With Their Gerrymandered Districts on Their New Map*, N.Y. Times (Jan. 31, 2022), available at <https://www.nytimes.com/2022/01/31/nyregion/nyc-congressional-district-nadler.html>.

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.

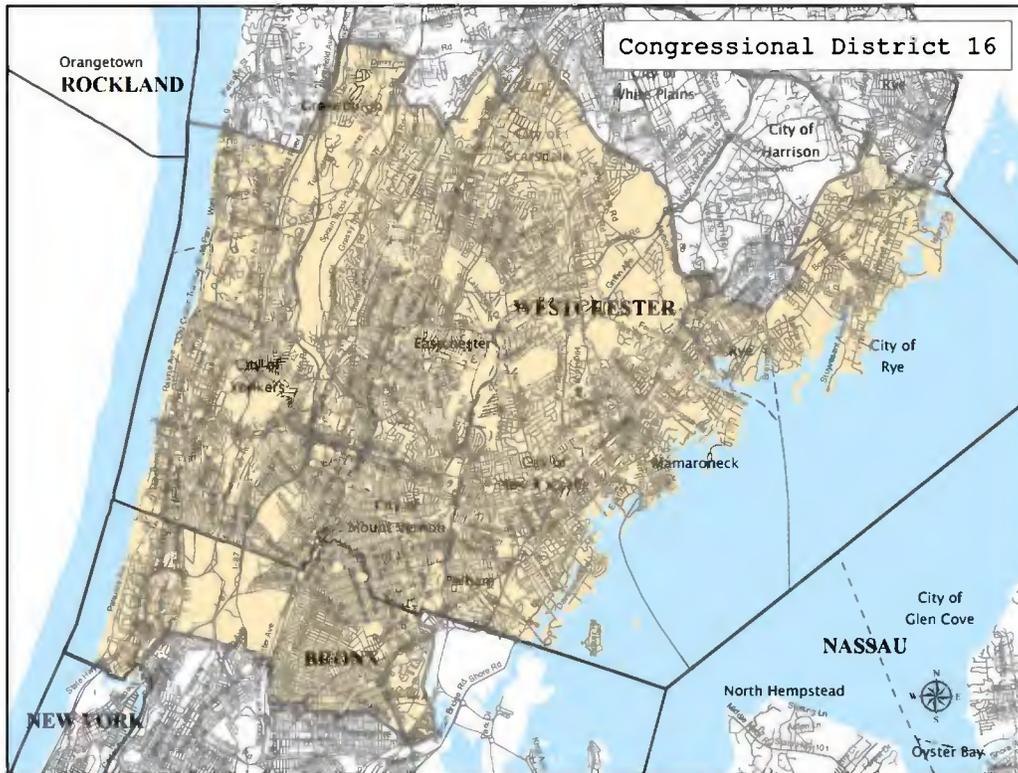
147. Furthermore, the gerrymander of Congressional District 16 removes Republican voters from Congressional District 18 and places them into a strong Democratic district, making Congressional District 18 a safer Democratic district without jeopardizing the Democratic Party’s interests in Congressional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

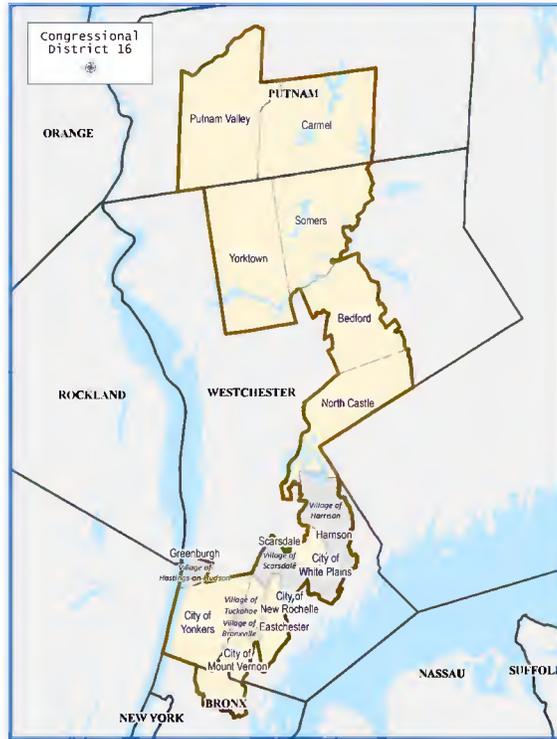
149. The legislative Democrats made these shifts not only to shore up their party’s chances in Congressional District 18, but also to protect incumbent Democratic Congressman Sean Maloney, the newly elected chair of the Democratic Congressional Campaign Committee.

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.

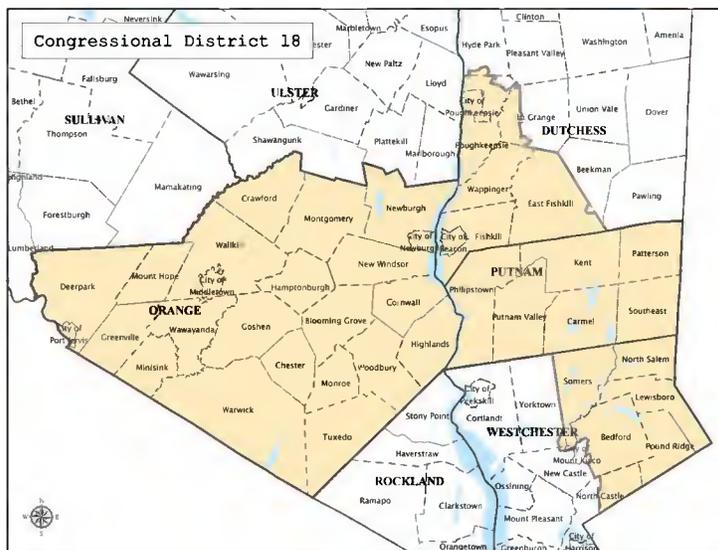
Map of Old Congressional District 16



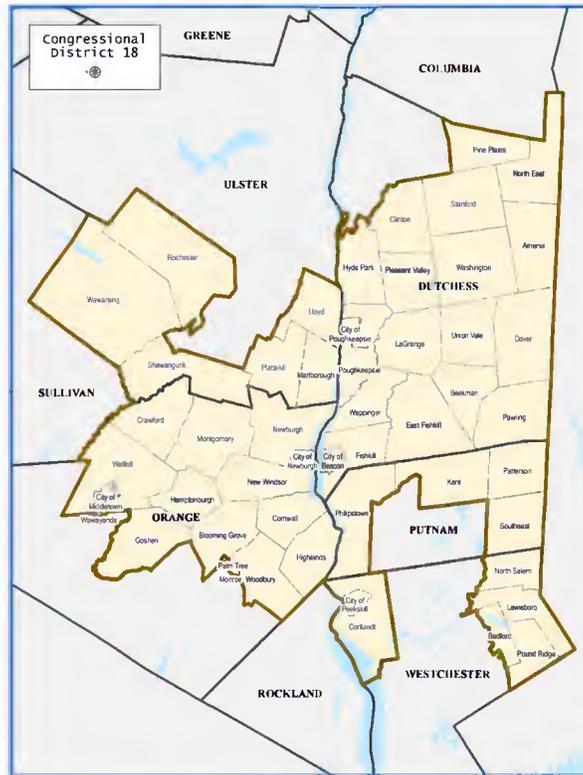
Map of New Congressional District 16



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.

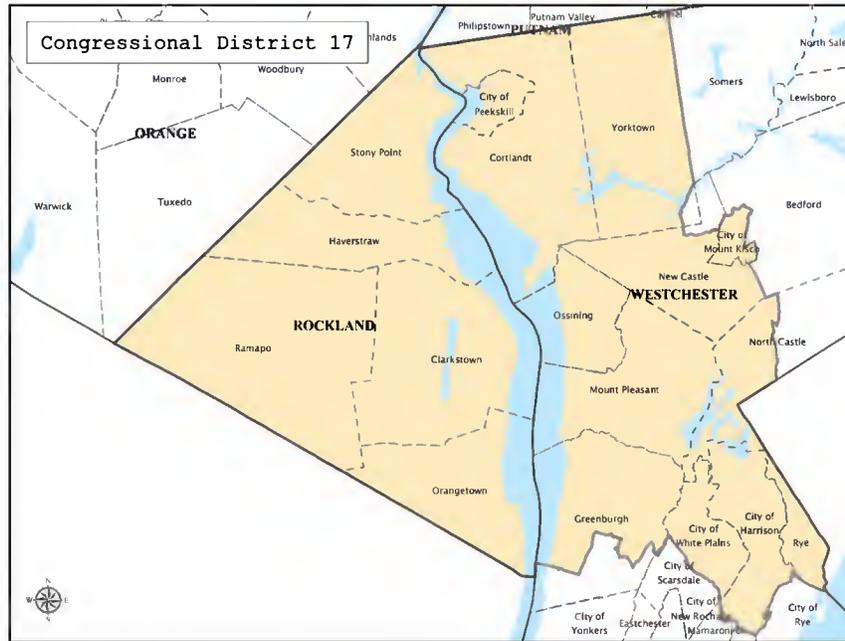
154. The District also includes part of the strongly Democrat city of White Plains.

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.

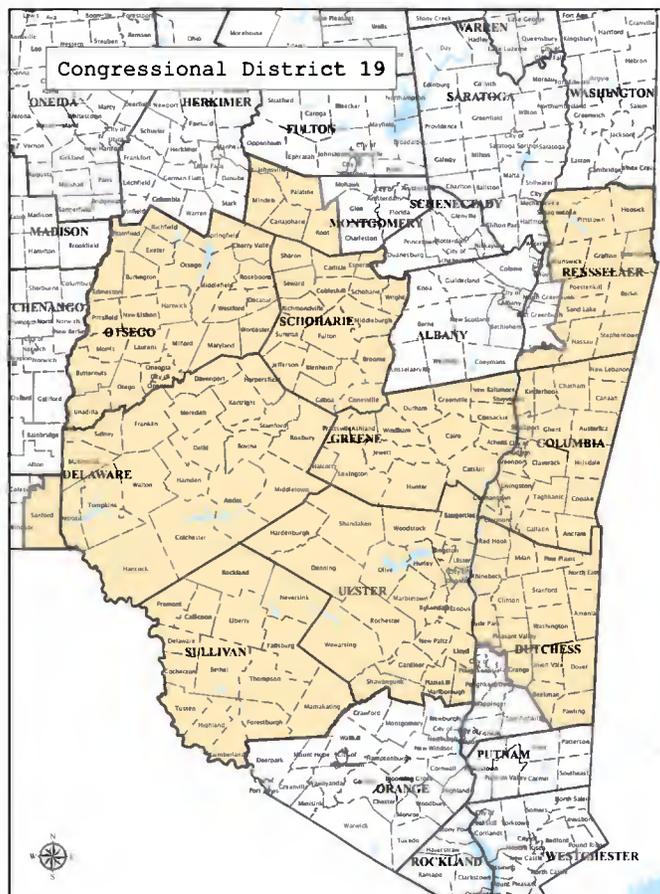
160. In Ulster County, the District picks up Democrats while specifically avoiding communities with large numbers of Republican voters.

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

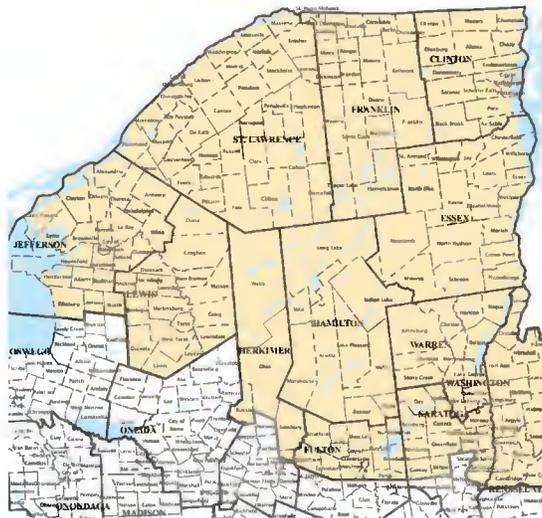


164. The Legislature also gerrymandered Congressional District 21 by packing it with additional Republican voters.

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



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.

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



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.

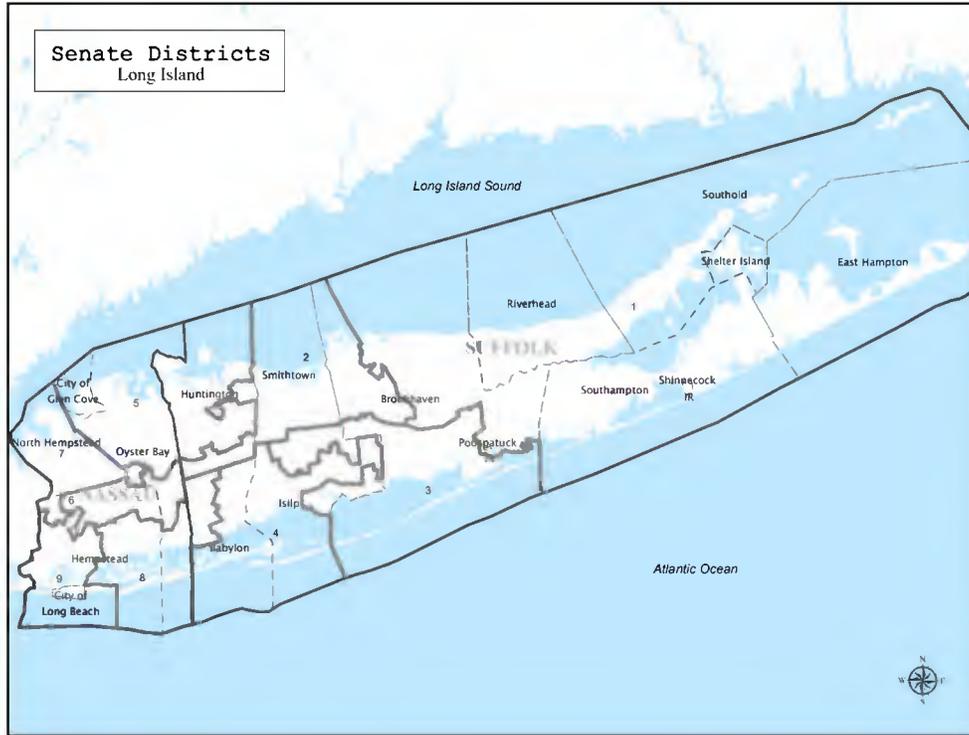
185. In new state Senate Districts 5 and 6, the Legislature combined areas that had been in different state Senate districts for decades, and which are not communities of interest, to turn previously swing districts into strongly Democrat-favoring districts.

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.

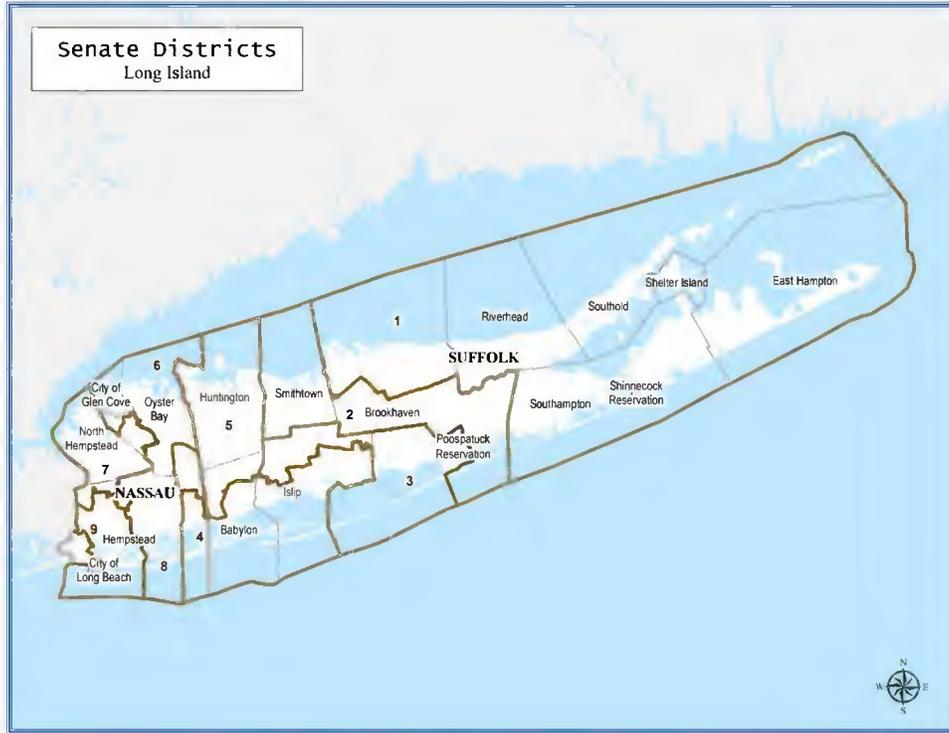
187. The Legislature then took Oyster Bay from old Senate District 5 and placed it in new Senate District 6, running that district southward to add strong Democrat areas from Uniondale and the Village of Hempstead to make that district much more favorable for Democratic candidates.

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.

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.

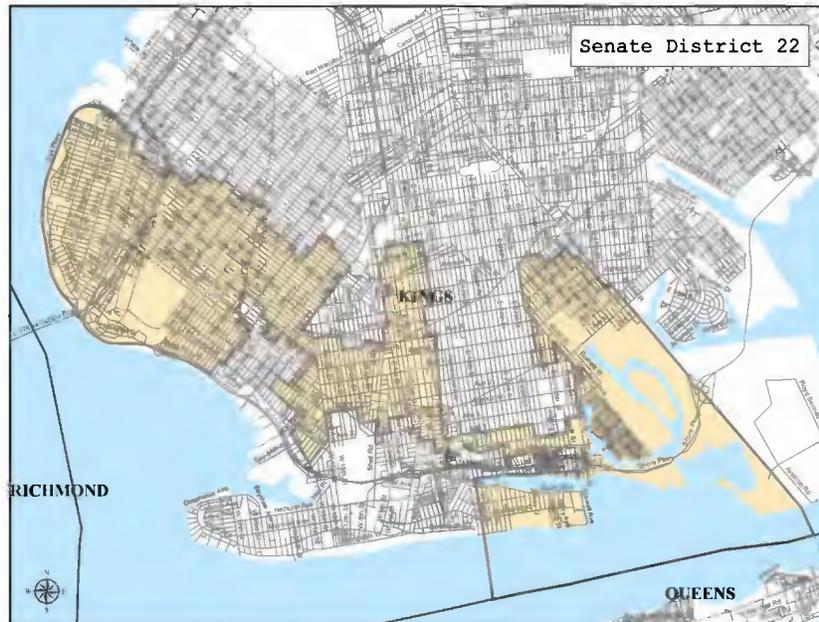
190. Moreover, the Legislature failed to respect the longstanding division of Nassau County from New York City by breaking the Nassau County-Queens County border, where there had been no prior cross-border state Senate districts breaching that line. By moving the Five Towns to a Queens-based Senate district,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

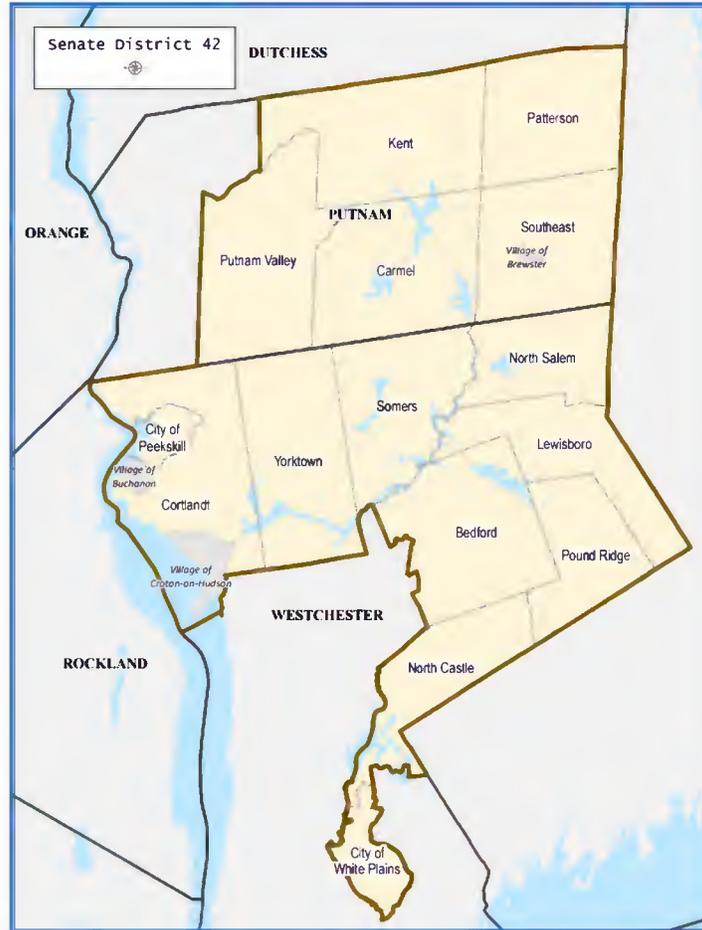


Map of New State Senate District 22



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.

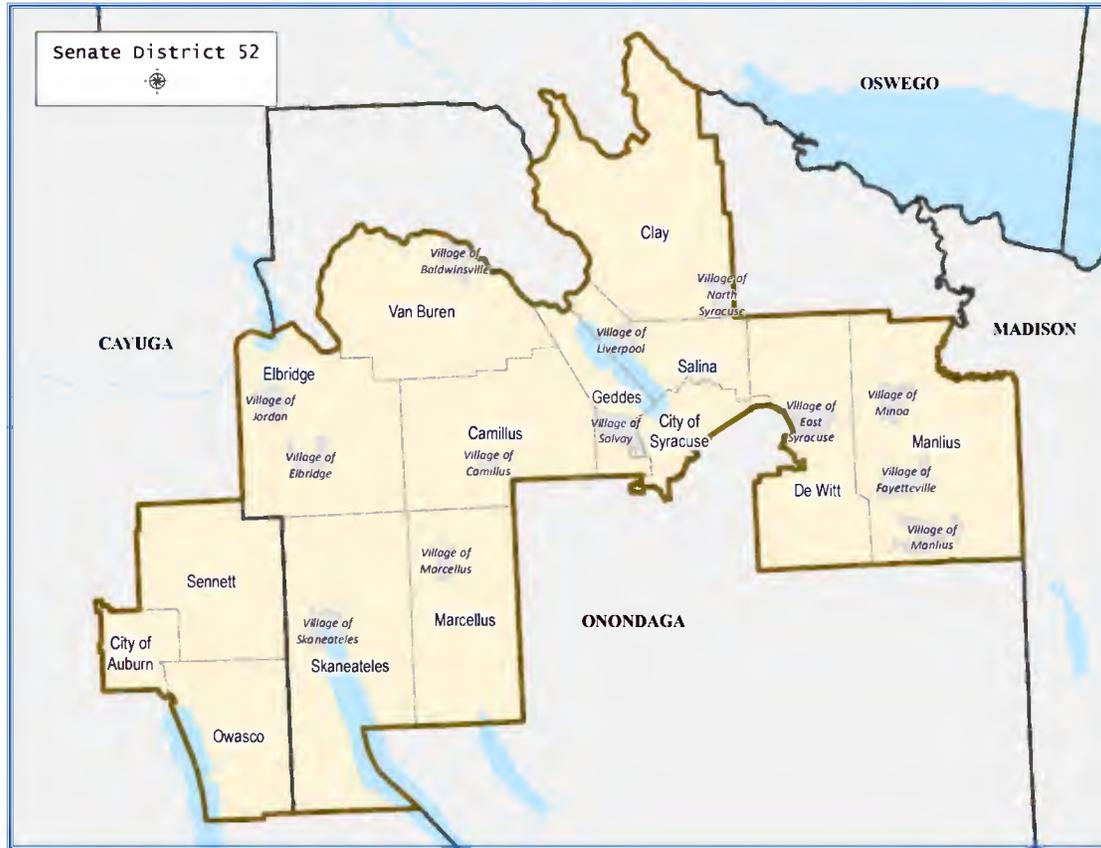
199. The Legislature's drawing of new state Senate District 51 lumps both Republican Senator James Tedisco and Republican Senator Peter Oberacker into the same district. The Democratic leaders in the Legislature drew this district specifically to disfavor or remove one of these two incumbent Republican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

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**EXHIBIT 3 TO PELUSO AFFIRMATION -
DECISION AND ORDER, DATED MARCH 31, 2022,
FROM HARKENRIDER V. HOCHUL, INDEX NO. E2022-0116CV [201 - 218]**

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STATE OF NEW YORK
SUPREME COURT : COUNTY OF STEUBEN

Index No. E2022-0116CV

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

Petitioners,

-against-

DECISION and ORDER

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 Petitioners, through their attorneys, are seeking to set aside the newly enacted congressional districts and senate districts. The Petitioners allege that the Respondents did not have the authority under the constitution to create the new congressional and senate districts as they did, and further that the Respondents engaged in prohibited gerrymandering when creating the districts. The Respondents oppose the Petitioners' application. The court heard oral argument on March 3, 2022. The court reserved decision pending further development of the record. The court heard testimony of several experts and final arguments were heard on March 31, 2022.

In making this Decision and Order the court has considered all the submissions made in this matter. To specifically innumerate them would needlessly waste pages of paper and lots of ink. The e-file system has them all enumerated.

Background:

Although it has been quite some time since one party controlled the Senate, the Assembly, and held the governorship, New York State has a long history of gerrymandering when it comes to the creation of new voting districts. Whichever major political party has been in power has used the creation of new voting districts to their own advantage and to the disadvantage of their opposition. The result was that 98% of incumbents were getting reelected before the constitutional amendment in 2014.

The scourge of gerrymandering is not unique to New York. In recent years the courts throughout the country have been called on to invalidate gerrymandered districts and to create new fairer districts. League of Women Voters v. Commonwealth, 178 AD3d 737 (Pa. 2018); League of Women Voters of Fla. v. Detzner, 172 So. 3d 363 (Fla. 2015); Rucho v. Common Cause, 204 L.Ed. 2d 931 (2019). In 2014, New York State took major steps to avoid being plagued by gerrymandering by amending Article III §§4 & 5 of the New York State Constitution. The 2020 census was the first time after the constitutional amendment that led New York to draw new districts. Therefore, this is a case of first impression in many respects.

Under New York's very old rule there was a district seat for each county, except for Hamilton County. The Federal Courts found that unconstitutional because some counties were sparsely populated resulting in the citizens of those counties receiving disproportionate representation as compared to the heavily populated counties. Reynolds v. Sims, 377 U.S. 533 (1964); In re Orans, 15 NY2d 339 (1965). The law was changed to create districts that were roughly equal in population. In doing so other redistricting criteria in the Constitution such as not crossing county lines were given less value. See, Wolpoff v. Cuomo, 80 NY2d 70 (1992).

In the past most redistricting challenges were heard in federal court. However, in Rucho v. Common Cause, 139 S.Ct. 2482 (2019) the court ruled that federal courts do not have the authority to strike down maps based on partisan gerrymandering. Hence, this action is brought in state supreme court.

The courts have recognized that redistricting requires a balancing of sometimes competing Federal and State Constitutional requirements. "The test is whether the Legislature has 'unduly departed' from the State Constitution's requirements regarding contiguity, compactness and integrity of counties (Matter of Schneider v. Rockefeller, 31 NY2d 420, 429) in its compliance with federal mandates. It is not our function to determine whether a plan can be worked out that is superior to that set up by the legislature. Our duty is, rather, to determine whether the legislative plan substantially complies with the Federal and State Constitutions." Wolpoff v. Cuomo, (*supra*. at 78). To again quote Wolpoff "This is no simple endeavor". "Balancing the myriad requirements imposed by both the State and the Federal Constitution is a function entrusted to the Legislature. It is not the role of this, or indeed any, court to second-guess the determinations of the Legislature, the elective representatives of the people in this regard. We are hesitant to substitute our own determination for that of the Legislature even if

we would have struck a slightly different balance on our own.” ” Wolpoff v. Cuomo, (*supra*. at 79).

Standing:

The Respondents challenge whether or not the Petitioners in this case have standing to bring this action since the various Petitioners live in only a small number of Congressional and State Senate Districts.

It is the law’s policy to only allow an aggrieved person to bring a lawsuit. One not affected by anything a would-be defendant has done or threatened to do ordinarily has no business suing. *New York Practice 6th Ed.* Seigel §136 Pg. 270.

Many of the prior redistricting challenges where the courts have found petitioners do not have standing were cases focused only on a particular district boundary. In those cases if the petitioner did not live in the district he/she did not have standing. The Petitioners in this case are challenging the entire process as being in violation of the Constitutionally prescribed method for redistricting and in particular that the Congressional and State Senate maps were drawn with a political bias that is contrary to the Constitution. In Dairylea Cooperative, Inc. v. Walkey, 38 NY2d 6 (1975) a milk distributor sought to challenge a Commissioner of Agriculture decision which granted a milk dealer license to another entity. The court found there was standing because the Plaintiff was in the “zone of interest.” Further, only when there is a clear lack of injury would standing be denied.

In Society of Plastics Industry, Inc. v. County of Suffolk, 77 NY2d 761 (1991) the court made clear that having an economic interest is not sufficient to find standing if the issue is a non-economic interest. In that case to have standing the Plaintiff needed to show non-economic issues such as environmental or aesthetic reasons to challenge the legislation.

If this court finds the method used in enacting these maps violated the Constitution this would not affect just a handful of districts, but in fact would effect every district in New York. It would be impractical to require someone from every district to serve as a Petitioner. Once one district is invalid it impacts neighboring districts. But if the entire process is invalidated then everyone is impacted. The court finds these Petitioners have standing.

The 2014 Constitutional Amendment:

The 2014 amendment to the New York Constitution includes both a provision to prohibit discrimination against racial or language minority voting groups and a prohibition against creating maps with partisan bias. The prohibition against discriminating against minority voting groups at the least encapsulated the requirements of the Federal Voting Rights Act, and according to many experts expanded their protection. That new provision is not currently being challenged. Therefore, the court will focus on the prohibition against partisan

bias and the process by which redistricting was to take place.

To tell how important the people considered the issue of partisan bias not only was Article III section 4 amended to add “Districts shall not be drawn to discourage competition or for the purpose of favoring or disfavoring incumbents or other particular candidates or political parties”, but the Constitutional process for redistricting was also revised to create an Independent Redistricting Committee (IRC), which was to create non-biased bipartisan maps. This provision creating an IRC was intended to take the creation of proposed redistricting maps out of the hands of a one-sided, partisan legislature as much as possible. This IRC committee was to consist of appointees as follows: two members by the temporary president of the senate, two members by the speaker of the assembly, two by the minority leader of the senate and two by the minority leader of the assembly, plus two additional members which were to be appointed, one by the Democratic committee members and one by the Republican committee members. NY Constitution Art. III §5-b. Although the word “compromise” is not used it is clear from reading the constitutional amendment that the people of the State of New York believed that nonpartisan maps agreed upon as a result of a compromise were the best way to avoid gerrymandering when redistricting. At the very least in the event one party controlled both the senate and the assembly the amended constitution required there to be both support from some of the Democrats on the committee and also by some of the Republicans on the committee in order for the redistricting plan to receive the minimum seven votes necessary for the plan to be submitted to the legislature for approval, and to the governor for signature. NY Constitution Art III §5-b(f)(1) reads as follows:

“In the event that the speaker of the assembly and the temporary president of the senate are members of the same political party, approval of a redistricting plan and implementing legislation by the commission for submission to the legislature **shall** require the vote in support of its approval by at least seven members including at least one member appointed by each of the legislative leaders.” (Emphasis added)

In 2022 the Democrats controlled both the senate and the assembly. Nevertheless, the IRC committee failed to come up with any plan that obtained the minimum seven votes. There was no plan that received bipartisan support. That eventuality was anticipated in the constitution and according to Art. III §5-b(g) the plan or plans receiving the highest vote were to be submitted to the legislature. The Democrat committee and the Republican committee each submitted their own plans known as Plan A and Plan B with an equal number of IRC votes, but only from their own respective subcommittees. The court heard limited testimony concerning both Plan A and Plan B and received copies of those plans as exhibits. Even though a few of the proposed districts seemed to be the same in both plans, the IRC was not able to come up with a bipartisan plan that received seven votes. Both Plan A and Plan B were submitted to the legislature and the legislature quickly rejected both plans. According to the amended constitution, the committee was then to submit to the legislature a second set of redistricting plans. NY Constitution Art. III §4(b).

In 2022 the committee never submitted a second revised redistricting proposal to the legislature. Hence, the legislature went ahead and in a few days drafted and passed their own redistricting maps. A couple of Democrats voted against the legislature's redistricting maps, but otherwise the legislation was passed along party lines. It is these Congressional and Senate redistricting maps that this court must review to determine whether they violate the state and/or federal constitutions.

Before analyzing the specifics of the redistricting plans that were passed, it is important to review what did not happen. The IRC committee never embraced the task of coming up with compromise plans. It was clear from the amended constitution that the people of the State of New York believed the best way to avoid partisan politics in drawing new district lines was for a small group to work together to come up with compromise plans that obtained some bipartisan support. The plans did not have to be unanimously approved by the members of the committee, but at least some members of each subcommittee had to support the plan. The court comes to this conclusion from the following:

1. The Constitution was amended to add Article III §4(c)(5) which now reads as follows: "Districts shall not be drawn to discourage competition or for the purpose of favoring or disfavoring incumbents or other particular candidates or political parties." ;
2. The Constitution created an Independent Restricting Committee (IRC);
3. The IRC was constructed in such a way that neither political party would attain the seven votes necessary without bipartisan support;
4. The Constitution specifically reads that the approved plan had to have support from at least one appointee of each of the political leaders that appointed members to the IRC.
5. That even if the IRC plan was rejected it was the IRC and not the legislature that was authorized to draw a second set of revised maps.
6. That even if the second set of IRC maps was rejected, the legislature could only vary the enacted maps slightly from the IRC maps. There could be no more than a 2% deviation in any district according to the Redistricting Reform Act of 2012.
7. The people of the State of New York rejected the 2021 ballot proposal that would have authorized the legislature to draw the maps in the event the IRC was not able to come with maps.

By contrast the important constitutional amendment that protected racial and language minority voting groups from being discriminated against had only one provision. Article III §4(c)(1). There was no new committee appointed to insure that this amendment to the Constitution was carried out. The court can only conclude that the people of the State of New York thought the creation of a non-biased, nonpartisan IRC committee that must work together to arrive at bipartisan redistricting maps was crucial to avoid gerrymandering - and even though the legislature, under certain circumstances, had the power to create their own redistricting maps, the legislature would have been under scrutiny in rejecting two sets of proposed bi-partisan maps before drawing their own maps, a circumstance that would invite the wrath of the electorate. Further, the law only permits slight alterations of the IRC maps by the legislature.

The legislature is not free to ignore the IRC maps and develop their own.

In a democracy it is rare if ever that one party has all the right answers and all the right policies. A democracy works best when every responsible adult has a voice and when by listening to each other a compromise is worked out that incorporates part of everyone's opinion. Unfortunately, in recent years the idea of "compromise" has gotten the reputation as being something distasteful and something to be avoided. Yet compromise is the foundation upon which the United States Constitution, our political system, and our country was established. It is compromise that is the safest way to avoid the plague of partisan gerrymandering. If gerrymandering is allowed to occur then certain groups of voters will be discriminated against and become disenfranchised. Discrimination comes in many forms whether it be against ones race, sex, age, religion, political party or something else. The New York Constitution specifically says, "When drawing district lines, the commission shall consider whether such lines would result in the denial or abridgement of racial or language minority voting rights, and districts shall not be drawn to have the purpose of, nor shall they result in, the denial or abridgment of such rights. Districts shall be drawn so that, based on the totality of the circumstances, racial or minority language groups do not have less opportunity to participate in the political process than other members of the electorate and to elect representatives of their choice." Art. III §4(c)(1).

Gerrymandering discrimination hurts everyone because it tends to silence minority voices. Then none of us receives the benefit from the input of the silenced. Imagine a society where only Democrats are able to work on cancer research or only Republicans could be board certified as heart surgeons. Imagine all the accomplishments and discoveries that would never come to pass because the majority thought it best to eliminate minority positions or views. Lives and the common good are at stake. When we choose to ignore the benefits of compromise we not only hurt others, we hurt ourselves as well.

There is nothing in the constitution that permits the IRC to just throw up their collective hands. Courts are very familiar with juries who say "We can't come to an agreement" during deliberations. However, the more the court keeps requiring them to go back and try again the more likely they are to finally reach a consensus. It is rare for the court to end up with a hung jury. Here the IRC stopped working well before their deadline. What someone should have done was bring an action to compel the members of the IRC to continue their work or for the political sides of the legislatures that appointed 8 of the 10 members of the IRC to remove and replace any IRC member that did not embrace his/her constitutional role. NY Constitution Art III §5-b(a)(1)-(4). Then either the court could have compelled the IRC to work together until they came up with a plan or the IRC new members could develop new bipartisan maps. Instead the IRC was permitted to throw up their hands and the legislature stepped in. Does the Constitution permit the legislature to take over if the IRC fails to do its job? By the Constitution the IRC's drop dead date for submitting a plan was February 28th. This action was commenced long before that deadline.

Under the “new” process that was put in place a committee (IRC) was formed to try to create a fair redistricting map. The committee had 4 Democrats, 4 Republicans and 2 people that could not be Democrats or Republicans. The Democrats chose 1 of the 2 and the Republicans chose the other. This year the committee met and considered a number of plans. The Democrats came up with a plan (Plan A) and the Republicans came up with a different plan (Plan B). The IRC could not come up with a compromise plan so both the Democrat and Republican plans were submitted to the legislature, although neither plan had obtained the required seven votes. Seven votes in favor of a plan were required since the Democrats control both the Senate and the Assembly. Both submitted plans were rejected by the legislature and sent back to the committee. The committee could not agree on anything different. They had a 15 day deadline but the IRC stopped working well before the deadline. So the legislature created it’s own map. The legislature’s plan differed significantly from either Plan A or Plan B submitted by the IRC.

Under the 2014 amendment the districts shall not be drawn to discourage competition or for the purpose of favoring or disfavoring incumbents or other particular candidates or political parties. Under constitutional criteria the maps must be compact, contiguous, of equal populations, avoid abridgment of racial or language minority voting rights, maintain cores, and not cross the boundary lines of pre-existing subdivisions such as counties, cities, towns and communities of interest and there was to be no partisan gerrymandering. “The anti-gerrymander provision of the State Constitution is found in article III. Section 4 requires that Senate districts ‘be in as compact form as practicable’ and ‘consist of contiguous territory’; and section 5 provides that Assembly districts shall be formed from ‘convenient and contiguous territory in as compact form as practicable. As we recognized in Matter of Orans, (15 NY2d 339, 351, supra), these constitutional requirements remain binding although they must be harmonized with the first principle of substantial equality of population among districts.” Schneider v. Rockefeller, 31 NY2d 420 (1972).

The Failed 2021 Constitutional Amendment and Subsequent 2021 Legislation:

The political powers realized that the redistricting compromise plan envisioned by our 2014 amended constitution had a flaw. The plan lacked a way to handle the contingency of the committee not coming up with a bipartisan plan(s). Thus another constitutional amendment was proposed and put before the voters in November of 2021, under which the legislature could create and the Governor enact its own redistricting plan in the event the IRC committee failed to carry out its constitutionally prescribed duties. This constitutional amendment was voted down by the people of the State of New York - Republicans, Democrats, and Independents alike. Just three (3) weeks later, the legislature enacted legislation signed by the governor giving themselves the power to do exactly what the people of the State of New York had just voted down three (3) weeks earlier. Even though the proposed 2021 Constitutional Amendment contained other new provisions, none were hot button issues. In part this decision will focus on that legislation that was enacted just three (3) weeks after the proposed 2021 Constitutional Amendment was voted down.

Redistricting Reform Act of 2012 (The 2% Rule):

Another key component of the Redistricting Reform Act of 2012 that directly impacts the subsequent 2014 constitutional amendment was that: **“Any 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.”** Redistricting Reform Act of 2012 N.Y. Sess, Laws 17 §3. The currently enacted plans vary by more than 2% from either of the plans submitted by the IRC. The Respondents do not allege that the plans they developed adhere to the 2% modification limit of either IRC map that was submitted. The Respondents contend that the “Notwithstanding any other provision” language of the newly enacted 2021 legislation made it so the legislature was not bound by the 2% rule. Obviously, it could not be compared to a final IRC map as such a map was never submitted. The court finds the 2% variance rule was another important procedural check to avoid partisan gerrymandering. These current maps ignore that procedural requirement. In essence, the legislature through the 2021 legislation, freed themselves from the constitutional process and the 2% limitation.

Analysis:

The New York Constitution Article III §§4 & 5 describes the process for the creation of election districts. Unconsolidated Laws §4221 says the supreme court has the jurisdiction to hear a petition brought by any citizen that wishes to challenge the redistricting law. The court is mandated to give this case the highest priority. The court has 60 days in which to render a decision from when the petition was filed. The Petition was filed February 3, 2022 so a decision must be rendered by April 4, 2022. If the court finds the redistricting plans invalid the legislature shall have a reasonable opportunity to correct their deficiency. Art. III §5. The Petitioners contend that this provision should be ignored by the court because the legislature never properly had jurisdiction to create these maps in the first place, since the IRC never submitted a second map to be considered.

The Petitioners seek to have this court find the 2022 Congressional Map and the 2022 Senate Map to be void *ab initio*. The Petitioners allege the legislature lacked the constitutional authority to enact redistricting maps because the Constitution proscribed an exclusive process, which in 2022 was not followed.

Not only must this court interpret the redistricting process under the 2014 amendment to the Constitution, but must also determine whether or not the legislature had the authority to alter the constitutional process by passing the recent 2021 legislation, when granting that same legislative authority was voted down by the people of the State of New York in the 2021 proposed Constitutional Amendment three weeks earlier.

On the November, 2021 ballot there was a proposed constitutional amendment to Article III Section 4(b) of the New York State Constitution that would have added language that

in the event the IRC redistricting commission fails to vote on a redistricting plan and implementing legislation by the required deadline then each house should introduce a redistricting plan and implementing legislation. When the constitutional amendment was voted down by the People of the State of New York the legislature passed a 2021 amendment to the Redistricting Reform Act of 2012 Section 4 (a) & (c) to provide that if the commission does not vote on any redistricting plan for any reason the legislature shall draft redistricting maps and implementing legislation and submit it to the governor.

In challenging the recently enacted 2021 legislation this court must start with the presumption that the legislation is constitutional. Matter of Moran Towing Corp. v. Urbach, 99 NY2d 443 (2003). Further, facial constitutional challenges like this one are disfavored. Overstock.com, Inc. v. New York State Dept. of Taxation and Fin., 20 NY3d 586 (2013). A challenge to a duly enacted statute requires the challenger to satisfy the substantial burden of demonstrating that in every conceivable application the enacted law suffers wholesale constitutional impairment. Center for Jud. Accountability, Inc. v. Cuomo, 167 AD3d 1406 (Third Dept. 2018); appeal dismissed 33 NY3d 933 (2019). Basically the challenger must establish that there is no set of circumstances under which the legislation could be valid. Overstock.com, Inc. v. New York State Dept. of Taxation and Fin., (*supra*). This court must make every effort to interpret the statute in a manner that otherwise avoids a constitutional conflict. See, People v. Davidson, 27 NY3d 1083 (2016).

The Petitioners contend that the November, 2021 legislation not only amended the Redistricting Reform Act of 2012 but also created a second path for redistricting that is not in the constitution. The constitution envisions the redistricting process to occur through the IRC. Only after the IRC has twice submitted maps that are rejected by the Legislature does the Legislature take up the process. The Constitution uses such words as “**the**” and “**shall**” to indicate this was the way and the only way that redistricting maps were to be drawn.

The 2021 legislation purportedly revised the 2012 Redistricting Reform Act so that if the IRC fails for any reason to submit a plan then the legislature shall prepare their own redistricting maps. However, the legislature can not override a constitutional barrier by passing a new law. City of N.Y. v. N. Y. State Div. of Human Rights, 93 NY2d 768 at 774 (1999). Further, this 2021 legislation purportedly negated the 2% variance limitation if the legislature drafted their own maps.

This court finds that by enacting the legislation in November of 2021 the legislature made it substantially less likely that the IRC would ever submit a bipartisan plan when the senate, assembly and governorship are all controlled by the same political party. Since the senate and assembly leaders appoint four of the ten members of the IRC, these four members, and by extension the legislature, would essentially have carte blanche veto power to keep the vote below the seven votes necessary to pass such a bipartisan plan. The intent of the 2014 constitutional amendment is to have bipartisan maps drawn by the IRC commission submitted and passed by the legislature.

Some might argue that whether the IRC failed to twice submit bipartisan maps or whether they did submit bipartisan maps and the legislature voted them down twice that it doesn't make any difference; that the legislature had the power to step in under either scenario. However, this court sees a difference. In this case the Legislature can say the IRC did not come up with bipartisan maps so we had to act. The IRC was a scapegoat for the legislature. If on the other hand the constitutional process were followed, the legislature would be in the awkward political position of having to vote down two sets of proposed bipartisan redistricting maps before drafting their own maps, at the risk of raising the ire of the voters at the next election. In addition the legislature, in drafting their own maps, would be under pressure and scrutiny to adopt a good portion of the proposed bipartisan maps submitted by the IRC commission, and they would also be limited by the no more than 2% alteration rule. The conclusion is that the currently enacted maps would have been substantially different had the constitutional process been followed.

This court finds that the November, 2021 legislation which purported to authorize the legislature to act in the event the IRC failed to act was not a mere enactment of legislation to help clarify or implement the Constitution, but in fact substantially altered the Constitution. Alteration of the Constitution can only be done by constitutional amendment and as recently as November, 2021 the people rejected the constitutional amendment that would have granted the legislature such authority. Therefore, this court finds the recently enacted Congressional and Senate maps are unconstitutional. Further, the enacted maps are void *ab initio*. Under the currently constructed Constitution when the IRC failed to act and submit a second set of maps there is nothing the Legislature has the power to do. Therefore, the court will need to step in. The court would note that not only are the Congressional District Maps and Senate District Maps void but the Assembly District Maps are void *ab initio* as well. The same faulty process was used for all three maps. Therefore new maps will need to be prepared for the Assembly Districts as well.

The People of the State of New York have spoken clearly. First, in the 2014 Constitutional Amendment not only did the People include language to prevent gerrymandering, but they also set forth a process to attain bipartisan redistricting maps through the IRC. The People of the State of New York again spoke loudly when they soundly voted down the proposed 2021 Constitutional amendment that would have granted authority to the Legislature to bypass the IRC redistricting process.

Although the court has already stricken the enacted redistricting maps as unconstitutional the court will discuss the Petitioners' further argument that the congressional and senate redistricting maps were the result of partisan bias. The standard of proof is beyond a reasonable doubt.

When considering redistricting there are two fundamental federal law principles that apply. There is the Equal Protection Clause of the 14th Amendment and the Voting Rights Act. The Equal Protection clause requires districts to be composed of the same number of residents

or within acceptable variance thereof. The Voting Rights Act prohibits drawing lines that deny racial or language minorities a fair opportunity to elect a candidate of their choice. In addition to those federal requirements, the New York constitution adds several other factors which must be considered, including the district being contiguous, compact, drawn so as to not favor or disfavor an incumbent or a political party, trying to keep county and town boundaries within the same district, and trying to maintain the cores of prior districts. Because of the need to make districts equal in population it is not always possible to meet all of the other factors to be considered. Article III §4 (c) 1 - 5 list a number of factors which “shall” be considered. “Shall” is a requirement.

What is compactness? “Reapportionment is one area in which appearances do matter.” Shaw v. Reno, 509 U.S. 630 at 647 (1993). Compactness has been described in scientific terms as the extent to which a district’s geography is dispersed around its center. In practice many courts use the eyeball test. Bush v. Vera, 517 U.S. 952 at 959 (1996). The Petitioners in this case claim districts that look like snakes or are elongated over hundreds of miles violate the Constitutional requirement of compactness. What the courts have found is that “compactness” may vary depending on whether or not the issue is racial gerrymandering or dilution of vote cases. “Dramatically irregular shapes may have sufficient probative force to call for an explanation.” Shaw v. Reno, (*supra*. at 647); Karcher v. Daggett, 462 U.S. 725 at 755 (1983).

A contiguous district requires that all parts of the district be connected. This is usually measured by whether it is possible to travel to all parts of the district without ever leaving the district. In this case, some of these proposed districts you would need a boat to go from one section of the district to another, but at least you do not have to cross district lines, just County lines and other political boundaries.

According to the eyeball test there are some districts that don’t look like they are compact. They include Congressional Districts 1,2, 3, 7, 8, 10, 17, 18, 19, 22 and 24. However, the eyeball test is not proof beyond a reasonable doubt.

The preservation of the cores of prior districts. At least 11 states, including New York, include this as part of the criteria when drawing new maps. The likely theory behind this is that by maintaining continuity of districts you maintain continuity of the representation for the citizens within that group. Obviously, when the number of districts has to change it is impossible to fully comply with this criteria.

According to *Redistricting Law 2020* by Davis, Strigari, Underhill, Wice & Zamarripa 18 states have now included language prohibiting redistricting to be drawn with the intent of favoring or disfavoring an incumbent or a political party, with 12 other states currently in the process of adopting neither favoring or disfavoring language. This language was the new anti-gerrymandering requirement added by the 2014 New York Constitutional Amendment.

Although the Federal Courts no longer have the authority under the First and/or

Fourteenth Amendments to invalidate maps based on partisan gerrymandering, numerous states and state courts have been addressing these issues. Rucho v. Common Cause, (*supra.*). States have been addressing this through constitutional amendments, the appointments of independent commissions and by prohibiting the drawing of district lines for partisan advantage. Rucho v. Common Cause, (*supra.*). In recent years both Florida and Pennsylvania courts have found and overturned maps based on partisan gerrymandering. See, League of Women Voters of Pa. v. Commonwealth 644 PA 287 (2018); League of Women Voters of Fla. v. Detzner, 172 So. 3d 363 (2015). In both of these cases the courts interpreted their respective constitutional provision which prohibited redistricting with the intent to favor or disfavor a political party or an incumbent. In the 2014 Constitutional Amendment Art. III §4(c)(5) New York added “Districts shall not be drawn to discourage competition or for the purpose of favoring or disfavoring incumbents or other particular candidates or political parties.” The meaning of this portion of the constitution and how it applies to the recently enacted Congressional and State Senate maps is key. Courts have for a long time struggled with being able to adequately define a standard to apply in such situations. Everyone agrees that politics plays some part in redistricting. In Davis v. Bandemer, 478 U.S. 109 (1986). At what point does permissible partisanship become unfair or unconstitutional? How much is too much? Comm. for a Fair & Balanced Map v. Ill. State Bd. of Elections, No. 11 C 5065 2011 U.S. Dist. LEXIS 117656 (2011).

In this case the Petitioners have presented expert testimony through Shawn Trende indicating that he ran at first 5,000 and then 10,000 potentially unbiased simulated redistricting maps. Respondents’ expert Michael Barber testified he ran 50,000 maps attempting to duplicate Trende’s maps. Trende and Barber’s maps came up with the same results. The result according to Trende’s Gerrymandering Index was that the maps adopted by the Legislature and signed by Governor Hochul were the most favorable to Democrats of any of the sample maps. Barber disagreed with Trende’s use of a Gerrymandering Index and concluded that the enacted maps actually favored Republicans. Likewise, Respondents other experts came to the conclusion that the enacted maps actually favored Republicans. The court finds it strains credulity that a Democrat Assembly, Democrat Senate, and Democrat Governor would knowingly pass maps favoring Republicans. Petitioners had two experts testify and Respondents had five experts testify. However, it is not the number of experts that is determinative but the quality and credibility of the expert testimony.

The Respondents’ expert attempted to discredit Trende’s analysis by claiming that a large percentage of Trende’s simulated maps are redundant in that the maps essentially show the same boundaries. It is claimed that as many as one half to three/fourths of the simulated maps are duplicative. Therefore, it was argued that Trende should have eliminated the duplicates as he did when addressing Maryland maps. Duplication or redundancy is claimed to be a common problem with this type of simulation. However, Trende ultimately did 10,000 simulated maps which could be reduced to 2,500 simulated maps if three quarters were redundant maps and were eliminated. Even under this analysis the enacted maps are the worst of 2,500 simulated maps, ie the worst of the worst.

What all the experts agreed upon was that the enacted congressional map would likely lead to the Republicans winning four Congressional seats. The Republicans currently hold 8 of the 27 congressional seats. A majority of the 5,000, 10,000 or 50,000 unbiased maps would have the Republicans winning less than four seats if you use 50.01% Democrats in a given district as the standard for which way a given district is likely to elect a Democrat or a Republican. Thus the Partisan Index used by the Respondents experts conclude the enacted maps favors Republicans because they are likely to receive four seats. However, both Trende and Respondents' expert, Jonathan Katz, testified that historically the Republicans win a district up to 52% Democrat and that incumbent Republicans enjoy an additional 3%, which means the districts would have to be at least 55% Democrats for the Democrats to actually win. The enacted maps gives the Democrats at least 55% in every district except the four that are Republican leaning. Obviously actual elections vary but as a general rule that is what the reliable historical data shows. What Trende's report shows is that the first four districts heavily lean toward the Republicans. See Trende's Gerrymandering Index (graphs pgs. 14 & 15 of the Expert Report dated February 14, 2021). However, in the enacted plans congressional seats 5 - 13 not only favor Democrats but show 55% or higher Democrats in those districts making them noncompetitive and virtually impossible for a Republican to win. However, in the "unbiased" sampling by Trende and Barber as few as 2 seats heavily favor Republicans, but in sample districts 3 - 13, while the Democrats were favored in those samples, their advantage was in most cases substantially less than 55% Democrat leaning and in many cases less than 52% Democrat leaning. That would mean these districts would be competitive and if historical data is accurate would likely result in several of those seats going to Republicans.

The Respondents' experts claim that the Gerrymandering Index should not be recognized by the court. The Petitioners cite Szeliga v. Lamone, C-02-CV-21-001816, a recent Maryland case (March 25, 2022) that recognized the Gerrymandering Index as proof that the maps were biased.

What is clear from the testimony of virtually every expert (Trende, Lavigna, Barber, and Katz) is that at least in the congressional redistricting maps the drawers packed Republicans into four districts thus cracking the Republican voters in neighboring districts and virtually guaranteeing Democrats winning 22 seats. In 5,000, 10,000 or 50,000 unbiased computer drawn maps there were several, and perhaps as many as 10 competitive districts. The enacted congressional map shows virtually zero competitive districts. Trende concludes and the court agrees that this shows political bias. Katz and Barber agree with Trende that creating districts with no competitive districts is a potential sign of political bias. However, both Katz and Barber conclude there is no bias since Republicans are likely to win four seats; and that four seats is higher than most of the projected wins assuming the Democrats win every district that is at least 50.01 % Democrat leaning which is what the Partisan Index is designed to depict.

The court finds that Trende's maps, and those drawn by Katz and by Barber, do not include every constitutional consideration. Katz and Barber testified they attempted to duplicate the maps drawn by Trende using the same variables used by Trende. However, none

of Respondents' experts attempted to draw computer generated maps using all the constitutionally required considerations. Katz said to do so would have significantly increased the time it would take to draw the maps. Both Katz and Barber thought that by including every constitutional consideration the maps would have been different, but they could not say how or by how much they would have differed. If they had done so and could thus demonstrate that the additional constitutional factors not considered in Trende's maps cause a representative sample that differed appreciably from Trende's sample then the court could have considered those maps against the enacted map to see whether or not the same political bias was shown. Since no such computer generated maps were provided to the court the court must use the evidence before it.

According to Rucho (*supra.*) the fundamental difficulty in formulating a standard to adjudicate whether or not partisan gerrymandering has occurred is for the court to determine what is "fair". Is fairness formulating a greater number of competitive districts? Whitford v. Gill, 218 F. Supp.3rd 837 (W.D. Wis 2016). Does fairness require as many safe seats for each party as possible? Davis v. Brademer, 478 U.S. 109 (1986). This court concludes that generating a map that significantly reduces the number of competitive seats is a clear sign of bias.

The court finds by clear evidence and beyond a reasonable doubt that the congressional map was unconstitutionally drawn with political bias in violation of Art. III §4(c)(5). One does not reach the worst of 2,500, 5,000, 10,000 or 50,000 maps by chance. Therefore, the court agrees with the Petitioners that the congressional map was unconstitutionally drawn with political bias in violation of Art. III §4(c)(5) of the New York Constitution.

The court will next consider the newly enacted senate map. The Petitioners presented credible evidence that this map also was gerrymandered. However, Todd Breitbart testified in-depth that many of the changes found between the 2012 enacted senate map and the 2022 enacted senate map were attempts by the legislature to correct malapportionment, and other constitutional deficiencies in the 2012 map. The court finds that testimony sufficiently credible. However, the court does not accept Breitbart's premise that the Republicans essentially gerrymandered the 2012 senate map since in 2012 the Assembly and Governorship were controlled by the Democrats and so the Republicans and Democrats had to work together to enact the maps. Therefore Petitioners could not show that the enacted 2022 senate map was drawn with political bias beyond a reasonable doubt. However, since this map was already struck down as void *ab initio* a new map will need to be drawn.

Having declared the recently enacted 2022 maps unconstitutional where do we go from here. It was clear from the testimony that not only is the 2012 congressional map not useable because New York State now only has 26 instead of 27 Congressional districts, but the 2012 senate map is also not useable because as a result of population shifts that map is now constitutionally malapportioned. Therefore, that leaves no maps. At this point in time, the candidates have been collecting signatures for over a month to get on the ballot for districts that

no longer exist. The end of the signature gathering process will occur within a few days. Yet Petitioners urge the court to have the parties quickly submit new maps and create new election time-lines so that the election can proceed on properly drawn redistricting maps that are free of partisan bias. The Respondents contend it is too late in the election cycle to try to draft new maps and then hold elections based on the new maps.

The Respondents point out that the U.S. Supreme Court has long ruled that Congressional elections can proceed even under defective lines. Merrill v. Milligan, 142 S. Ct. 879(2022); Abbott v. Perez, 138 S. Ct. 2305 (2018); Wells v. Rockefeller, 394 U.S. 542 (1969). In Wells v. Rockefeller the court faced a similar time deadline when on March 20, 1968 the primary election was three months away and yet the court permitted the election based on the redistricting maps that were constitutionally infirm, rather than delay the primaries and redraw the redistricting maps. Therefore, the Respondents urge this years election to proceed under the unconstitutional maps.

The Petitioners urge the court to strike down these constitutionally infirm maps and have new maps prepared. This of course will require revision of the election schedule since candidates would not even know what district he/she would run in before most of the current deadlines would have expired. The Petitioners urge moving the primary back to as late as August 23, 2022. The Petitioners cite other states that have recently moved their primaries to a later date because of challenges to the redistricting maps. See, Harper v. Hall, 865 S.E.2d 301, 302 (N.C. 2021); In re 2022 Legislative Districting of the State of Maryland, No. COA-MISC-0025-2021 (Md. Mar. 2022).

This court is well aware that this Decision and Order is only the beginning of the process and not the end of the process. There will likely be appeals to the Appellate Division and the Court of Appeals in addition to what ever time it takes to draw new maps. Then once the maps are drawn the County Boards of Election need time to apply the new redistricting maps to the precincts within their respective borders.

On March 3, 2022 when the court initially denied Petitioners application to stay the election process the court was not at all sure that the Petitioners could overcome the extremely high hurdle of demonstrating the maps violated the constitution. Thus, the court did not see a substantial likelihood for ultimate success by the Petitioners. Therefore the request for a temporary stay was denied. The court was also unaware of the prior courts ruling with regard to not permitting new elections in Congressional races in 2023 even when the maps were found to be unconstitutional. Having now determined that the various redistricting maps are unconstitutional the court is still concerned about the relatively brief time in which everything would need to happen to draw new maps, complete the appellate review process, revise the election process guidelines, and give the county election commissioners time to do their jobs.

However, this court's deadline of April 4, 2022 to make a decision was set by law (60 days to render a decision) in order to allow time for elections under newly drawn maps.

As the court sees it the drop dead date for sending out overseas military ballots is forty-five days before the November 8, 2022 general election. Thus, the ballots have to be finalized and mailed out no later than September 23, 2022. Between the primary election and that September 23rd date the votes have to be counted, the elections need to be certified, candidates need time to challenge election results, and the ballots need to be prepared. Thus, August 23, 2022 is the last possible date to hold a primary. An earlier August date would be preferred from the stand point of providing sufficient time from the holding of the primary to the completion of the November ballot. However, the same 45 day rule applies with regard to sending out overseas primary ballots. Thus, the primary ballots would have to be sent out no later than July 8, 2022. That only leaves about 100 days from today for the drawing of new maps, the candidates to gather signatures, the preparation of the primary ballots, the appellate review process, etc.

The court is mindful that in the Maryland case decided on March 25, 2022 that court threw out the recently enacted gerrymandered maps and ordered new maps to be drawn. This court finds that although it will be very difficult this court must require new maps to be drawn and the current maps are void and unusable. The court will leave it to the legislature and governor to develop new time frames for gathering signatures, how many signatures will be required to be on the ballot, whether signatures already gathered can be counted toward meeting the quota to appear of the ballot, etc.

N.Y. Constitution Art III §5 states as follows:

“In any judicial proceeding relating to redistricting of congressional or state legislative districts, any law establishing congressional or state legislative districts found to violate the provisions of this article shall be invalid in whole or in part. In the event that a court finds such a violation the legislature **shall** have a full and reasonable opportunity to correct the law’s legal infirmities.” (Emphasis added)

Therefore, the Constitution requires the Legislature to be given another chance to pass maps that do not violate the Constitution. Part of the problem is these maps were void *ab initio* for failure to follow the constitutional process of having bipartisan maps presented by the IRC. The second problem was the Congressional map that was presented was determined to be gerrymandered. The Legislature could correct the gerrymander issue, but they can not correct the constructional failure to have IRC present bipartisan maps for Congressional, State Senate, and State Assembly Districts. Therefore, the court will require any revised maps generated by the Legislature to receive bipartisan support among both Democrats and Republicans in both the senate and the assembly. The maps do not have to be unanimously approved, but they must enjoy a reasonable amount of bipartisan support to insure the constitutional process is protected. This they will need to do quickly. In Maryland the court gave their legislature 5 days in which to submit appropriate new maps for the court to review. The court will give the legislature until April 11, 2022 (which is slightly more time than they took to prepare the

enacted maps) to enact new bipartisan supported proposed maps that meet the constitutional requirements. This court will review those maps. If the maps do not receive bipartisan support or if no revised maps are submitted, then I will retain an expert at the States expense to draw new maps. Not only would the process be expensive it is possible that New York would not have a Congressional map in place that meets the Constitutional requirements in time for the primaries even with moving the primary date back to August 23, 2022.

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

ORDERED, ADJUDGED, and DECREED the Petitioner are found to be in the zone of interest and therefore having standing to bring this action; and it is further

ORDERED, ADJUDGED, and DECREED that the Governor and Lt. Governor are necessary parties to this action; and it is further

ORDERED, ADJUDGED, and DECREED that the process used to enact the 2022 redistricting maps was unconstitutional and therefore void *ab initio*; and it is further

ORDERED, ADJUDGED, and DECREED that with regard to the enacted 2022 Congressional map the Petitioners were able to prove beyond a reasonable doubt that the map was enacted with political bias and thus in violation of the constitutional prohibition against gerrymandering under Article III Sections 4 and 5 of the Constitution; and it is further

ORDERED, ADJUDGED, and DECREED that the maps enacted by 2021-2022 N.Y. Reg. Sess. Leg. Bills S8196 and A.9039-A (as technically amended by A.9167) be, and are hereby found to be void and not usable; and it is further

ORDERED, ADJUDGED, and DECREED that the maps enacted by 2021-2022 N.Y. Reg. Sess. Leg. Bills S9040-A and A.9168 be, and are hereby found to be void and not usable; and it is further

ORDERED, ADJUDGED, and DECREED that congressional, state senate and state assembly maps that were enacted after the 2010 census are no longer valid due to unconstitutional malapportionment and therefore can not be used; and it is further

ORDERED, ADJUDGED, and DECREED that the legislation enacted in November, 2021 purporting to create a way to bypass the IRC is unconstitutional and in clear violation of the Peoples' express desire to not amend the Constitution to permit the Legislature to act in the event the IRC failed to submit maps; and it is further

ORDERED, ADJUDGED, and DECREED that the enacted legislation L. 2021 c. 633 §1 be and is hereby found to be void and not usable and shall be stricken from the books; and it

FILED: STEPHEN COUNTY CLERK 0632812022064120PM

NYSCEF DOC. NO. 843

INDEXED: NE202204012602

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is further

ORDERED, ADJUDGED, and DECREED that the Petitioners and others have been injured as a result of the unconstitutional enacted maps; and it is further

ORDERED, ADJUDGED, and DECREED that in order to grant appropriate relief the court hereby grants to Petitioners a permanent injunction refraining and enjoining the Respondents, their agents, officers, and employees or others from using, applying, administering, enforcing or implementing any of the recently enacted 2022 maps for this or any other election in New York, included but not limited to the 2022 primary and general election for Congress, State Senate and State Assembly; and it is further

ORDERED, ADJUDGED, and DECREED that the Legislature shall have until April 11, 2022 to submit bipartisanly supported maps to this court for review of the Congressional District Maps, Senate District Maps, and Assembly District Maps that meet Constitutional requirements; and it is further

ORDERED, ADJUDGED, and DECREED that in the event the Legislature fails to submit maps that receive sufficient bipartisan support by April 11, 2022 the court will retain a neutral expert at State expense to prepare said maps; and it is further

ORDERED, ADJUDGED, and DECREED that any request for attorneys' fees and costs is denied; and it is further

ORDERED, ADJUDGED, and DECREED that this Court retains jurisdiction to issue any and all further orders which shall be necessary to comply with the mandates set forth herein.

Dated: March 31, 2022

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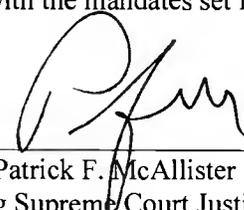

 Hon. Patrick F. McAllister
 Acting Supreme Court Justice

EXHIBIT 4 TO PELUSO AFFIRMATION -
DECISION, DATED APRIL 8, 2022, HARKENRIDER V. HOCHUL,
CAE 22-00506 [219 - 222]

FILED: ALBANY COUNTY CLERK 06/28/2022 06:15 PM

NYSCEF DOC. NO. 7

FILED: APPELLATE DIVISION - 4TH DEPT 04/08/2022

NYSCEF DOC. NO. 23

INDEX NO. 904972-22

RECEIVED NYSCEF: 06/28/2022
CAE 22-00506

RECEIVED NYSCEF: 04/11/2022

CAE 22-00506

IN THE MATTER OF TIM HARKENRIDER, GUY C. BROUGHT, LAWRENCE CANNING, PATRICIA CLARINO, GEORGE DOOHER, JR., STEVEN EVANS, LINDA FANTON, JERRY FISHMAN, JAY FRANTZ, LAWRENCE GARVEY, ALAN NEPHEW, SUSAN ROWLEY, JOSEPHINE THOMAS AND MARIANNE VOLANTE, PETITIONERS-RESPONDENTS,

V

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 NEW YORK STATE LEGISLATIVE TASK FORCE ON DEMOGRAPHIC RESEARCH AND REAPPORTIONMENT, RESPONDENTS-APPELLANTS, ET AL., RESPONDENT.

Index No: E2022-0116CV

DECISION

Having considered the voluminous written submissions of the parties and the arguments advanced by counsel yesterday during the virtual hearing, I am granting in part respondents-appellants' (respondents) application for a stay of enforcement of the order of Hon. Patrick F. McAllister, entered March 31, 2022. The stay will apply to the provisions of the order that enjoin respondents and their agents, including officials from the various boards of election, from "using, applying, administering, enforcing or implementing any of the recently enacted 2022 maps for this or any other election in New York, included but not limited to the 2022 primary and general election for Congress, State Senate and State Assembly."

The stay will, among other things, allow candidates for Congress, State Senate and Assembly to file designating petitions by the statutory deadline, and allow the boards of elections to accept such petitions. The stay will also allow objections to petitions to be filed by the April 11, 2022 deadline, permit the boards of elections to rule on objections, and allow aggrieved parties to commence legal action by the April 21, 2022 deadline. None of those actions would be permitted under Judge McAllister's order in the absence of a stay.

The stay issued herein will also apply to the provision of Judge McAllister's order that strikes the redistricting

FILED: ALBANY COUNTY CLERK 06/28/2022 06:15 PM

NYSCEF DOC. NO. 7

INDEX NO. 904972-22

RECEIVED NYSCEF: 06/28/2022

2

legislation (L. 2021, ch 633 § 1) "from the books," as well as the determination that "the Legislature shall have until April 11, 2022 to submit bipartisanly supported maps to this court for review of the Congressional District Maps, Senate District Maps, and Assembly District Maps that meet Constitutional requirements."

The stay will not, however, prohibit Judge McAllister from retaining a "neutral expert" to "prepare" a proposed Congressional map, if Judge McAllister elects to do so pending resolution of the appeal. Of course, any map drafted by such neutral expert would have no force or effect unless and until the Court of Appeals affirms Judge McAllister's order, and the Legislature, pursuant to the redistricting legislation, is provided with 30 days from entry of the order to "discharge its constitutional mandate" of enacting a Congressional map that does not run afoul of the anti-gerrymandering provisions of article III, § 4 (c) of the New York Constitution. The 30-day period to cure should extend beyond the expected duration of this appeal.

The appointment of a "neutral expert" to draft proposed Congressional districts, in the event that the Court of Appeals ultimately determines that they are needed, in no way intrudes upon the Legislature's constitutional authority to redraw a Congressional map in response to Judge McAllister's ruling. The Legislature may begin redrawing the map right now if it chooses to do so. Or the Legislature may chose to do nothing and risk the possibility of having to live with the map drawn by Judge McAllister's neutral expert should respondents lose before the Court of Appeals and lack sufficient time to propose a substitute map that withstands constitutional scrutiny after exhaustion of appellate remedies.

With respect to the other two redistricting maps enacted by the Legislature, respondents correctly point out that petitioners never contended that the Assembly districts were unconstitutionally gerrymandered, and the court made no such finding. Although petitioners did not initially challenge the Senate districts either, they later did so by an amended petition. Regardless, Judge McAllister determined that petitioners failed to establish that the Senate districts were unconstitutionally gerrymandered, and petitioners have not cross-appealed from that ruling. Judge McAllister struck down the Assembly and Senate maps solely on grounds that the Legislature, in enacting the maps, failed to comply with the procedural structure of article III, § 4 (b) of the State Constitution. Inasmuch as it appears on the surface that

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NYSCEF DOC. NO. 7

INDEX NO. 904972-22

RECEIVED NYSCEF: 06/28/2022

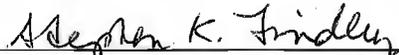
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petitioners may be more likely to prevail, if they are to prevail at all, on their substantive challenges to the redistricting legislation than they are on their procedural challenges, there would seem to be less need for the neutral expert, if appointed by Judge McAllister pending appeal, to draft proposed maps for Assembly and Senate districts.

This stay shall remain in effect until the Appellate Division, Fourth Department renders a decision on the appeal, which is scheduled for oral argument on April 20, 2022. A decision will be issued expeditiously following oral argument.

Counsel for respondents may submit an order consistent with the decision herein no later than April 12, 2022, upon notice to petitioners.

DATED: April 8, 2022



Hon. Stephen K. Lindley
Associate Justice

FILED: ALBANY COUNTY CLERK 06/28/2022 06:15 PM

NYSCEF DOC. NO. 7

INDEX NO. 904972-22

RECEIVED NYSCEF: 06/28/2022

Supreme Court
APPELLATE DIVISION
Fourth Judicial Department
Clerk's Office, Rochester, N.Y. }

I, ANN DILLON FLYNN, Clerk of the Appellate Division of the Supreme Court in the Fourth Judicial Department, do hereby certify that this is a true copy of the original document, now on file in this office.



IN WITNESS HEREOF, I have hereunto set my hand and affixed the seal of said Court at the City of Rochester, New York, this **APR 11 2022**

Ann Dillon Flynn
Clerk

EXHIBIT 5 TO PELUSO AFFIRMATION -
 PRELIMINARY ORDER, DATED APRIL 29, 2022,
 FROM HARKENRIDER V. HOCHUL, INDEX NO. E2022-0116CV [223 - 224]

FILED: STEUBEN COUNTY CLERK 06/28/2022 06:41:57 PM

NYSCEF DOC. NO. 801

INDEXED: 06/29/2022 09:26:02

RECEIVED NYSCEF: 06/29/2022

STATE OF NEW YORK
 SUPREME COURT : COUNTY OF STEUBEN

Index No. E2022-0116CV

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

Petitioners,

-against-

PRELIMINARY ORDER

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 Opinion dated April 27, 2022 declared the recently enacted Congressional and State Senate redistricting maps to be unconstitutional and further directed this Court to have an independent special master develop both new Congressional and State Senate maps. This court appointed Dr. Jonathan Cervas to serve as the special master. Based on the current time pressure and after consulting with special master Cervas and the State Board of Elections this court is issuing the following preliminary order with regard to when the redistricting maps will be completed; when the primary for the Congressional and State Senate will be held; and when the military and other overseas ballots will need to be mailed. A further more detailed order will follow with regard to ballot access and other issues.

This order will only pertain to the Congressional and State Senate primary elections. It will be up to the Legislature to determine whether or not to continue the June primary for all

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NYSCEF DOC. NO. 801

INDEXED: N020224012628

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other offices or whether the Legislature will want to change the currently scheduled June primary to coincide with the Congressional and State Senate primary.

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

ORDERED that the new 2022 impartial redistricting maps for the Congressional and State Senate districts to be prepared by Special Master Dr. Jonathan Cervas will be available by May 20, 2022; and it is further

ORDERED that the 2022 primary for the Congressional and State Senate elections will be held on Tuesday, August 23, 2022; and it is further

ORDERED that the deadline for military and overseas ballots to be mailed will be July 8, 2022.

Dated: April 29, 2022


Hon. Patrick F. McAllister
Acting Supreme Court Justice

ENTER

EXHIBIT 6 TO PELUSO AFFIRMATION -
 DECISION AND ORDER, DATED MAY 20, 2022,
 FROM HARKENRIDER V. HOCHUL, INDEX NO. E2022-0116CV [225 - 255]

FILED: ~~STEUBEN COUNTY CLERK 06/28/2022 05:21:57 PM~~
 NYSCEF DOC. NO. 070

INDEXED NO. E2022-0116CV
 RECEIVED NYSCEF: 06/28/2022

STATE OF NEW YORK
 SUPREME COURT : STEUBEN COUNTY

Index No. E2022-0116CV

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

Petitioners,

-against-

DECISION and ORDER

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

Special Master Dr. Jonathan Cervas is releasing a report that will provide you with much detail concerning the process used to draw the redistricting maps. A court rarely explains the reasoning and rationale behind an order. However, a single order rarely directly impacts millions of people. Therefore, the court will also explain parts of the process as well, because so many of you have expressed concern.

First of all the court would like to thank the many New Yorkers who submitted maps and the thousands who responded during the various public comment times, including those comments given before the Independent Redistricting Commission (IRC), at the in-person hearing before this court, and the written submissions. The fact that many of you were concerned enough to drive for hours to get to the courthouse was impressive and demonstrated how concerned you were about your various communities. All of these maps and comments

(there were approximately 3,000 submissions earlier this week) were reviewed by the court and special master. What was clear was that many people are concerned that the maps permit free and fair elections. The court is confident this has been accomplished.

There were several common misconceptions that appeared in many of the public comments which the court feels need to be addressed. Some were negative with respect to the court, some with respect to the special master, some as to the process, and others were just misconceptions.

The court would first like to correct the misconception that the court's redistricting maps are a Republican gerrymander. All three courts that reviewed this matter came to the same conclusion that the Respondents had unconstitutionally produced gerrymandered maps. The fact is that Petitioners/Republicans were successful in proving those maps were gerrymandered. However, the result is not that the Petitioners/Republicans now get to draw their own gerrymandered maps. This is not a situation where to the victor goes the spoils. The result is simply that Petitioners get to have neutral maps drawn by an independent special master as approved by the court. Unfortunately some people have encouraged the public to believe that now the court gets to create its own gerrymandered maps that favor Republicans. Such could not be further from the truth. The court is not politically biased. Yes, the trial judge was elected as a Republican, and the justices on the Court of Appeals were appointed by Democrats. The reason all three courts came to the same conclusion was because the courts applied the applicable rules of law in as fair and impartial a manner as possible.

The 2012 congressional map was drawn by a judge with the aid of a special master. That map was fair and impartial. That map resulted in eight Republicans currently being elected to Congress and over the last ten years sometimes more than eight Republicans were elected. The congressional map that was found to be gerrymandered would have only favored four Republicans being elected. The fact that this map will likely result in more than four Republicans being elected to Congress does not mean or indicate in anyway that this map is gerrymandered to favor Republicans. What this map does do is create eight competitive districts in which either party has a reasonable chance to win and three districts in which the Republicans will likely win. On the other hand the Democrats have 15 safe districts. For Republicans to repeat eight members in congress from New York in 2022 will require that they win over half of the competitive districts.

There is an index (Plan Score) that has been developed to determine whether or not a map favors one party or another. The proposed map that was released on May 16, 2022 had a score on that index of 0.01. A score of zero means the map is perfectly neutral. The court has made a few minor adjustments to that map to accommodate several concerns that were raised by the public, but the court believes the maps remain almost perfectly neutral, meaning the maps do not favor or disfavor any political party.

The court would next like to correct another misconception that showed up frequently in

the comments with regard to this process being rushed and why the court did not simply use one of the prior maps for this election cycle. The simple answer is there were no maps that could be used.

The 2012 Congressional maps are no longer constitutional. They had 27 districts and New York is now only entitled to 26 districts. Therefore the court could not keep the same districts that were used these last 10 years because the voters of one district would be totally unrepresented. Thus new maps had to be created so that these voters would have a representative. Likewise, the 2012 Senate Maps are now unconstitutionally malapportioned. A look at the new map shows there are now two more Senate districts downstate than there were for the last 10 years. This is due to population shifts in the last 10 years. So once again the court could not simply use the 2012 districts. The court understands that you have become accustomed to a certain representative and if you are no longer in his/her district you feel disenfranchised. However, the boundaries absolutely had to be moved. The court did not have the option of just using those old district boundaries.

The two 2022 IRC maps were never enacted. The court and the special master did consider those maps when constructing the new maps, but the court did not find it appropriate to adopt one of those maps to be the base for this year's Congressional and/or Senate maps, primarily because to chose one would mean the court would have to favor either the Democrat proposed IRC maps or the Republican proposed IRC maps. There was no bipartisan IRC maps. Therefore the court thought it best to develop unbiased independent maps.

Finally, the court could not use the maps enacted by the Legislature in 2022, because all three levels of the New York courts found those maps to be unconstitutional.

The time frame for developing new maps was less than ideal, not by choice but by necessity. The court worked with the Board of Elections to develop the maximum amount of time for creation of the new maps and still allow sufficient time for the Board of Elections to be able to conduct elections. Between gathering signatures, challenges to signatures, certifying candidates, mailing out overseas and military ballots, holding primary elections, and everything that has to happen before the primary and before the general election the court and the Board of Elections constructed about the only election calendar time frame that would work.

Frankly it was remarkable that special master Cervas was able to create both the Congressional and State Senate maps in such a short period of time. He and his team are to be commended.

The court would also like to briefly address the criticism that the new maps discriminated against Democrats by placing two incumbents into the same district. The constitution specifically prohibits new maps from being used to ensure a candidate's reelection or to prevent a candidate's reelection. To ensure no bias was shown either way neither the court nor the special master received any information concerning where any candidate or

potential candidate lives prior to the development of the maps. Since the release of the maps several of you have informed the court and the special master where your candidate lives. Location of a candidate received zero consideration from the court. No district was designed to pit one candidate against another. In any event in New York a candidate is not required to live in his or her district. Thus, these maps do not prohibit an incumbent from running in an adjoining district.

To those who expressed concern that the Special Master, Dr. Jonathan Cervas was too inexperienced or too unfamiliar with New York to be the special master the court makes the following comment:

Dr. Cervas has solid credentials in redistricting matters. He established a team which included amongst others, Dr. Bernard Grofman. Dr. Grofman is widely considered one of the leading experts in redistricting and has now worked on New York's redistricting in three separate decades. Dr. Cervas also has working under him several assistants born and raised in New York. New Yorkers should be very thankful that Dr. Cervas was willing to take on this task.

Another voiced concern involved moving district boundaries and maintaining cores of districts. Maintaining cores of districts is an important part of the constitution. However, when the court must eliminate a district as was required with the congressional map or move two senate districts from upstate to downstate because of population shifts, district lines must change significantly.

From the comments it appears many citizens think that when drawing maps the court must start with and identify communities of interest and create districts around those cores — then fill-in such a district with whatever is left over with anyone else. New York has so many geographic regions and communities that the “what’s left” often times is a massive meandering district or districts. It is impossible primarily because of the geography of New York. The special master and the court either need to start on the eastern tip of Long Island and proceed westward across Long Island to the city and then expand northward and westward, or the court could start near Niagra Falls and proceed eastward and southward. In either case you have to start populating your districts from your starting point. The law requires exactly equal population in each district. So if a district is already half or two-thirds populated before reaching a given community there is often nothing that can be done but to split the geographic region or community. It is not because the court wants to split up the region or community but because the law does not permit unequal populations within districts.

Some comments voiced concerns about multiple primaries diluting the voter turnout. As explained above, this court had no choice but to move the primary to August. The governor and legislature have the prerogative to move the June primary to August so that there was just one primary, but to do so would affect the candidates for supreme court positions in November.

FILED: STEPHEN COUNTY CLERK 06528720022062157PMM

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Attached are the maps that this court hereby certifies as being the 2022 Congressional and 2022 New York State Senate maps. The court will instruct LATFOR to review the maps for compliance with block-on-border and town-on-border compliance and to certify to the New York State Board of Elections the precincts, districts, etc. for each Congressional and State Senate district. If LATFOR finds any technical violations it is instructed to inform the court so that appropriate modifications can be made.

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

ORDERED, ADJUDGED, and DECREED that the attached maps be, and hereby are certified as being the official approved 2022 Congressional map and the 2022 State Senate map; and it

ORDERED, ADJUDGED, and DECREED that LATFOR be and hereby is directed to review the maps for the purpose of determining compliance with the block-on-border and town-on-border rules and then to certify to the New York State Board of Elections the precincts, districts, etc. for each Congressional and New York State Senate district; and it is further

ORDERED, ADJUDGED, and DECREED that in the event LATFOR determines there to be some technical violation of one of these rules that LATFOR immediately notify the court of the violation so that appropriate corrective action can be taken by the court; and it is further

ORDERED, ADJUDGED, and DECREED that Dr. Jonathan Cervas provide to LATFOR and the New York State Board of Elections files of these maps in a usable format.

Dated: May 20, 2022


 Hon. Patrick F. McAllister
 Acting Supreme Court Justice

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FILED: STEUBEN COUNTY CLERK 05/28/2022 05:15 PM

NYSCEF DOC. NO. 070

INDEXED: NE20224912622
RECEIVED NYSCEF: 05/28/2022

Report of the Special Master
May 20, 2022

Jonathan Cervas
Special Master

Harkenrider v. Hochul

Jonathan Cervas Short Bio

I am a postdoctoral fellow at Carnegie Mellon University in the Institute for Politics and Strategy. I have been involved in drawing maps for three federal courts in voting rights and redistricting cases. Three cases involved questions related to the Voting Rights Act and the U.S. Constitution. In *Navajo Nation v. San Juan County, UT*, D.C. No. 2:12-CV-00039-RJS (2018), the district court ruled that the election districts for school board and county commission violated the Fourteenth Amendment to the United States Constitution. After the court rejected the county's remedial map, the court retained Prof. Bernard Grofman as special master. I was employed as assistant to the special master and helped to prepare remedial maps. The court selected the illustrative maps I helped prepare for immediate use in the next election. These maps were upheld by the Tenth Circuit Court of Appeals *Navajo Nation v. San Juan County*, No.18-4005 (10th Cir. 2019). In *Bethune-Hill v. Virginia State Bd. of Elections*, 141 F. Supp. 3d 505 (ED Va. 2015) the federal court ruled that twelve of Virginia's 100 House of Delegates districts were unconstitutional gerrymanders under precedent set in *Shaw v. Reno* 509 US 630 (1993). Eventually reaching the United States Supreme Court (SCOTUS) the first time, the court remanded *Bethune-Hill v. Virginia State Board of Elections*, 580 U.S. ____ (2017). The district court then ruled eleven of the twelve districts were unconstitutional racial gerrymanders and ordered them redrawn. *Bethune-Hill v. Virginia State Bd. of Elections*, 326 F. Supp. 3d 128 (2018). The district court retained Prof. Grofman as special master. I worked with Prof. Grofman as assistant to the special master. Together we created ten map modules; three in Norfolk, two in the peninsula area, three in Petersburg, and two in Richmond. The court selected module combinations that adjusted the boundaries of twenty-five districts. The case was heard for a second time on appeal to SCOTUS, who remanded on standing. *Virginia House of Delegates v. Bethune-Hill*, 587 U.S. ____ (2019). These districts were used in the 2019 election, and because of census delays, again used in 2021. In *Wright v. Sumter County Board of Elections and Registration* (1:14-CV-42 (WLS) U.S. District Court, Middle District of Georgia (2020)), the district court ruled that Sumter County's voting districts diluted the voting power of Blacks in violation of section 2 of the Voting Rights Act. The court retained Prof. Grofman in his capacity as special master. I again served as assistant to the special master. Working with Prof. Grofman I helped craft four seven-district illustrative plans and one five-district illustrative plan. The court chose one of the plans I helped to prepare. Defendants appealed to the eleventh circuit court, who reviewed the entire record and found the district court did not err in concluding a section 2 violation and that the special master "expressly found an easily achievable remedy available". *Wright v. Sumter County Board of Elections and Registration*, No. 15-13628 at 45 (11th Cir. 2020). In July of 2021, I entered into contract with the Pennsylvania Legislative Reapportionment Commission to provide consulting work relating to the creation of the PA state House of Representatives and PA Senate districts to be used during elections held between 2022 and 2030. This work involved numerous aspects of the reapportionment process, not limited to map drawing. The maps drafted by the commission passed with a bi-partisan vote on February 4, 2022. The Pennsylvania Supreme Court unimously affirmed the final reapportionment plan. My work with the commission is ongoing.

1. In *Harkenrider v. Hochul* (2022), the State of New York Supreme Court ruled that the congressional and state senate plan passed by the Legislature and signed by the Governor had bypassed the Redistricting Commission and thus were not enacted through a constitutionally valid process. For the congressional plan, the Court also held that the Respondents "engaged in prohibited gerrymandering when creating the districts" (2022.03.21 [243] *Harkenrider v. Hochul* DECISION and ORDER at 1). The findings that there were no constitutional maps for either New York's Congressional delegation or for the New York State Senate triggered the new provision of the State Constitution that shifted the burden to state courts to specify a process for creating constitutional maps for each body. On April 18, 2022, I was asked by Judge and Acting Supreme Court Justice Patrick McAllister to serve as Special Master in preparing a remedial plan for the New York congressional delegation to be considered by the Court; after the State of New York Court of Appeals heard the case on appeal, my responsibilities were extended by Justice McAllister to include preparing a remedial plan for the state senate for the Court's consideration on April 27, 2022.

2. In proposing maps for the Court's consideration, Justice McAllister Court instructed me to fully adhere to all the provisions of the New York State Constitution, such as the strict equal population requirement for Congress and the block-on-the-border rule and town-on-the border rule for the state senate.¹ In my map making I avoided fragmenting existing political subunits such as counties and cities and I sought to draw districts that were reasonably compact. I was also instructed by the Court to draw proposed maps in a fashion that was blind to the location of incumbents and I followed that injunction. **The predominant motive of these proposed maps was to fully comply with federal and state law.** Race-based districting is strictly prohibited by the U.S. constitution, and therefore I did not use race as a preponderant criterion. Later in this Report, I discuss in more detail how I dealt with each of the many relevant provisions in the New York Constitution, including the one dealing with communities of interest.

3. The failure of the Commission to agree on lawful maps and the time consumed by subsequent litigation meant that, even after an initial postponement of the date for the primaries, the Court was operating under extremely severe time constraints. The Court provided a timetable for my work which included deadlines for submission of comments and expert witness reports to me and the Court, a deadline for the dissemination of a preliminary proposal and report, deadlines for submission of comments and expert witness reports pertaining to this preliminary proposal, and a deadline for the preparation and dissemination of a final map adopted by the Court.

4. The urgency of the tasks confronting me, the great volume of suggestions made to the Court (and previously to the Redistricting Commission), and the time pressure made it impossible for a single individual to do everything that was needful. I employed research assistants to whose work I am greatly

¹ The latter rules are found in Article III, section 4(c).

indebted (Marissa Zanfardino²; Jason Fierman³, and Zachary Griggy⁴) to work under my direction. In addition, with the approval of the Court, I brought in the distinguished redistricting scholar, Bernard Grofman (University of California, Irvine), as a consultant. I had previously worked with him in other cases where Grofman had been the Special Master.⁵ All decisions as to what recommendations were to be given to the Court vis-a-vis proposed remedial maps were ones made by me.

5. I did not begin my map drawing process *de novo*. There was a considerable volume of information and public comment that had been compiled by the Redistricting Commission that I was able to draw upon. In preparing my preliminary proposed maps for the Court, I (with the help of my research assistants) poured over thousands of pages of court records and testimony that was presented to the Redistricting Commission. In addition, I reviewed the several hundred submissions of testimony via email or through the court docket that came after or just before my appointment, along with several dozen complete or near complete plans directly submitted to me. While I received roughly two dozen congressional map submissions that were fully compliant with one-person, one-vote, relatively few senate maps were submitted that fully satisfied the strict block-on-border and town-on-border rules for equalizing population. Among those, several appear to build off one

² Zanfardino completed her JD from New York Law School in 2022. She is currently a Legal Fellow at the New York Census and Redistricting Institute. Zanfardino graduated from Tulane University in 2019 with a bachelor's degree in Economics and Sociology. She is a lifelong New York resident, living in Massapequa, Brooklyn, and Manhattan at various stages.

³ Fierman graduated from The George Washington University with a bachelor's degree in Political Science and Criminal Justice in 2011, and from George Mason University with an MPA in 2016. Fierman has worked as an associate at Princeton University working on issues of redistricting and as a consultant at DailyKos working on elections. Fierman grew up in Westchester, NY.

⁴ Griggy is an undergraduate at the University of California, Irvine. He is expected to graduate in 2023 with a degree in Political Science and Urban Studies. He previously worked as an assistant to the Special Master and has assisted in the map-drawing process for several remedial court maps.

⁵ Grofman was indispensable in drafting this report and in his consultation throughout the process of producing these maps. Grofman taught for six years at SUNY Stony Brook before he took a tenured position at the University of California, Irvine. He also spent a full academic year as a Straus Fellow at New York University Law School and two other academic quarters as a visiting scholar there. Some time ago, in two different decades, Grofman was chosen by federal courts as a senior consultant on New York redistricting (Congress and state legislature). He also once served as a consultant on New York City redistricting for a redistricting commission. Over the past seven years, Grofman's work as a Special Master or senior consultant to federal or state courts has been in southern and western states, including North Carolina (Congress), Virginia (Congress and state legislature), Georgia (local districting), and Utah (local redistricting). In the past he has been a consultant to both political parties and to minority legal groups as well as to the U.S. Department of Justice.

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another. I borrowed pieces of maps as the base of both the congressional and senate map, but adopted no map in full. And I had available to me the maps enacted in 2012, along with plans proposed by the Redistricting Commission. I also benefited from hearing in person from around 30 citizens in Bath, NY on May 6, 2022. Because of these inputs, I was able to complete my task of preparing a proposed map for the Court in the time frame required. In so doing, I looked for good ideas from the many submissions by concerned citizens and groups and, to the extent feasible given the time constraints, incorporated them when they allowed for integration into a complete map drawn fully according to constitutional principles. I evaluated suggestions based on the merits of the proposal not on who (or which political party) was suggesting the change.

6. To the extent feasible given the severe time constraints, in addition to the considerable body of information previously integrated into the initial map-making process, the Court solicited further comments from the public and concerned groups on the proposed preliminary maps. After the dissemination of a map on May 16, 2022, I was pleased to receive additional extensive input from the public and concerned groups, most of which was specifically directed to the proposed maps. This feedback included over 800 e-mails and messages directed at me through social media. Additionally, I estimate that over 3,000 comments were submitted to the Court directly, pursuant to the Court's stipulation of time periods to receive suggestions for map revisions and briefs or expert witness reports.⁶ My team and I read all these suggestions and they were organized and categorized by my research assistants. With respect to these comments, of necessity, the ones to which I paid the greatest attention were those which the political scientists Peter Miller and Bernard Grofman refer to as *mappable suggestions*, i.e., ones that were based on the existing map proposals and made specific suggestions for how changes could be made to improve them.⁷

7. At this stage of the map-making process my attention was focused on suggestions for changes in the proposed maps that involved the treatment of particular communities of interest. However, in a number of cases, either the submission was not sufficiently well articulated in a mappable way as to allow consideration of how its ideas it might be incorporated into the proposed maps, or submissions proposed changes that were inconsistent with changes proposed in other submissions so as to suggest a lack of public consensus on where particular communities of interest were located. Some submissions were simply infeasible to implement without ripple effects that would force dramatic changes in the maps, affect other constitutional criteria, or suggestions were infeasible in practice because of the very binding population equality constraints imposed by the New York Constitution. Also, suggestions to reconfigure the map to benefit the reelection chances of a particular party or incumbent or to unpair particular incumbents were disregarded as inappropriate in a map drawing process entirely based on the good government strictures embedded in the Redistricting Amendment to the New

⁶ I want to extend a debt of gratitude to the Court staff, especially Brenda Wise, for receiving and promptly posting submissions to the court docket.

⁷ Miller, Peter, and Bernard Grofman. 2018. "Public Hearings and Congressional Redistricting: Evidence from the Western United States 2011-2012." *Election Law Journal: Rules, Politics, and Policy* 17(1): 21-38. <http://www.liebertpub.com/doi/10.1089/elj.2016.0425>.

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York State Constitution, and the requirement that maps neither favor nor disfavor any political party or incumbent. However, as before, I evaluated suggestions based on the merits of the proposal, not on who (or which political party) was suggesting the change. In particular, if a change was advocated to unify neighborhoods or for community of interest reasons and had few or no partisan consequences and it was feasible to implement, I examined it very carefully and sometimes proposed it to the Court for adoption in the final map (see discussion of changes from the preliminary map to the final map discussed at the end of the report).

8. The preliminary maps were each accompanied by a one-page report highlighting its key features. In this Report I describe the criteria used in devising a constitutional map and review the key features of the final map adopted by the Court. At the end of this Report, I also identify some issues having to do with communities of interest that were brought to the Court's attention in multiple submissions, and discuss how those suggestions for improvement were dealt with in the final revisions to the initial proposed maps.

9. Any constitutional map requires the satisfaction of the multiple criteria laid out in the New York State Constitution that are not fully consistent with one another and that necessarily require tradeoffs. Because of this fact there cannot be a "perfect" map. The New York State Constitution does not clearly rank order criteria. Here we list them in the order given in the Constitution.⁸

9A. VOTING RIGHTS.

"(1) When drawing district lines, the commission shall consider whether such lines would result in the denial or abridgement of racial or language minority voting rights, and districts shall not be drawn to have the purpose of, nor shall they result in, the denial or abridgement of such rights. Districts shall be drawn so that, based on the totality of the circumstances, racial or minority language groups do not have less opportunity to participate in the political process than other members of the electorate and to elect representatives of their choice."

In map drawing I have adhered to the instructions for treatment of minority groups laid down in the New York State constitution. I have taken the groups whose rights need be paid special attention to be the same racial and linguistic minorities that are identified by the U.S. Congress in the Voting Rights Act of 1965 and in its subsequent amendments. Other groups I consider under the category of communities of interest. In New York, the largest minority groups -- African-Americans, those of Spanish heritage, and Asian-Americans -- are almost always highly geographically concentrated. Even in a completely race blind process there will be many districts (both for Congress and especially for the State Senate) that have a large minority population,

⁸ Our federal system of government places criteria found in the U.S. Constitution as highest priorities, federal law next, and then provisions of the state constitution and state law.

and these demographic and geographic realities are fully reflected in the maps that I drew for the Court. I did not use race as a preponderant criterion. As indicated earlier, the standard good government criteria laid down in the New York State Constitution were the dominant considerations in my map-making.⁹

9B. EQUAL POPULATION.

"(2) To the extent practicable, districts shall contain as nearly as may be an equal number of inhabitants. For each district that deviates from this requirement, the commission shall provide a specific public explanation as to why such deviation exists."

"(6) In drawing senate districts, towns or blocks which, from their location may be included in either of two districts, shall be so placed as to make said districts most nearly equal in number of inhabitants. The requirements that senate districts not divide counties or towns, as well as the 'block-on-border' and 'town-on-border' rules, shall remain in effect."

While the language in (2) above suggests that the New York State constitutional standard for equal population is essentially the same as that in the federal constitution (as interpreted by federal courts), that is wrong. There are other more specific requirements for population equality laid down elsewhere in the NY Constitution that make it much harder to satisfy one person, one vote standards in New York than is the case in other states.

In particular, while federal case law allows for some deviations from perfect equality for Congress when there is compelling justification (with plans with a total population deviation of less than 0.75% sometimes found acceptable)

⁹ Time did not permit a full analysis of the Section 2 VRA factors. However, (a) in order to bring a Section 2 claim it must be demonstrated that an additional compact 50%+ citizen voting age district can be created (*Bartlett v. Strickland*, 556 U.S. 1, 2009), and (b) any requirement to create a 50%+ citizen voting age district can be rebutted by a showing that the challenged district also gives minorities a realistic equal opportunity to elect candidates of choice. The Court maps contain so many districts with substantial minority populations whose candidate of choice is likely to be able to win primary victories and then go on to win general elections with non-Hispanic White crossover support in districts that are very heavily Democratic in political leaning that litigants would be unlikely to be able to satisfy the *Gingles* requirement that the candidate of choice of the minority community would be expected to regularly lose in the reconfigured district. It is the rights of minority communities, not the rights to office of individual candidates that are protected. This view of the potential for a successful Section 2 challenge to the Court imposed remedial maps is shared by Professor Grofman. Let me reiterate, however, that race was not a preponderant motive in my line drawing; rather, the heavily minority districts I have drawn simply reflect the population concentrations visible to citizens of the state New York or to someone who has studied demographic information about the state.

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the New York standard is plus or minus one-person. This is a very demanding standard, especially in New York City where precincts (and blocks) are often rather large. As a consequence, satisfying New York's congressional one person, one vote requirement can force some irregularity in a district perimeter and may limit the potential for fully incorporating particular neighborhoods or communities of interest in a single district.

Similarly, while federal case law generally allows for a total population deviation of plus or minus five percent, and relatively few states require more restricting population constraints than those laid down in federal law, and even when they do, do not require perfect population equality, the block-on-border and town-on-border rules (see (6) above) force very strict population constraints on most of the districts. For example, in New York City all of the Senate districts within NYC must essentially be identical in population.¹⁰

9C. CONTIGUITY.

"(3) Each district shall consist of contiguous territory."

The mathematical definition of contiguity is straightforward: "Is it possible to proceed from any part of the district to any other part of the district without leaving the district?" I have sought, however, to avoid contiguity that is only "technical," i.e., generated only at a point or only via a

¹⁰ The block-on-border rule requires any district that includes only part of a city to have exactly the same population as every other district in that city. The 'town-on-border' rule requires population to be balanced between districts found in the same county, by ensuring that no town or city can be moved to an adjacent district which would lower the deviation between the two. These requirements are mandated by the text of the constitution and by state case law.

narrow wedge or a thin string of connecting blocks,¹¹ or contiguity that is not *functional contiguity*.¹²

9D. COMPACTNESS.

"(4) Each district shall be as compact in form as practicable."

¹¹ For example, one of the several problems with the way in which Congressional District 10 was configured in the unconstitutional map was that it achieved contiguity only in a very ill-compact way.

District 10 in Legislative Proposal and in Court Map



¹² *Functional contiguity* is generally taken to require that there be a way to traverse the district on foot or by car that does not require using a boat (or an airplane). As I note in identifying changes in the preliminary map later in the Report, one change that the Court did make at my recommendation was to ensure functional contiguity over water in District 17. (I am indebted to Steven Dunn for calling that issue to my attention.) There are, however, some states in which contiguity by water is permitted, but I prefer to avoid that option if possible.

Standard measures of compactness are defined in terms of area or perimeter and these can be measured in various ways, but two standard measures are *Polsby-Popper* (for area) and *Reock* (for perimeter).¹³ There is no dispute that the Court maps are compact on both measures, and more compact (and in the case of the congressional map, much more compact) than the maps found unconstitutional. (See summary table in section 10).

9E. COMPETITION, PARTISAN OR INCUMBENT BIAS, DISTRICT CORES, PRE-EXISTING POLITICAL SUBDIVISIONS, AND COMMUNITIES OF INTEREST

"(5) Districts shall not be drawn to discourage competition or for the purpose of favoring or disfavoring incumbents or other particular candidates or political parties. The commission shall consider the maintenance of cores of existing districts, of pre-existing political subdivisions, including counties, cities, and towns, and of communities of interest."

I discuss each of these clauses separately below.

9E1. RESPONSIVENESS AND POLITICAL COMPETITION.

Representative democracy requires elections that are free, open, and equal, with representatives ultimately accountable to the voters for their actions in office. One way in which such accountability is assured is in limiting the duration of office holding so that the will of the people is repeatedly assessed. Another way in which responsiveness is fostered is to have districts that are sufficiently competitive that they might realistically change in outcome in response to a change in voter preferences. In the U.S., since early in the Republic, elections are mediated by political parties serving as gatekeepers to organize voters for collective action. In the maps I drew for the Court's consideration, I reviewed whether those maps allowed for state-wide partisan outcomes to be responsive to changes in voter preferences by having a reasonable number of politically competitive districts.

Future election outcomes are hypothetical, and no crystal ball exists to perfectly predict elections, and political contexts change over time. Nonetheless, plausible expectations can be developed about which districts might be politically competitive in future elections by projecting past elections into the new districts. Political polarization has made outcomes more predictable and party orientation and vote choice more stable. Of course, projections can depend on which elections are incorporated into the model. I preferred data averaged from the presidential elections of 2016 and 2020. Political scientists have found that increasingly, congressional elections tend to mirror presidential ones, and even state elections are

¹³ See e.g., Niemi, Richard G., Bernard Grofman, Carl Carlucci, and Thomas Hofeller. 1990. "Measuring compactness and the role of a compactness standard in a test for partisan and racial gerrymandering." *Journal of Politics*, 52(4):1155-1181. This essay, written from a purely academic and non-partisan point of view, has one co-author who would be regarded as a Republican expert and another who would be regarded as a Democratic expert.

increasingly affected by national forces. For comparison purposes, I also examined projections based on a composite of 6 statewide elections over the period 2016-2020 (President 2016, U.S. Senate 2016, U.S. Senate 2018, Governor 2018, Attorney General 2018, President 2020). Because this set includes several rather idiosyncratic elections won overwhelmingly by the Democratic candidate, it shows projected outcomes to be more Democratic leaning than is the case for the presidential elections. Conclusions as to competition can also vary depending on exactly how a competitive district is defined. I use a definition that is standard in the political science literature: an average (of past recent elections) with a two-party vote share between 45% and 55%. Both the congressional and state senate maps have a substantial number of competitive seats (far more than in the unconstitutional maps) and are going to be responsive to the public will. Exact comparisons are provided in the Table in numbered section 10 of this Report and in the one page summary document released simultaneously with the new map and this Report.

9E2 PARTISAN OR INCUMBENT BIAS

Neither the proposed maps nor the final maps adopted by the Court were "drawn ... for the purpose of favoring or disfavoring incumbents or other particular candidates or political parties." (emphasis added) This statement cannot be a matter of dispute. I served the Court as a non-partisan expert. These maps were drawn blind to the homes of incumbents, using the good government criteria set down in the New York State Constitution.

Most of the attention has been devoted to the congressional map. As far as I can judge, the issues raised vis-a-vis the Senate map almost all have to do with the configuration of particular districts in terms of communities, so I will only focus on the congressional map with respect to partisanship. The Petitioners claim that the congressional plan does not give Republicans enough districts, while Respondents complain that the map does not allow them to keep the expected gains in congressional seats given to them by the map found unconstitutional, and incumbents complain about reconfiguring of their districts or about pairings.

There are many metrics that can be used to evaluate partisan neutrality. Most of these indicators show a slight Republican bias to the Court's congressional map, although a few show a pro-Democratic bias, and some essentially no statistically significant bias at all. Since this Report is not a Ph.D. dissertation, I will not try to explicate why measures for partisan gerrymandering such as *seats bias*, *votes bias*, *declination*, the *efficiency gap*, the *mean minus median gap*, and various results based on ensembles using particular instructions to a computer using a limited set of criteria and parameters that give specific weight to each criteria and can not reach the threshold levels of population equality to be completely unbiased do not give the exact same answers. Suffice it to note that some of these metrics can be unreliable in a state like New York where one party is dominant¹⁴; they work best in states in evaluating gerrymandering in states that are competitive at the state-wide level.

¹⁴ Nagle, John F., and Alec Ramsay. 2021. "On Measuring Two-Party Partisan Bias in Unbalanced States." *Election Law Journal: Rules, Politics, and Policy* 20(1): 116-38. <https://www.liebertpub.com/doi/10.1089/elj.2020.0674>.

To the extent that we find pro-Republican bias in New York even in maps drawn by Democrats, Democratic voting strength is inefficiently distributed largely because of highly concentrated Democratic voting strength in almost all of New York City - that is, Democrats can be expected to win around 90% of the votes in districts centered in New York City, but the most overwhelmingly Republican districts will only reach around 60%. Common sense tells us that this lopsided difference will necessarily penalize Democrats in their translations of votes into seats.

The average Democratic congressional winner projected in the Court map (based on past presidential elections averaged in 2016 and 2020) are expected to win with 70% of the vote and the average Republican winner projected to win with only 56% of the vote. But it is equally clear that this is an overwhelmingly Democratic leaning state in terms of recent statewide elections (Democratic presidential candidates average 61.75% of the statewide Democratic vote, compared with 38.25% Republican vote); accordingly, non-dilutive treatment of the two parties argues that this fact should be reflected in the congressional and legislative maps. The second simple point I would make is that the maps I proposed have a substantial proportion of competitive seats. In a good year for Republicans, the Republicans can pick up seats; in a more typical Democratic year, it is likely that seats will remain in the hands of the incumbent party in the district, though now, because of an eliminated upstate district, there is one less congressional district being held by a Republican.

I show below the Plan Score evaluations of the final congressional map and the final Senate map (Results for the preliminary maps are essentially identical.) Plan Score is a project of the Campaign Legal Center, a nonpartisan organization, whose stated goal is to advance democracy through law.

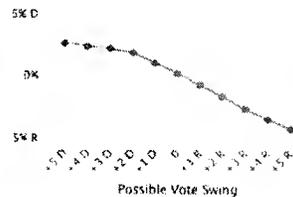
Congress:

Efficiency Gap: 0.1% D



Votes for Democratic candidates are expected to be inefficient at a rate 0.1% D lower than votes for Republican candidates, favoring Democrats in 52% of predicted scenarios. Learn more >

Sensitivity Testing



Sensitivity testing shows us a plan's expected efficiency gap given a range of possible vote swings. It lets us evaluate the durability of a plan's skew.

Declination: 0 R



The difference between mean Democratic vote share in Democratic districts and mean Republican vote share in Republican districts along with the relative fraction of seats won by each party leads to a declination that favors Republicans in 56% of predicted scenarios. Learn more >

View PlanScore here:

<https://planscore.campaignlegal.org/plan.html?20220520T183242.680480746Z>

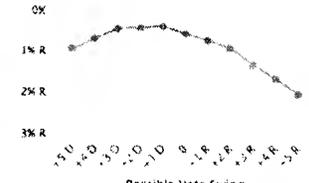
Senate:

Efficiency Gap: 0.6% R



Votes for Republican candidates are expected to be inefficient at a rate 0.6% R lower than votes for Democratic candidates, favoring Republicans in 58% of predicted scenarios.
[Learn more >](#)

Sensitivity Testing



Sensitivity testing shows us a plan's expected efficiency gap given a range of possible vote swings. It lets us evaluate the durability of a plan's skew.

Declination: 0.11 D



The difference between mean Republican vote share in Republican districts and mean Democratic vote share in Democratic districts along with the relative fraction of seats won by each party leads to a declination that favors Democrats in 77% of predicted scenarios.
[Learn more >](#)

View PlanScore here:

<https://planscore.campaignlegal.org/plan.html?20220521T024453.892105205Z>

The Plan Score evaluations find the final Court maps to be almost perfectly politically neutral for both the congressional and the state senate plans.

9E3 CORES OF EXISTING DISTRICTS.

After the 2020 census, state specific shifts in relative population share meant that New York lost one of its congressional districts. Moreover, the regional distribution of population within the State of New York has changed, with upstate losing population relative to downstate - requiring a shift that is roughly the equivalent of one full congressional seat. As a consequence, direct comparisons between the 2012 congressional map and any 2022 proposed congressional maps can be quite misleading.

Similarly, loss of population upstate relative to downstate led to a loss of two Senate seats upstate. As a consequence, direct comparisons between the 2012 State Senate map and any proposed 2022 State Senate maps can also be quite misleading. Moreover, the 2012 State Senate map was drawn with partisan goals as thus comparisons to a map satisfying the new constitutional requirements for State Senate maps can be misleading on that ground alone.

Nonetheless, despite population shifts, core retention was actually quite high. According to the analysis done by Sean Trende, congressional core retention in the preliminary congressional map was 70.9% and that percentage should not be expected to change drastically in the final map.¹⁵ I take this

¹⁵ See 2022.05.18 [646] Harkenrider v. Hochul - Moskowitz Aff Ex. 2 SUPPLEMENTAL REPORT OF SEAN P. TRENDE ON THE SPECIAL MASTER'S PROPOSED CONGRESSIONAL MAP May 18, 2022.) Professor Trende's map, which is tilted toward Republicans, has 73.3% core retention. At the level of individual districts, Professor Trende's map has a higher core retention in 11 districts; the proposed map has higher core retention in 9 districts; and 6 districts are ties.

to be clear evidence that despite all the changes made in the Court drawn congressional map to improve compactness and limit county and city cuts, the Court's Congressional map clearly takes core retention into consideration -- which is all that is required by the language of the New York State Constitution.

9E4 PRE-EXISTING POLITICAL SUBDIVISIONS

Very specific population equality provisions in the New York Constitution are completely inflexible and therefore were given the most weight. Among the factors listed in the New York constitution, I regard maintenance of pre-existing political subdivisions as an important consideration.

Some comments have objected to the apparent weight I gave to political subdivision boundaries. But there are what I believe to be six strong reasons why maintenance of these borders should be an important consideration in good government map-making.

First, there can be no disagreement that the constitutional amendment on redistricting was intended to limit the potential for partisan gerrymandering.

"The People of the State of New York have spoken clearly. ... [I]n the 2014 Constitutional Amendment not only did the People include language to prevent gerrymandering, but they also set forth a process to attain bipartisan redistricting maps." (2022.03.21 [243] Harkenrider v. Hochul DECISION and ORDER at 10)

- (1) While maintaining pre-existing county and city borders is not a guarantee against gerrymandering, since what I (and Bernard Grofman) have called "stealth gerrymandering" i.e., plans that adhere closely with traditional redistricting criteria but nonetheless are carefully to still egregiously favor one party over another,¹⁶ still remain possible, imposing a rule limiting county and city cuts makes it harder to gerrymander.
- (2) If we treat jurisdictional boundaries as non-constraining and allow maps to wander, it becomes easy for mapmakers to make claims that they are simply preserving communities of interest as a mask for what is actually partisan or incumbency preservation gerrymandering. As I note in our discussion of the community of interest criterion below, there is a certain looseness to the concept, except when communities are defined in racial or linguistic terms. But thinking of communities of interest only in racial or linguistic terms brings me to another compelling reason to maintain county and municipal boundaries.
- (3) Political subunits are *cognizable* to ordinary citizens, to use Professor Bernard Grofman's terminology, because they have a clear geographic location that is usually marked by signage, often including that on road or parkway exits, and a long-standing history. In thinking

¹⁶ Cervas, Jonathan R., and Bernard Grofman. 2020. "Tools for Identifying Partisan Gerrymandering with an Application to Congressional Districting in Pennsylvania." *Political Geography* 76: 102069.

about what is where, political subunits are a natural way to demarcate space.¹⁷

- (4) Prioritizing respect for fixed and known boundaries immediately renders highly implausible any claim that race was a preponderant motive in the way in which maps were drawn, and thus limits the potential for a constitutional challenge to a map under the *Shaw v. Reno* (509 U.S. 630, 1993) constitutionally rooted prohibition of "race serving as a preponderant motive" in the line drawing process.
- (5) Units, such as cities and counties, are units of governance and thus have an inherent political relevance.
- (6) Relatedly, units such as cities and counties are also cognizable communities and can readily be viewed as themselves communities of interest in that residents of such units have interests in common.

Of course, given strict 'one-person, one-vote' requirements in both the congressional and senate maps, some political subdivisions will have to be divided. Nonetheless in the congressional map I have sought to limit the number of county splits to near to $N-1$, where N is the number of constituencies.¹⁸ Similarly, in the Senate map I have sought to limit the number of municipality splits to no more than one per district. But, given the geography and the size of the different cities, completely eliminating all municipality splits is simply impossible.

9E5 COMMUNITIES OF INTEREST

Communities of interests are notoriously difficult to precisely define.¹⁹ Even within a specific minority community there may be issues of what are the boundaries of particular neighborhoods and which neighborhoods most appropriately belong together. In reading through testimony submitted to the IRC or to the special master about communities of interest, some testimony has been contradictory, and the same tends to be true in other jurisdictions with which I am familiar. Also, while there are certainly historic communities, community definitions can be constantly evolving, especially as the racial or ethnic population of neighborhoods changes. Since communities of interest are often smaller than a single Congressional district or even a State Senate district, some combining of communities of interest will be

¹⁷ Chen, Sandra J. et al. 2022. "Turning Communities Of Interest Into A Rigorous Standard For Fair Districting." *Stanford Journal of Civil Rights and Civil Liberties* 18: 101-89, provides a brief discussion of the idea of cognizability.

¹⁸ It can be shown mathematically that $N-1$ is the lowest mathematically feasible number of splits except where there are whole counties or cities or aggregates of cities and counties that exactly meet population requirements. This result has been shown by Professor Grofman and demonstrated in a mathematically elegant fashion by Professor John Nagle (personal communication).

¹⁹ See discussion in Chen, Sandra J. et al. 2022. "Turning Communities Of Interest Into A Rigorous Standard For Fair Districting." *Stanford Journal of Civil Rights and Civil Liberties* 18: 101-89, and references therein.

necessary. Finding the appropriate communities to combine is often more art than science and there will almost never be one absolutely correct answer, especially given the other constraints that need to be satisfied for a constitutional map.

10. Below is a summary chart showing key features of the Court's final congressional map and the Court's final Senate map, with a comparison to the corresponding unconstitutional maps.

CONGRESS	Court Map	Legislative Proposal
Number of Counties Split	16	34
Total Number of County Splits	26	56
Reock Compactness	41	32
Polsby-Popper Compactness	35	25
Competitive Districts ²⁰	8	3

For splits, lower is better. For compactness and competitive districts, higher numbers are better.

SENATE	Special Master Proposal	Legislative Proposal
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²⁰ As measured using the 2016/2020 Presidential election PVI on DRA; districts between 45% and 55%.

Number of Counties Split	25	30
Total Number of County Splits	66	71
Reock Compactness	39	35
Polsby-Popper Compactness	34	28
Competitive District	12	6
For splits, lower is better. For compactness and competitive districts, higher numbers are better.		

11. CHANGES TO PROPOSED MAPS

I was very pleased to see the high level of civic engagement and interest reflected in the volume of comments this Court (and the Redistricting Commission earlier) had received, and particularly pleased with the many suggestions for improvements in the preliminary maps I prepared for the Court. And I sought to be very responsive to citizen concerns in my recommendations to the Court for the shape of the final maps. But there are several realities that must be understood that made it impossible to incorporate most of the suggestions.

First, some of those suggestions were mutually contradictory.

Second, while I was quite successful in limiting the number of counties and cities that were split, some splits are simply inevitable given the geography of the state and the population constraints, and the need to take into account other of the multiple competing criteria for redistricting identified in the state constitution that I listed earlier in this Report. I can assure you that if yours was one of these units that were split it was not because of any kind of animus but was essentially due to the mathematical necessity of splitting some units, though I have tried especially hard to limit splits of smaller units.²¹

²¹ Professor Bernard Grofman has joked that there are so many different criteria that a Special Master must pay attention to that it's like being asked to simultaneously juggle things as diverse as tires, tea pots, and burning torches, with some pennies to juggle (population equality constraints) thrown in for good measure.

Third, under federal law, it is unconstitutional for race to be a preponderant motive in redistricting, and I did not do so. Some of the changes that were proposed involved moving pockets of concentrated minority populations from one district to another simply to increase minority influence without a clear justification in terms of unifying long-established geographically defined neighborhoods and communities.

Fourth, changes to a proposed map needed to be geographically feasible in terms of changes to the proposed map that reflects the spirit and rules set out in the constitution.

Fifth, perhaps, most importantly, any change has a ripple effect that can force substantial redrawing of lines. In particular, even small changes in one part of the map can force more substantial changes overall due to the strict population constraints in the New York State Constitution.

Finally, and relatedly, changes which seem desirable from the standpoint of one community of interest may have fewer desirable consequences for other communities of interest.

Nonetheless, despite the important caveats in the paragraphs above about why it was simply impossible to address all the public's concerns, I am pleased to report that I was able to incorporate into the final maps a very large proportion of the most serious and most often repeated suggestions about changes needed in the preliminary maps. Below I have sought to explain my reasons for key changes I did or did not make - often involving a hard choice between two options, each of which could be supported with good reasons. There are 28 proposed changes that had some substantial support that I reference below. Of these 28 changes, I was able to adopt in whole or in part 21.

My preliminary proposed maps were informed by testimony before the Redistricting Commission, evidence in the court record, and suggestions given directly to me prior to my drafting of a preliminary map. But I find the present round of citizen submissions of particular usefulness to me as a mapmaker, since they were directly offering what they believe to be improving changes in a map whose main features were likely to be adopted by the Court. Having a map to work from allows the public to be better informed about how their recommendations might be made compatible with concerns of other citizens and groups in a lawful map.

Several changes to the Proposed Maps have been made based on the comments of citizens and interest groups. I am thankful for the time invested by those citizens in helping me to identify areas for improvement from the Proposed map I delivered to the court on May 16, 2022. I provide in the following section reasons why some suggested changes were or were not made in the revised map.

CONGRESSIONAL MAP

NEW YORK CITY

11A. BROOKLYN - BEDFORD-STUYVESANT

In the draft congressional map, I inadvertently split the community of Bedford-Stuyvesant while trying to create compact, legally compliant districts in Brooklyn. In the final version of the map, I have placed this community in full in district 8. Bedford-Stuyvesant is now the core of district 8, as has historically been the case.

11B. BROOKLYN - CROWN HEIGHTS

In the draft congressional map, I inadvertently split the community of Crown Heights while trying to create compact, legally compliant districts in Brooklyn. In the final version of the map, I have placed this community in full in district 9. Crown Heights is now the core of district 9, as has historically been the case.

11C. SUNSET PARK, MANHATTAN CHINATOWN, RED HOOK

Several changes from the proposed map were made to Congressional District 10 to reflect numerous public comments concerning preserving communities of interest. There were many comments about maintaining the community of interest between Manhattan Chinatown, the Lower East Side, Sunset Park, and Red Hook within one congressional district. More specifically, many comments cited to the language in the federal case Diaz v. Silver, 978 F. Supp. 96 (E.D.N.Y) (per curiam), aff'd, 522 U.S. 801 (1997), which recognized that Manhattan Chinatown and Brooklyn's Sunset Park were a community of interest and should be kept together within the then 12th Congressional District. This configuration has been followed in the last two redistricting cycles. The Unity Map Coalition, APA Voice Redistricting Task Force, Common Cause New York, as well as many other members of the public, provided comments concerning the maintenance of this community of interest. There were also many comments about including Red Hook, Carroll Gardens, Gowanus, and Sunset Park within one congressional district, which is also reflected in Congressional District 10. Comments also requested to keep Park Slope with Red Hook, which was also reflected in the congressional map. While many comments addressed maintaining Red Hook, Sunset Park, and Manhattan Chinatown in Congressional District 7 with Bushwick and Williamsburg, this was not possible given the population constraints.

11D. MANHATTAN

There are clearly multiple ways in which communities on Manhattan Island are conceptualized. One conceptualization is the east side and the west side, with the focus on Central Park as a divider. Others have said that they appreciate the way my proposed map creates upper, middle, and lower Manhattan districts, which is another common way to think about NYC in spatial terms. And other observations were that Central Park is an area that, rather than being seen as a barrier, can be viewed as a green space for shared activities that unite uptown Manhattan. Moreover, the proposed uptown congressional district includes more than just areas bordering on Central Park for which the East Side versus West Side distinction may be most relevant. Furthermore, looking at Manhattan as a whole, the East Side versus West Side distinction tends to break down as we move further south. Also, even the areas of the city bordering on opposite sides of Central Park do not appear to be as strongly distinguished in terms of economic and demographic differences as they once were. Thus, while this is a hard choice, I do not find a compelling

community of interest argument for changing the configurations of Manhattan congressional districts in the proposed map.

11E. NORTH BRONX/WESTCHESTER - CO-OP CITY

There is conflicting testimony as to the appropriate portion of the Bronx that would be included in district 16. All former parts of district 16 cannot be included because of population constraints. Co-Op City, which was previously in Congressional District 16, had to be moved out of the 16th because the population loss in upstate required CD 16 to take in more population to the north. Unfortunately, even though many hundreds of citizens sent me requests for Co-Op City to be placed into the 16th CD, this is not possible given the constraints imposed by the combination of population and other criteria. I am pleased to note that Co-Op City is maintained wholly within Congressional District 14, an adjacent district that is also majority-minority in character.

11F. BROOKLYN - BENSONHURST

In the proposed congressional map, Bensonhurst was inadvertently divided between two congressional districts. Bensonhurst is now united in Congressional District 11. This reflects comments about keeping Bensonhurst whole and within Congressional District 11.

11G. BROOKLYN - BENSONHURST, BATH BEACH, NEW UTRECHT

The area of south Brooklyn was unintentionally divided in the proposed congressional map. Numerous comments were made about keeping the South Brooklyn areas of Bensonhurst, Bath Beach, and New Utrecht together in one congressional district and uniting these areas with Staten Island. I made changes to reflect these comments and now unite Bay Ridge, New Utrecht, Bensonhurst, and Bath Beach in CD 11 with Staten Island.

11H. QUEENS - BAYSIDE

Several comments related to the neighborhood of Bayside being included in Congressional District 6 instead of Congressional District 3 on the proposed map. Given population constraints, including all of Bayside in CD 6 is not possible. However, I have taken the suggestion of APA Voice and added the southern portion by making population exchanges.

LONG ISLAND

11I. LONG ISLAND COMMUNITIES

Several changes were made to Long Island districts in both the Senate and Congressional maps. Testimony by the League of Women Voters Long Island chapter, and others, suggested that splitting Long Island in a way that respects the north shore and south shore communities would be more appropriate. The congressional map now reflects that change.

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RECEIVED NYSCEF: 05/28/2022

11J. NASSAU/QUEENS COUNTY BORDER

Common Cause reported that there was community activist sentiment for Congressional District 5 not to cross the Nassau County border. This feature is maintained in the final congressional map.

11K. WESTBURY/NEW CASSEL

Although there were numerous comments about including Westbury and New Cassel with Hempstead within a congressional district, Westbury and New Cassel were not included in Congressional District 4 in order to maintain the district within the city line.

UPSTATE**11L. DISTRICT 17 - CONTIGUITY**

Rockland County was inadvertently left discontinuous in the Proposed congressional map. The city of Greenburgh is now split in such a way that the Mario M. Cuomo Bridge connects Rockland to the rest of CD 17. I thank Steve Dunn for bringing this error to my attention.

11M. CAPITAL REGION

Congressional District 20, which is centered on the capital city of Albany, initially did not include the culturally and economically connected city of Saratoga Springs. In the final Court map, all of Saratoga County is included, along with the city of Troy in Rensselaer County. I was not able to include Amsterdam given population constraints and the requirement to consider county subdivision boundaries.

11N. ERIE COUNTY THREE WAY SPLIT

Several changes have been made to Erie County. First, objections to the additional split of Erie County have been corrected in the congressional map. Erie County now consists of parts of CD 23 and 26. CD 24 now includes the more rural parts of Niagara County. This configuration better reflects the map submissions made to me and the testimony I have received since the release of the Proposed maps.

11O. KINGSTON CITY SPLIT

Some cities are necessarily split in the process of equalizing the population between districts. The Court map minimizes the impacted cities by only splitting one city in each district (in accordance with N-1 splitting criteria laid out above, and in the preservation of political sub-divisions). The residents of Kingston were clear about the particular harm splitting their community would cause, and therefore I maintained the entirety of Kingston in the final map.

SENATE**NEW YORK CITY****11P. BROOKLYN - BENSONHURST/SUNSET PARK**

In the final senate map, changes were made to reflect numerous testimony about keeping the neighborhoods of Sunset Park and Bensonhurst whole and together in one Senate District. This comment was received by APA Voice Redistricting Task Force, The Unity Map Coalition, Common Cause, as well as many other individuals. This is reflected in Senate District 17.

11Q. BROOKLYN - BAY RIDGE

Bay Ridge was unintentionally split in the proposed State Senate map. Several comments were made about keeping Bay Ridge whole within a Senate District. The Senate map changes reflect these comments and keep Bay Ridge whole and with Dyker Heights within Senate District 26.

11R. BROOKLYN - PARK SLOPE

In the proposed map, I inadvertently excluded a northern triangular portion of Park Slope from other districts that contained the Park Slope neighborhood. Given the difficulties in obtaining equal population in these highly dense areas, I was unable to unite this portion of the neighborhood.

11S. QUEENS - BAYSIDE, OAKLAND GARDENS, AUBURDALE

Several comments related to the neighborhoods of Bayside, Oakland Gardens, and Auburdale being included in Senate District 16 instead of Senate District 11. To keep neighborhoods together, comments also reflected requests to add part of the "Hillside Corridor" to Senate District 11 instead of its inclusion in proposed Senate District 16. These comments are reflected in written submissions from APA Voice Redistricting Task Force, The Unity Map Coalition, and Common Cause. I prioritized written comments to make changes to the map to include more of Bayside, Oakland Gardens, and Auburdale into senate district 16 while including areas of what is classified as the "Hillside Corridor" into Senate District 11.

11T. QUEENS - RICHMOND HILL/OZONE PARK

Numerous comments requested the inclusion of more of Richmond Hill within Senate District 15 with Ozone Park. I changed Senate District 15 to reflect these comments. I was not, however, able to get all of South Ozone Park into Senate District 15 due to population constraints. These district changes were made in an effort to preserve neighborhood boundaries as best as possible. Unfortunately, Forest Hills is slightly split in this new configuration.

11U. QUEENS - WOODSIDE/ELMHURST

Numerous statements from APA Voice Redistricting Task Force provided support for keeping Woodside and Elmhurst together in Senate District 15. Based on this testimony, I made the decision to unite these two communities and maintain Senate District 15.

11V. NORTH BRONX/WESTCHESTER - CO-OP CITY

I was able to follow the guidance of numerous testimony regarding the North Bronx/Westchester region, proposing uniting the neighborhoods of Co-Op City, Edenwald, and Williamsbridge with Mount Vernon, Eastchester, and Wakefield in one senate district. This is now achieved in Senate District 36.

LONG ISLAND

11W. SENATE DISTRICT 4

According to Article III, Section 4(c)(1) of the New York Constitution, when drawing district lines one must "...consider whether such lines would result in the denial or abridgment of racial or language minority voting rights, and districts shall not be drawn to have the purpose of, nor shall they result in, the denial or abridgement of such rights." Here, following the injunctions of the State Constitution to respect communities of interest (NYS Const. Art. III, Section 4(c)(5)) and to not draw districts that would result in the denial or abridgement of racial or language minority voting rights, the final map includes a district similar to one suggested by Common Cause.²²

11X. LAKEVIEW/ROCKVILLE CENTRE

In the proposed state Senate map, Lakeview was inadvertently divided. I have made a change to keep Lakeview whole in Senate District 6. Rockville Centre is also kept whole in a senate district, as requested by public feedback to the preliminary map.

11Y. WESTBURY/NEW CASSEL

There were numerous comments about including Westbury and New Cassel with Hempstead in a district. The map was changed such that it includes this community of interest in Senate District 6.

UPSTATE

11Z. SYRACUSE/AUBURN

²² Whether failing to create this district would be a federal Voting Rights Act violation is unclear, as federal law on whether or not the Voting Rights Act applies to combined minority groups is currently unsettled. In any case, we have relied on state law, not federal law here.

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There were many requests to keep Auburn and Syracuse together in one senate district. Comments highlighted the shared interests of Cayuga County and Onondaga County. I changed the Syracuse area to reflect this and keep these two cities together within Senate District 48. Cayuga County is kept whole within Senate District 48.

11AA. UTICA/ROME

There were also numerous requests to keep the cities of Utica and Rome together in one district. This change is reflected in Senate District 53 that unites these two cities.

11AB. BUFFALO

In the proposed map, I inadvertently split the city of Buffalo to join it with the more rural area of Erie County. There were comments that the previous split between a more urban district and a more rural district did not respect neighborhood interests. The configuration has been changed to provide a clearer separation between more urban and rural populations of the county.

11AC. ROCHESTER

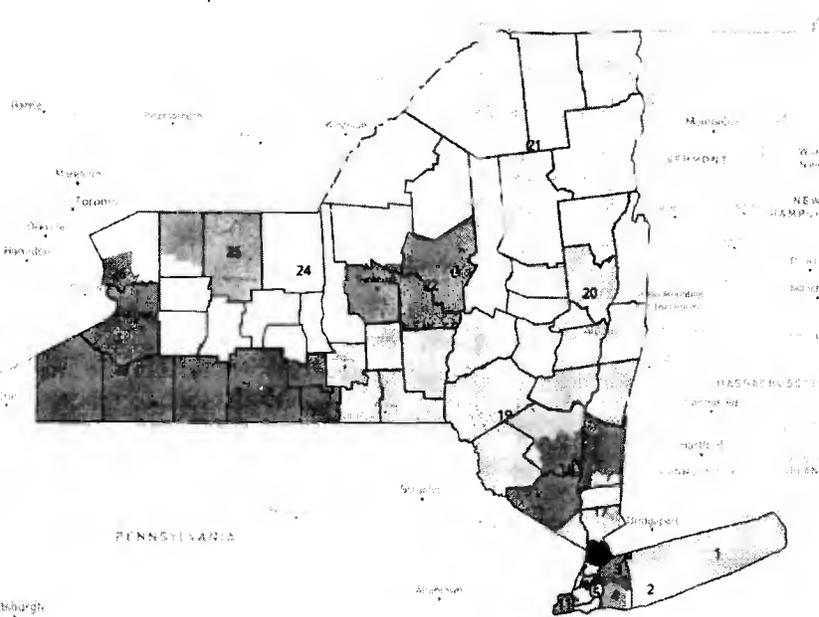
At least one group has questioned the split in the senate map of Rochester. However, for Senate Districts 55 and 56, the maps submitted by the Petitioners and the Respondents each had identical lines and I saw no reason to not propose that same configuration to the Court for the final map.

11AD. GREENE/COLUMBIA

I received testimony that requested to join Greene and Columbia Counties in the senate map. I have made a change in the final map to reflect this.

2022 NY Congressional Court Ordered Map

Jonathan Cervas, Carnegie Mellon University



View Here: <https://davesredistricting.org/join/a3a223ed-54cf-4b54-8ea3-6f9312d7c405>

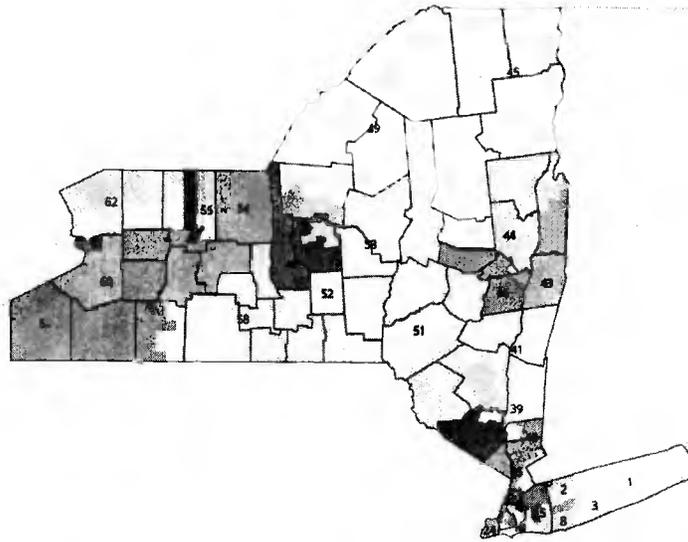
	Court Map	Legislative Proposal
Number of Counties Split	16	34
Total Number of County Splits	26	56
Reock Compactness	41	32
Polsby-Popper Compactness	35	25
Competitive Districts	8	4

For splits, lower is better. For compactness and competitive districts, higher numbers are better.

¹ As measured using the 2016/2020 Presidential election PV1 on DRA; districts between 45% and 55%.

2022 NY Senate Court Ordered Map

Jonathan Cervas, Carnegie Mellon University



View Here: <https://davesredistricting.org/join/db25a7a8-477a-4443-bc68-9a157f9b2cc8>

	Court Map	Legislative Proposal
Number of Counties Split	25	30
Total Number of County Splits	66	71
Reock Compactness	39	35
Poisby-Popper Compactness	34	28
Competitive Districts ¹	12	6

For splits lower is better. For compactness and competitive districts, higher numbers are better.

Senate district numbers are provisional and based on an attempt to match the 2012-2020 map numbering as closely as possible. Because of relative population loss, two districts have been shifted and there are necessary changes throughout the state to reflect the population changes.

¹ As measured using the 2016/2020 Presidential election PVI on DRA; districts between 45% and 55%.

SIGNED ORDER TO SHOW CAUSE, DATED JUNE 30, 2022 [256 - 258]

FILED: ALBANY COUNTY CLERK 06/30/2022 09:48 AM
NYSCEF DOC. NO. 12

INDEX NO. 904972-22
RECEIVED NYSCEF: 06/30/2022

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ALBANY

-----X
Anthony S. Hoffmann; Courtney Gibbons;
Lauren Foley; Seth Pearce; and Nancy Van Tassel,

Index No. 904972-22

Petitioners,

ORDER TO SHOW CAUSE

For an Order and Judgment Pursuant to Article 78 of the
New York Civil Practice Law and Rules

Oral argument requested

-against-

The New York State Independent Redistricting
Commission; Independent Redistricting Commission
Chairperson David Imamura; Independent Redistricting
Commissioner Ross Brady; Independent Redistricting
Commissioner John Conway III; Independent Redistricting
Commissioner Ivelisse Cuevas-Molina; Independent
Redistricting Commissioner Elaine Frazier; Independent
Redistricting Commissioner Lisa Harris; Independent
Redistricting Commissioner Charles Nesbitt; and
Independent Redistricting Commissioner Willis H.
Stephens,

Respondents.

-----X

UPON reading and filing the annexed Verified Petition of Petitioners Anthony S. Hoffmann, Courtney Gibbons, Lauren Foley, Seth Pearce, and Nancy Van Tassel, dated June 28, 2022, and the Affirmation of James R. Peluso and the exhibits attached thereto, and the accompanying Memorandum of Law, dated June 28, 2022, and upon due consideration:

LET THE RESPONDENTS OR RESPONDENTS' COUNSEL SHOW CAUSE before this court, at the Albany County Courthouse located at ¹⁶~~20~~ Eagle Street, Albany, New York, on ~~July 29~~ ^{August 5}, 2022 at 9:30 a.m., or as soon thereafter as counsel may be heard, why a judgment should not be entered in this proceeding:

~~✱~~ NO PERSONAL OR VIRTUAL APPEARANCES ON RETURN ~~✱~~
UNLESS DIRECTED BY ASSIGNED JUSTICE

1. Granting judgment, pursuant to Article 78 of the New York Civil Practice Law and Rules ("CPLR"), compelling the New York State Independent Redistricting Commission and its commissioners to fulfill their constitutional duty under Article III, Sections 4 and 5 of the New York Constitution by submitting a second round of proposed congressional and state legislative districting plans for consideration by the Legislature, in order to ensure that a lawful plan is in place immediately following the 2022 elections and can be used for subsequent elections this decade; and

2. Grant such other and further relief as this Court may find just and proper.

And it is further ORDERED, that service of a copy of this order on the Attorney General, Independent Redistricting Commission Chairperson David Imamura, Independent Redistricting Commissioner Ross Brady, Independent Redistricting Commissioner John Conway III, Independent Redistricting Commissioner Ivelisse Cuevas-Molina, Independent Redistricting Commissioner Elaine Frazier, Independent Redistricting Commissioner Lisa Harris, Independent Redistricting Commissioner Charles Nesbitt, and Independent Redistricting Commissioner Willis

H. Stephens, by ~~personal or electronic mail service~~, a method of service authorized in CPLR article 3 together with the papers upon which it is granted, on or before the ~~30th~~ ^{5th} day of ~~June~~ ^{July}, 2022, be deemed good and sufficient service upon Respondents thereof; and it is further

ORDERED that answering papers shall be served on Petitioners' counsel by electronic ~~service~~ ^{22nd} service on or before the ~~30th~~ day of July, 2022; and it is further

ORDERED that reply papers, if any, shall be served on Respondents' counsel by electronic ~~service~~ ^{4th} service on or before the ~~26th~~ day of ~~July~~ ^{August}, 2022.

ENTER:



RICHARD PLATKIN, A. J.S.C.



06/30/2022

FILED: ALBANY COUNTY CLERK 06/30/2022 09:48 AM

NYSCEF DOC. NO. 12

INDEX NO. 904972-22

RECEIVED NYSCEF: 06/30/2022

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**Pro hac vice applications forthcoming*

DECISION AND ORDER OF THE HONORABLE PETER A. LYNCH,
DATED AUGUST 1, 2022 [259 - 264]

FILED: ALBANY COUNTY CLERK 08/02/2022 11:04 AM

NYSCEF DOC. NO. 44

INDEX NO. 904972-22

RECEIVED NYSCEF: 08/02/2022

THE STATE OF NEW YORK
SUPREME COURT

COUNTY OF ALBANY

Anthony S. Hoffman; Courtney Gibbons;
Lauren Foley; Seth Pearce; and Nancy
Van Tassel,

Petitioners,

-against-

DECISION AND ORDER
Index No. 904972-22
RJI No. 01-22-ST2408
(Hon. Lynch, J.)

The New York State Independent redistricting
Commission; Independent Redistricting Commission
Chairperson David Imamura; Independent Redistricting
Commissioner Ross Brady; Independent Redistricting
Commissioner John Conway III; Independent Redistricting
Commissioner Ivelisse Cuevas-Molina; Independent
Redistricting Commissioner Elaine Frazier; Independent
Redistricting Commissioner Lisa Harris; Independent
Redistricting Commissioner Charles Nesbitt; and
Independent Redistricting Commissioner Willis H. Stephens,

Respondents.

INTRODUCTION

This is an Article 78 proceeding in the form of mandamus (CPLR § 7803(1)) to compel Respondents to timely prepare and submit to the legislature a second redistricting plan and the necessary implementing legislation for such plan in accord with Article III, Sections 4 and 5(b) of the New York Constitution, to ensure that a lawful congressional plan is in place following the 2022 elections, for the next successive elections.

Petitioner seeks to amend the Petition and leave to effect service on respondents Conway and Harris pursuant to CPLR § 308(5).¹ By the proposed amendment, Petitioner seeks to add new Petitioners Marco Carrión, Mary Kain, Kevin Meggett, Reverend Clinton Miller, and Verity Van Tassel Richards, and to limit the requested relief to compel the IRC to submit a second set of congressional district plan for consideration by the Legislature.²

STATEMENT OF FACTS

NY Const. Article III, Section 4 (b) provides, inter alia:

“The independent redistricting commission established pursuant to section five-b of this article shall **prepare a redistricting plan to establish senate, assembly, and congressional districts every ten years commencing in two thousand twenty-one**, and shall submit to the legislature such plan and the implementing legislation therefore on or before January first or as soon as practicable thereafter but no later than January fifteenth in the year ending in two beginning in two thousand twenty-two. The redistricting plans for the assembly and the senate shall be contained in and voted upon by the legislature in a single bill, and the congressional district plan may be included in the same bill if the legislature chooses to do so. The implementing legislation shall be voted upon, without amendment, by the senate or the assembly and if approved by the first house voting upon it, such legislation shall be delivered to the other house immediately to be voted upon without amendment. If approved by both houses, such legislation shall be presented to the governor for action. If either house shall fail to approve the legislation implementing the first redistricting plan, or the governor shall veto such legislation and the legislature shall fail to override such veto, each house or the governor if he or she vetoes it, shall notify the commission that such legislation has been disapproved. **Within fifteen days of such notification and in no case later than February twenty-eighth, the redistricting commission shall prepare and submit to the legislature a second redistricting plan and the necessary implementing legislation for such plan.** Such legislation shall be voted upon, without amendment, by the senate or the assembly and, if approved by the first house voting upon it, such legislation shall be delivered to the other house immediately to be voted upon without

¹ NYSCEF Doc Nos. 1, 23, 34, 39.

² NYSCEF Doc No. 23 - Mukherjee Aff. ¶ 30-31; see also NYSCEF No. 38 -redline of Petition delineating the amendments.

amendment. If approved by both houses, such legislation shall be presented to the governor for action.

In Matter of Harkenrider v. Hochul, 2022 N.Y. LEXIS 874, p. 4-5 [2022], the Court held,

“The Constitution now requires that the IRC — a bipartisan commission working under a constitutionally mandated timeline — is charged with the obligation of drawing a set of redistricting maps that, with appropriate implementing legislation, must be submitted to the legislature for a vote, without amendment (*see NY Const, art III, § 4 [b]; § 5-b [a]*). If this first set of maps is rejected, the IRC is required to prepare a second set that, again, would be subject to an up or down vote by the legislature, without amendment (*see NY Const, art III, § 4 [b]*).” (Emphasis added)

The Court noted,

“As a result of their disagreements, the IRC submitted, as a first set of maps, two proposed redistricting plans to the legislature — maps from each party delegation — as is constitutionally permitted if a single consensus map fails to garner sufficient votes (*see NY Const, art III, § 5-b [g]*). The legislature voted on this first set of plans without amendment as required by the Constitution and rejected both plans. The legislature notified the IRC of that rejection, **triggering the IRC's obligation to compose — within 15 days — a second redistricting plan for the legislature's review** (*see NY Const, art III § 4 [b]*). On January 24, 2022 — the day before the 15-day deadline but more than one month before the February 28, 2022 deadline—the IRC announced that it was **deadlocked and, as a result, would not present a second plan to the legislature.**” (Id. @ 6-7; emphasis added)

Without question, the record supports Petitioner’s claim that the IRC failed to submit a second redistricting plan in time for the 2022 elections.

Petitioner has personally served the Petition on 6 of the 8 Commissioners.³ Despite numerous attempts, Petitioner has not been able to serve Commissioners Conway and Harris.⁴

³ NYSCEF Doc No. 23 - Mukherjee Aff. ¶ 3, 7-21.

⁴ NYSCEF Doc No. 23 - Mukherjee Aff. ¶ 22-25; NYSCEF Doc. Nos. 31-33.

FILED: ALBANY COUNTY CLERK 08/02/2022 11:04 AM

NYSCEF DOC. NO. 44

INDEX NO. 904972-22

RECEIVED NYSCEF: 08/02/2022

Petitioner even e-mail Commissioners Conway and Harris at their official IRC e-mail account to inquire if they would accept service via e-mail but received no response.⁵

To the limited extent that Respondents have appeared, they do not oppose the motions.⁶

STATEMENT OF LAW

CPLR R 3025 (b) provides:

“Amendments and Supplemental Pleadings by Leave. A party may amend his or her pleading or supplement it by setting forth additional or subsequent transactions or occurrences, at any time by leave of court or by stipulation of all parties. **Leave shall be freely given** upon such terms as may be just including the granting of costs and continuances. Any motion to amend or supplement pleadings shall be accompanied by the proposed amended or supplemental pleading clearly showing the changes or additions to be made to the pleading.” (emphasis added)

(see Moon v. Clear Channel Communs., Inc., 307 A.D.2d 628, 629 [3d Dept. 2003], where the Court held,

“As we have previously explained, “leave to amend a complaint rests within the trial court's discretion and should be **freely granted** in the absence of prejudice or surprise resulting from the delay **except in situations where the proposed amendment is wholly devoid of merit**.” (emphasis added)).

Petitioner has demonstrated the proposed amendments have merit, since they have added Petitioners who were engaged in the underlying redistricting process and have narrowed the scope of their focus to redistricting for congressional districts only.

Motion Granted. The caption of the action shall be amended to add Marco Carrión, Mary Kain, Kevin Meggett, Reverend Clinton Miller, and Verity Van Tassel Richards, as a named Petitioners.

⁵ NYSCEF Doc No. 23 - Mukherjee Aff. ¶ 23 and 25.

⁶ NYSCEF Doc. No. 42.

CPLR § 308 (5) provides:

“Personal service upon a natural person shall be made by any of the following methods:

in such manner as the court, upon motion without notice, directs, if service is impracticable under paragraphs one, two and four of this section.”

The record evidences a good faith effort to serve Commissioners Conway and Harris. The Court notes that other Commissioners have cooperated with Petitioner’s service efforts and accepted service via electronic means.⁷ It is inexplicable that Commissioners Conway and Harris have not acted in a responsible manner to cooperate with the service process, for undue delay undermines the integrity of the redistricting process. Petitioner’s application to serve Commissioner’s Conway and Harris in accord with CPLR 308 (5) is granted, and such service may be made by e-mail to their official IRC account (See Safadjou v Mohammadi, 105 A.D.3d 1423 [4th Dept. 2013]).

CONCLUSION

For the reasons more fully stated above, Petitioner’s motions for leave to amend the Petition is Granted, and it is further,

ORDERED, that Petitioner’s motion to allow alternate service in accord with CPLR 308 (5) is granted, and Petitioner authorized to serve Commissioners Conway and Harris by e-mail to their official IRC e-mail account, and it is further,

ORDERED, that the caption shall be amended to add Marco Carrión, Mary Kain, Kevin Meggett, Reverend Clinton Miller, and Verity Van Tassel Richards, as a named Petitioners.

⁷ NYSCEF Doc No. 23 - Mukherjee Aff. ¶ 12, 21.

FILED: ALBANY COUNTY CLERK 08/02/2022 11:04 AM

NYSCEF DOC. NO. 44

INDEX NO. 904972-22

RECEIVED NYSCEF: 08/02/2022

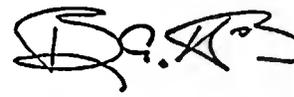
This memorandum constitutes both the decision and order of the Court.⁸

Dated: Albany, New York
August 1, 2022


PETER A. LYNCH, J.S.C

PAPERS CONSIDERED:

All e-filed pleadings, with exhibits.


08/02/2022

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⁹ Subject to Pro hac Vice Order

¹⁰ Subject to Pro hac Vice Order

¹¹ Subject to Pro hac Vice Order

AMENDED VERIFIED PETITION FOR WRIT OF MANDAMUS,
DATED AUGUST 4, 2022 [265 - 288]

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NYSCEF DOC. NO. 47

INDEX NO. 904972-22

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ALBANY

-----X

Anthony S. Hoffmann; Marco Carrión; Courtney Gibbons;
Lauren Foley; Mary Kain; Kevin Meggett; Clinton Miller;
Seth Pearce; Verity Van Tassel Richards; and Nancy Van
Tassel,

Index No. 904972-22

**AMENDED VERIFIED
PETITION FOR WRIT OF
MANDAMUS**

Petitioners,

For an Order and Judgment Pursuant to Article 78 of the
New York Civil Practice Law and Rules

-against-

The New York State Independent Redistricting
Commission; Independent Redistricting Commission
Chairperson David Imamura; Independent Redistricting
Commissioner Ross Brady; Independent Redistricting
Commissioner John Conway III; Independent Redistricting
Commissioner Ivelisse Cuevas-Molina; Independent
Redistricting Commissioner Elaine Frazier; Independent
Redistricting Commissioner Lisa Harris; Independent
Redistricting Commissioner Charles Nesbitt; and
Independent Redistricting Commissioner Willis H.
Stephens,

Respondents.

-----X

Petitioners Anthony S. Hoffmann, Marco Carrión, Courtney Gibbons, Lauren Foley, Mary
Kain, Kevin Meggett, Reverend Clinton Miller, Seth Pearce, Verity Van Tassel Richards, and
Nancy Van Tassel, by and through their counsel, Emery Celli Brinckerhoff Abady Ward & Maazel
LLP, Dreyer Boyajian LLP, and Elias Law Group LLP, for their Amended Verified Petition for
an Order and Judgment Pursuant to Article 78 of the New York Civil Practice Law and Rules
("CPLR") against Respondents the New York State Independent Redistricting Commission (the
"IRC"), IRC Chair David Imamura, and IRC Commissioners Ross Brady, John Conway III,

Ivelisse Cuevas-Molina, Elaine Frazier, Lisa Harris, Charles Nesbitt, and Willis H. Stephens, allege as follows:

PRELIMINARY STATEMENT

1. Petitioners bring this writ of mandamus to compel Respondents to “prepare and submit to the legislature a second redistricting plan and the necessary implementing legislation for such plan” as is required by Article III, Sections 4 and 5(b) of the New York Constitution, in order to ensure a lawful congressional plan is in place immediately following the 2022 elections and can be used for subsequent elections this decade.

2. In 2014, New York voters approved constitutional amendments (the “Redistricting Amendments”) to reform the redistricting process.

3. The Redistricting Amendments, now codified in Article III, Sections 4 and 5(b) of the New York Constitution, altered many aspects of the redistricting process, from changing the legislative procedures used to approve new districts and mandating new substantive criteria for maps to creating a process for judicial review of adopted plans.

4. Notably, the Redistricting Amendments provided for the creation of an independent redistricting commission (the “IRC”), whose members would be appointed in a bipartisan fashion and would reflect the diversity of the state. The Redistricting Amendments require the IRC to submit proposed redistricting plans for consideration by the Legislature in accordance with a carefully crafted process that includes extensive public comment.

5. Following the 2020 census, the IRC held numerous public hearings both virtually and in person across the State of New York, as required by Article III, Section 4(b). N.Y. Const. art. III, § 4(b).

6. Following this months-long process, the Democratic and Republican members of the IRC could not agree on a congressional redistricting plan, and so each delegation submitted a proposed map in January 2022. The Legislature rejected both proposed congressional maps, as it was entitled to do under Article III, Section 4. *Id.*

7. At that point, the IRC abandoned its constitutional duty. Rather than prepare and submit a second round of maps as was constitutionally required by Article III, Section 4(b), the members of the IRC instead declared that they could not reach agreement. Although the option of sending separate plans to the Legislature—as they had done the first time around—remained available, certain members of the IRC refused to meet, thereby denying a quorum. Paralyzed, the IRC failed to send a second round of plans to the Legislature.

8. The Legislature had anticipated this possibility and passed legislation in 2021 (the “2021 Legislation”) purportedly filling a gap in the New York constitutional language by authorizing the Legislature to pass a redistricting plan in the event that the IRC failed to submit redistricting plans. *See* L 2021, ch 633 (stating that “if the commission does not vote on any redistricting plan or plans, for any reason . . . each house shall introduce such implementing legislation with any amendments each house deems necessary”).

9. Pursuant to that statutory authority, the Legislature stepped into the void left by the IRC’s inaction, introducing and adopting a congressional map to ensure that New York’s 2022 congressional primary elections could proceed as scheduled.

10. But on April 27, 2022, the New York Court of Appeals held the 2021 Legislation unconstitutional to the extent that it allowed the Legislature to pass a redistricting plan in the absence of a second set of plans submitted by the IRC. Consequently, the Court of Appeals invalidated the statute as well as the Legislature’s congressional and State Senate plans. *See*

Harkenrider v. Hochul, 2022 N.Y. Slip Op. 02833, 2022 WL 1236822, at *1 (N.Y. Apr. 27, 2022) (nullifying district maps because IRC failed to complete “mandatory process for submission of electoral maps to the legislature”). The Steuben County Supreme Court then moved the primary date for congressional and State Senate elections and ordered that judicially drawn maps be implemented in advance of the new date.

11. The Court of Appeals’ decision makes clear that the IRC did not complete its constitutionally required redistricting duties because it failed to submit a second proposed congressional districting plan. And by striking down the 2021 Legislation, the Court of Appeals also made clear that the Legislature was powerless to enact a new congressional plan once the IRC refused to submit a second set of plans.

12. Through the Redistricting Amendments, New Yorkers demanded that the state’s redistricting process be democratic, transparent, and conducted by the IRC and the Legislature pursuant to certain procedural and substantive safeguards. They did so to ensure that their voices would be heard in the redistricting process—directly through the IRC public-input process and indirectly through their elected legislators. That process was crafted to ensure the substantive outcomes the voters sought; namely, maps drawn without partisan intent that respect the Empire State’s communities of interest. *See* N.Y. Const. art. III, § 4(c)(5). Instead of achieving this result during the past redistricting cycle, New Yorkers ended up with a judicial map-drawing process for congressional districts that was not transparent, did not adequately consider the views of minority voters, and tore apart longstanding communities of interest.

13. In other words, as a direct result of the IRC’s refusal to carry out its constitutional duty, New York voters, including Petitioners—three of whom submitted comments or testimony

to the IRC regarding New York's congressional plan—have yet to vindicate their rights under the Redistricting Amendments.

14. The Court of Appeals has already determined that the 2022 elections will occur under a court-drawn congressional plan. Subsequent congressional elections this decade should occur under plans adopted pursuant to the constitutionally mandated process for the IRC and Legislature. Accordingly, Petitioners ask this Court to issue a writ of mandamus pursuant to Article 78 of the CPLR ordering the IRC and its commissioners to fulfill their constitutional duty under Article III, Sections 4 and 5 of the New York Constitution by submitting a second round of proposed congressional districting plans for consideration by the Legislature, in order to ensure that a lawful plan is in place immediately following the 2022 elections and can be used for subsequent elections this decade.

PARTIES

15. Petitioners are citizens of the United States and registered to vote in New York. They intend to vote for congressional candidates in the primary and general elections in 2024, 2026, 2028, and 2030. Petitioners are specifically invested in their congressional representation, as several Petitioners who submitted comments to and testified before the IRC did so regarding the congressional plan.

16. Petitioner Anthony S. Hoffmann submitted comments to and testified in front of the IRC regarding congressional map drawing following the 2020 census.¹ Mr. Hoffmann has been

¹ See NYS Independent Redistricting Commission, *Bronx and New York Counties Public Meeting*, YouTube (July 26, 2021), https://www.youtube.com/watch?v=WQo4aFhlH_E (video at 49:40–53:00); see also *New York County Public Hearing: Part 2*, N.Y. State Indep. Redistricting Comm'n (Nov. 10, 2021), <https://totalwebcasting.com/view/?func=VIEW&id=nysirc&date=2021-11-10&seq=1> (video at 33:24–38:10).

a resident of Greenwich Village for over 50 years. He testified at a public meeting on July 26, 2021, that the residents on the East and West Sides of Manhattan had different interests and encouraged the IRC to keep the Tenth Congressional District—which previously included much of Manhattan’s West Side—intact.

17. Mr. Hoffmann again testified on November 10, 2021, in support of one proposed map and against another map, and once again encouraged the IRC to recognize the West Side of Manhattan as a community of interest distinct from that of the East Side of Manhattan for the purpose of the congressional plan. While the legislatively enacted map reflected this comment, the court-drawn congressional map pairs these communities together.

18. Petitioner Marco Carrión submitted a comment to the IRC regarding the congressional map following the 2020 census.² Mr. Carrión described the shared interest between the communities of Williamsburg and the Lower East Side, noting that they “are not only connected by a bridge, transportation and the families/friends linking these diverse boroughs, but they are also partners in climate advocacy,” particularly in light of “the devastating effects of Superstorm Sandy” on these coastal communities. Nonetheless, the court-drawn congressional map entirely separates the Lower East Side, in the Tenth Congressional District, from Williamsburg, which is split across the Seventh and Eighth Congressional Districts.

19. Petitioner Verity Van Tassel Richards submitted comments to the IRC regarding congressional map drawing following the 2020 census.³ Ms. Van Tassel Richards resides in the

² See NYS Independent Redistricting Commission, *Kings and Richmond Counties*, https://www.nyirc.gov/storage/archive/Kings_Richmond_Redacted.pdf (last visited July 13, 2022).

³ See *Letter from Verity Ann Van Tassel Richards*, N.Y. State Indep. Redistricting Comm’n (Nov. 7, 2021), <https://nyirc.gov/storage/testimony/zbTjPDDx23ijD3jbrkGpPb0Rfp1U9CBmWF1VHKyi.pdf>.

Village of Tarrytown, Town of Greenburgh, and her family has lived in that area since the 1600s. Ms. Van Tassel Richards asked the IRC to keep Tarrytown and the Town of Greenburgh in the same congressional district, and also asked the IRC to keep certain longstanding river communities of interest together based on their “shared history, geography, and community.” While the legislatively enacted map reflected this comment, the court-drawn congressional map splits Tarrytown and divides these river towns across two congressional districts.

20. Respondents the New York State Independent Redistricting Commission and its members—Chairman David Imamura, Commissioner Ross Brady, Commissioner John Conway III, Commissioner Ivelisse Cuevas-Molina, Commissioner Elaine Frazier, Commissioner Lisa Harris, Commissioner Charles Nesbitt, and Commissioner Willis H. Stephens—are responsible under Article III, Sections 4 and 5 of the New York Constitution for proposing congressional redistricting plans to the Legislature. As explained in further detail below, Respondents’ submission of proposed plans to the Legislature is a necessary step in the congressional redistricting process, and thus Respondents’ failure to propose plans as required by Article III, Section 4(b) has prevented New York from completing its constitutional process for redrawing its congressional districts.

VENUE

21. Venue is proper in Albany County because that is where Respondents “refused to perform the dut[ies] specifically enjoined upon [them] by law”; because “material events . . . took place” in Albany County, as described in the paragraphs below; and because Respondents’ principal offices are located in Albany County. CPLR § 506(b); *see also id.* § 7804(b) (providing that a proceeding brought pursuant to Article 78 must be brought in the supreme court of the county specified in CPLR § 506(b)).

LEGAL BACKGROUND

22. Every ten years, the district lines for New York's congressional seats are redrawn to adjust for population variances based on the results of the decennial U.S. census. *See* N.Y. Const. art. III, § 4(a). Newly drawn maps must be approved by the Legislature and signed by the Governor before they become effective. *See id.* art. III, § 4(b). In 2014, New York voters amended the state constitution, establishing new procedural and substantive requirements for redistricting.

I. The Redistricting Amendments established a new redistricting process that imposes mandatory obligations on the IRC.

23. New Yorkers adopted procedural changes by creating an independent redistricting commission with authority to draw congressional districting plans and to submit those plans to the Legislature for its approval, rejection, or amendment. N.Y. Const. art. III, §§ 4(b), 5-b. The IRC is comprised of ten commissioners who are appointed in bipartisan fashion. Each party's legislative leaders must appoint four commissioners. *Id.* art. III, § 5-b. A bipartisan majority of the resulting eight commissioners must then appoint the remaining two. *Id.* The Redistricting Amendments require that, "to the extent practicable," commissioners "reflect the diversity of the residents of this state with regard to race, ethnicity, gender, language, and geographic residence." *Id.* art. III, § 5-b(c).

24. When both houses of the Legislature are controlled by the same political party, a seven-vote majority in the IRC is required to approve a redistricting plan and send it to the Legislature, with one exception. *Id.* If the IRC "is unable to obtain seven votes to approve a redistricting plan on or before January first . . . or as soon as practicable thereafter," it must submit to the Legislature the plan or plans that received the most votes. *Id.* art. III, § 5-b(g).

25. The IRC must submit its first approved congressional plan or plans to the Legislature for a vote “on or before January first or as soon as practicable thereafter but no later than January fifteenth.” *Id.* art. III, § 4(b). Each house of the Legislature must then vote on the IRC’s submissions “without amendment.” *Id.*

26. If the Legislature does not approve the IRC’s first proposed map or maps, then the IRC must repeat the process again. The Redistricting Amendments provide that “[w]ithin fifteen days of [the] notification [of disapproval of the first plan] and in no case later than February twenty-eighth, the redistricting commission shall prepare and submit to the legislature a second redistricting plan and the necessary implementing legislation for such plan.” *Id.*

27. Upon receipt of the second round of IRC maps, the Legislature must vote on the maps “without amendment.” *Id.* Should that vote fail, the IRC process is complete, and the Legislature assumes the redistricting pen to draw its own plans “with any amendments each house of the legislature deems necessary.” *Id.*

28. The Redistricting Amendments are silent on what should occur if the IRC fails to submit a second set of congressional maps to the Legislature.

29. The 2021 Legislation provided that, “if the [IRC] d[oes] not vote on any redistricting plan or plans, for any reason, by the date required for submission of such plan,” the Legislature could proceed to introduce redistricting legislation. *See* L 2021, ch 633; *see also Harkenrider*, 2022 WL 1236822, at *9 (describing statute as “authorizing the legislature to move forward on redistricting even if the IRC fails to submit maps”).

30. The 2021 Legislation also required that “the [IRC] . . . submit to the legislature all plans in its possession, both completed and in draft form, and the data upon which such plans are

based,” L 2021, ch 633, presumably to ensure that the Legislature could benefit from the IRC record in adopting new redistricting plans.

31. The Redistricting Amendments also included several new substantive requirements that map-drawers must consider when drawing district lines. Districts shall not result “in the denial or abridgement” of minority voting rights and “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)(1), (5). Additionally, map-drawers must consider “the maintenance of cores of existing districts,” “pre-existing political subdivisions,” and “communities of interest.” *Id.* art. III, § 4(c)(5).

II. The Redistricting Amendments also created a process for remedying legal deficiencies in redistricting plans.

32. The Redistricting Amendments provide that “[a]n apportionment by the legislature, or other body, shall be subject to review by the supreme court, at the suit of any citizen.” N.Y. Const. art. III, § 5.

33. The Redistricting Amendments also provide that “[i]n any judicial proceeding relating to redistricting of congressional or state legislative districts, any law establishing congressional or state legislative districts found to violate the provisions of [Article III] shall be invalid in whole or in part.” *Id.* Furthermore, “[i]n the event that a court finds such a violation, *the legislature shall have a full and reasonable opportunity to correct the law’s legal infirmities.*” *Id.* (emphasis added).

FACTUAL BACKGROUND

III. The IRC failed to fulfill its constitutional duties.

34. The newly established IRC convened in the spring of 2021, pursuant to the requirements of the Redistricting Amendments. The IRC held hearings in the summer and fall of 2021 to aid its drawing of the state's congressional boundaries.

35. On January 3, 2022, following months of meetings, hearings, and legwork, the IRC voted on plans to submit to the Legislature. No congressional plan garnered the seven required votes, and, consistent with the New York Constitution, the IRC submitted the congressional plans that received the most votes—a Republican-proposed plan and a Democratic-proposed plan, each of which received five votes.⁴ On January 10, 2022, the Legislature rejected both congressional plans and notified the IRC.

36. Subsequently, the IRC refused to submit a second set of congressional plans and the necessary implementing legislation “[w]ithin fifteen days of such notification and in no case later than February twenty-eighth,” as required by Article III, Section 4(b) of the New York Constitution.

37. On January 24, 2022, Chair Imamura announced that the IRC was deadlocked and would not submit a second round of recommended congressional plans to the Legislature. Republican Vice Chair Martins claimed that the IRC's Democratic commissioners refused to

⁴ *Letter from Karen Blatt to Legislative Leaders*, N.Y. State Indep. Redistricting Comm'n (Jan. 3, 2022), https://www.nyirc.gov/storage/plans/20220103/planA_cover_letter.pdf; *Letter from Jack Martins et al.*, N.Y. State Indep. Redistricting Comm'n (Jan. 3, 2022), https://www.nyirc.gov/storage/plans/20220103/planB_cover_letter.pdf.

develop a new proposal,⁵ while Chair Imamura stated that the Republican commissioners simply refused to meet.⁶

38. The Democratic commissioners said in a statement, “We have repeatedly attempted to schedule a meeting by [January 25, 2022], and our Republican colleagues have refused. This is the latest in a repeated pattern of Republicans obstructing the Commission doing its job. We have negotiated with our Republican colleagues in good faith for two years to achieve a single consensus plan. At every step, they have refused to agree to a compromise.”⁷ They added, “The Republicans are intentionally running out the clock to prevent the Commission from voting on second maps by its deadline.”⁸

39. Ultimately, January 25, 2022, and February 28, 2022, came and went without any action by the IRC. At that point, it was not clear whether the redistricting process had failed, as the 2021 Legislation at least facially gave the Legislature the opportunity to pass a new congressional redistricting map.

IV. The Legislature and Governor enacted a new congressional map.

40. Following the IRC’s failure to vote on and submit a second round of congressional maps, the Legislature assumed control over the redistricting process.⁹ Pursuant to the 2021

⁵ See Joshua Solomon, *Independent Redistricting Commission Comes to a Likely Final Impasse*, Times Union (Jan. 24, 2022), <https://www.timesunion.com/state/article/Independent-Redistricting-Commission-comes-to-a-16800357.php>.

⁶ See Rachel Vick, *Redistricting Deadline Leaves Electoral Lines in Limbo*, Queens Daily Eagle (Jan. 25, 2022), <https://queenseagle.com/all/redistricting-deadline-leaves-electoral-lines-in-limbo>.

⁷ *Id.*

⁸ *Id.*

⁹ See Nick Reisman, *New York Lawmakers to Draw Redistricting Maps, Expect Vote Next Week*, Spectrum News (Jan. 26, 2022), <https://spectrumlocalnews.com/nys/central-ny/ny-state-of-politics/2022/01/26/new-york-lawmakers-to-draw-redistricting-maps--expect-vote-next-week>.

Legislation, the Legislature passed new a congressional plan on February 3, 2022. Governor Kathy Hochul signed the plan into law later that day. *See* A9167/S8196, A9039-A/S8172-A, A9168/S8197, S8185-A/A9040-A, 2022 Leg., Reg. Sess. (N.Y. 2022).

41. That same day, a group of Republican voters filed a petition in the New York Supreme Court in Steuben County, claiming that the new congressional plan was unconstitutional. *See generally* Pet., *Harkenrider v. Hochul*, No. E2022-0116CV (Steuben Cnty. Sup. Ct. Feb. 3, 2022), NYSCEF Doc. No. 1 (attached to Affirmation of James R. Peluso (Aug. 3, 2022) (“Peluso Aff.”) as Ex. 1). The *Harkenrider* petitioners alleged that the plan was procedurally defective because the Legislature lacked the authority to enact it after the IRC failed to submit a second set of proposed plans to the Legislature. *Id.* ¶¶ 186–97. The petitioners further alleged that, because the enacted congressional plan was procedurally invalid, New York’s prior congressional map remained in place, rendering the state’s congressional districts unconstitutionally malapportioned. *Id.* ¶¶ 198–207. The petitioners also alleged that the legislatively enacted congressional plan was a partisan gerrymander in violation of the New York Constitution. *Id.* ¶¶ 208–15. They later amended their petition to challenge the Legislature’s State Senate plan on the same bases. *See generally* Am. Pet., *Harkenrider*, No. E2022-0116CV (Steuben Cnty. Sup. Ct. Feb. 14, 2022), NYSCEF Doc. No. 33 (attached to Peluso Aff. as Ex. 2).

42. On March 3, one month after the *Harkenrider* petition was filed, the Steuben County Supreme Court held its first hearing on the matter. The Steuben County Supreme Court proceeded to hold a trial from March 14 to 16.

43. On March 31, 2022, the Steuben County Supreme Court enjoined use of the legislatively enacted congressional plan for the 2022 elections. *See* Decision & Order at 17–18, *Harkenrider*, No. E2022-0116CV (Steuben Cnty. Sup. Ct. Mar. 31, 2022), NYSCEF Doc. No. 243

(attached to Peluso Aff. as Ex. 3). The court held that the Legislature violated the New York Constitution by enacting redistricting legislation after the IRC failed to submit a second round of proposed maps. *Id.* at 10. It also held that the enacted congressional plan was drawn with unconstitutional partisan intent under Article III, Section 4(c)(5) of the New York Constitution. *Id.* at 14.

44. The Steuben County Supreme Court ordered that “the Legislature shall have until April 11, 2022 to submit bipartisanly supported maps to this court for review,” and further ordered that it would appoint a neutral expert to draw new maps if the Legislature failed to produce bipartisan maps by that date. *Id.* at 18.

45. Soon after, the Fourth Department of the New York Supreme Court, Appellate Division, stayed the Steuben County Supreme Court’s order, allowing primary processes and petitioning to continue under the Legislature’s congressional plan. *See Order, Harkenrider v. Hochul*, No. CAE 22-00506 (4th Dep’t Apr. 8, 2022) (attached to Peluso Aff. as Ex. 4). Two weeks later, on April 21, the Fourth Department reversed the Steuben County Supreme Court’s holding that the new plans were procedurally invalid—but nonetheless struck down the congressional map as an unconstitutional partisan gerrymander. *See Harkenrider v. Hochul*, 204 A.D.3d 1366, 1369–70, 1374 (4th Dep’t 2022).

V. The Court of Appeals invalidated the 2021 Legislation and the Legislature’s plans.

46. On April 27, 2022—one week before the New York State Board of Elections’ deadline to certify ballots for the state’s primary elections—the New York Court of Appeals held that the 2021 Legislation was unconstitutional and invalidated the enacted congressional plan.

47. The Court of Appeals explained that “the legislature and the IRC deviated from the constitutionally mandated procedure” required by the “plain language” of the Redistricting

Amendments. *Harkenrider*, 2022 WL 1236822, at *5. It described the “mandatory process for submission of electoral maps to the legislature,” as follows:

The IRC “shall prepare” and “shall submit” to the legislature a redistricting plan with implementing legislation, that IRC plan “shall be voted upon, without amendment,” by the legislature, and—in the event the first plan is rejected—the IRC “shall prepare and submit to the legislature a second redistricting plan and the necessary implementing legislation,” which again “shall be voted upon, without amendment.”

Id. at *1, *6 (quoting N.Y. Const. art. III, § 4(b)). The Court of Appeals emphasized that “the detailed amendments leave no room for legislative discretion regarding the particulars of implementation.” *Id.* at *8.

48. The Court of Appeals explained that the 2021 Legislation was unconstitutional because “the drafters of the [Redistricting Amendments] and the voters of this state intended compliance with the IRC process to be a constitutionally required precondition to the legislature’s enactment of redistricting legislation.” *Id.* at *9. In other words, “the IRC’s fulfillment of its constitutional obligations was unquestionably intended to operate as a necessary precondition to, and limitation on, the legislature’s exercise of its discretion in redistricting.” *Id.* at *7.

49. The Court of Appeals ordered the Steuben County Supreme Court to draw new congressional and State Senate maps for the 2022 elections with the help of a special master. *See id.* at *13. In so ordering, the Court of Appeals explained that “it will likely be necessary to move the congressional and senate primary elections to August.” *Id.* at *12.

50. Even though the Redistricting Amendments included a provision requiring that the Legislature be given a “full and reasonable opportunity to correct . . . legal infirmities,” N.Y. Const. art. III, § 5, the Court of Appeals held that “[t]he procedural unconstitutionality of the

congressional and senate maps is, at this juncture, incapable of a legislative cure” because the IRC had not sent a second set of maps. *Harkenrider*, 2022 WL 1236822, at *12.

VI. Despite widespread objections, the Steuben County Supreme Court adopted a congressional plan that unnecessarily shifts residents into new districts and divides long-recognized communities of interest.

51. Two days after the Court of Appeals’ decision invalidating the legislatively enacted congressional and State Senate plans, the Steuben County Supreme Court ordered that New York’s congressional and State Senate primary elections would occur on August 23, 2022, rather than the originally scheduled date of June 28, 2022. Prelim. Order at 2, *Harkenrider*, No. E2022-0116CV (Steuben Cnty. Sup. Ct. Apr. 29, 2022), NYSCEF Doc. No. 301 (attached to Peluso Aff. as Ex. 5).

52. Unlike the constitutionally mandated IRC and legislative redistricting process, the Steuben County Supreme Court’s process for adopting a new congressional plan provided no meaningful opportunity for the public to comment on maps submitted to the court without traveling to Bath *in person*—a hardship for the vast majority of New Yorkers, including minority voters who live hours away in New York City, voters who do not own cars, and voters who were not able to take an entire day off work to participate in the court’s hearing. Steuben County is not only geographically removed from New York’s major metropolitan areas, it is one of the *least* racially diverse areas of the state. Indeed, while New York State’s non-Hispanic White population is 55.3%, Steuben County’s is 93.4%.¹⁰

53. Article III, Section 5-b(c) of the New York Constitution requires that IRC commissioners “reflect the diversity of the residents of this state with regard to race, ethnicity,

¹⁰ Compare *Quick Facts: Steuben County, New York*, U.S. Census Bureau, <https://www.census.gov/quickfacts/steubencountynewyork> (last visited June 15, 2022), with *QuickFacts: New York*, U.S. Census Bureau, <https://www.census.gov/quickfacts/NY> (last visited June 15, 2022).

gender, language, and geographic residence” and mandates that “to the extent practicable the appointing authorities shall consult with organizations devoted to protecting the voting rights of minority and other voters concerning potential appointees to the commission.” By contrast, the Steuben County Supreme Court’s special master was not selected on diversity-related criteria.

54. And while the IRC’s public-comment process played out over the course of many months as part of an iterative map-drawing process, comments regarding the special master’s proposed congressional map were due just two days after it was released—which was followed by the map’s ordered implementation just two days later, on May 20, 2022.

55. In a report justifying his congressional map, the special master stated that “[c]ommunities of interest are notoriously difficult to precisely define. Even within a specific minority community there may be issues of what are the boundaries of particular neighborhoods and which neighborhoods most appropriately belong together.” Rep. of the Special Master at 20, *Harkenrider*, No. E2022-0116CV (Steuben Cnty. Sup. Ct. May 21, 2022), NYSCEF Doc. No. 670 (attached to Peluso Aff. as Ex. 6). The special master went on to state that it was “impossible to incorporate most of the suggestions” he received due in part to his desire to minimize county splits. *Id.* at 17.¹¹ And while the special master apparently considered the comments previously submitted to the IRC, he also considered unidentified “suggestions given directly to [him] prior to [his] drafting of a preliminary map.” *Id.* at 18. Those comments were apparently not part of the public record, further underscoring the lack of transparency in the judicial map-drawing process.

¹¹ The IRC and Legislature must consider communities of interest *and* political boundary lines when drawing districts, but the New York Constitution does not specify which consideration shall take precedence. *See* N.Y. Const. art. III, § 4(c)(5).

56. It is no surprise, then, that the failure to follow New York’s constitutionally required map-drawing process resulted in a congressional plan that splits longstanding minority communities of interest for reasons that remain unclear. For example, the special master’s plan split Prospect Heights, a predominantly working-class Black community in Brooklyn, and combined part of that community with wealthy Manhattan residents in the Financial District and Tribeca. The special master’s plan also failed to keep Bedford-Stuyvesant, Fort Greene, East New York, and Canarsie together, even though those areas had historically been grouped together in a single congressional district once represented by Shirley Chisholm, the first Black woman elected to Congress. And even though “hundreds of citizens” requested that Co-Op City—historically the largest housing cooperative in the world—be placed in the Sixteenth Congressional District, the special master declined to do so based in part on unspecified “other criteria.” *Id.* at 20.

57. In short, the IRC’s failure to send a second set of maps to the Legislature not only stymied the constitutional procedure enacted by New York voters, but also resulted in a congressional map that does not properly reflect the substantive redistricting criteria contained in the Redistricting Amendments.

PETITION FOR WRIT OF MANDAMUS AGAINST RESPONDENTS

**Failure to Fulfill Constitutional Duty Under
Article III, Sections 4 and 5 of the New York Constitution**

58. Petitioners reallege and reincorporate by reference all prior paragraphs of this Verified Petition and the paragraphs in the count below as though fully set forth herein.

59. A writ of mandamus is available where a government “body or officer failed to perform a duty enjoined upon it by law.” CPLR § 7803(1).

60. Article III, Section 4(b) of the New York Constitution requires that, if the Legislature “shall fail to approve the legislation implementing the [IRC’s] first redistricting plan, or the governor shall veto such legislation and the legislature shall fail to override such veto,” then “[w]ithin fifteen days of [the notification of rejection] and in no case later than February twenty-eighth, the [IRC] *shall* prepare and submit to the legislature a second redistricting plan and the necessary implementing legislation for such a plan.” N.Y. Const. art. III, § 4(b) (emphasis added).

61. After the Legislature rejected the IRC’s first set of congressional plans, the IRC refused to prepare and submit a second set of plans.

62. Under the 2021 Legislation, “if the [IRC] d[id] not vote on any redistricting plan or plans, for any reason, by the date required for submission of such plan,” the Legislature could proceed to introduce redistricting legislation. L 2021, ch 633.

63. The Court of Appeals subsequently declared the 2021 Legislation “unconstitutional to the extent that it permits the legislature to avoid a central requirement of the” Redistricting Amendments. *Harkenrider*, 2022 WL 1236822, at *9. The Court of Appeals then invalidated the Legislature’s congressional plans and ordered that a new plan be drawn before the 2022 primary elections.

64. As the Court of Appeals stated, “No one disputes that this year, during the first redistricting cycle to follow adoption of the 2014 amendments, the IRC and the legislature failed to follow the procedure commanded by the State Constitution. A stalemate within the IRC resulted in a breakdown in the mandatory process for submission of electoral maps to the legislature.” *Id.* at *1.

65. The Court of Appeals was correct: The IRC failed to complete its mandatory duty to submit a second set of congressional plans to the Legislature for consideration.

PRAYER FOR RELIEF

WHEREFORE, Petitioners pray for relief as follows:

- A. Grant Petitioners' Amended Verified Petition for a Writ of Mandamus by commanding the New York State Independent Redistricting Commission and its commissioners to fulfill their constitutional duty under Article III, Sections 4 and 5 of the New York Constitution by submitting a second round of proposed congressional districting plans for consideration by the Legislature, in order to ensure that a lawful plan is in place immediately following the 2022 elections and can be used for subsequent elections this decade.
- B. Grant such other and further relief as this Court may find just and proper.

Dated: August 4, 2022

FILED: ALBANY COUNTY CLERK 08/04/2022 04:43 PM

NYSCEF DOC. NO. 47

INDEX NO. 904972-22

RECEIVED NYSCEF: 08/04/2022

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jhawley@elias.law

**Pro hac vice applications forthcoming*

VERIFICATION

State of New York)

: ss.:

County of Nassau)

Anthony S. Hoffmann, being duly sworn, deposes and says:

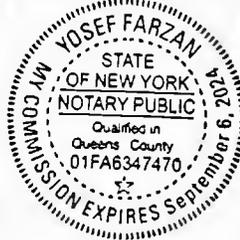
1. I am a petitioner in the above-entitled action.
2. I am united in interest and plead together with the other Petitioners in this action.
3. I have read the contents of the foregoing Amended Petition.
4. The information stated therein is true to my own knowledge except as to those matters stated to be alleged upon information and belief, and as to those matters I believe the information to be true.

Anthony S. Hoffmann
 Anthony S. Hoffmann

Sworn to before me this

3rd day of August, 2022 .

Yusef Farzan
 Notary Public



VERIFICATION

State of New York)

: ss.:

County of Kings)

Marco Carrión, being duly sworn, deposes and says:

1. I am a petitioner in the above-entitled action.
2. I am united in interest and plead together with the other Petitioners in this action.
3. I have read the contents of the foregoing Amended Petition.
4. The information stated therein is true to my own knowledge except as to those matters stated to be alleged upon information and belief, and as to those matters I believe the information to be true.


 Marco Carrión

Sworn to before me this

3rd day of August, 2022


 Notary Public



VERIFICATION

State of New York)

: ss.:

County of Kings)

Seth Pearce, being duly sworn, deposes and says:

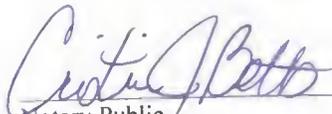
1. I am a petitioner in the above-entitled action.
2. I am united in interest and plead together with the other Petitioners in this action.
3. I have read the contents of the foregoing Amended Petition.
4. The information stated therein is true to my own knowledge except as to those matters stated to be alleged upon information and belief, and as to those matters I believe the information to be true.



Seth Pearce

Sworn to before me this

3rd day of August, 2022



Notary Public



**PROPOSED ORDER TO SHOW CAUSE,
FILED AUGUST 4, 2022 [289 - 291]**

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ALBANY

-----X
Anthony S. Hoffmann; Marco Carrión; Courtney Gibbons;
Lauren Foley; Mary Kain; Kevin Meggett; Clinton Miller;
Seth Pearce; Verity Van Tassel Richards; and Nancy Van
Tassel,

Index No. 904972-22

ORDER TO SHOW CAUSE

Petitioners,

Oral argument requested

For an Order and Judgment Pursuant to Article 78 of the
New York Civil Practice Law and Rules

-against-

The New York State Independent Redistricting
Commission; Independent Redistricting Commission
Chairperson David Imamura; Independent Redistricting
Commissioner Ross Brady; Independent Redistricting
Commissioner John Conway III; Independent Redistricting
Commissioner Ivelisse Cuevas-Molina; Independent
Redistricting Commissioner Elaine Frazier; Independent
Redistricting Commissioner Lisa Harris; Independent
Redistricting Commissioner Charles Nesbitt; and
Independent Redistricting Commissioner Willis H.
Stephens,

Respondents.

-----X
UPON reading and filing the annexed Amended Verified Petition of Petitioners Anthony
S. Hoffmann, Marco Carrión, Courtney Gibbons, Lauren Foley, Mary Kain, Kevin Meggett,
Reverend Clinton Miller, Seth Pearce, Verity Van Tassel Richards, and Nancy Van Tassel, dated
August 4, 2022, and the Affirmation of James R. Peluso and the exhibits attached thereto, and the
accompanying Memorandum of Law, dated August 4, 2022, and upon due consideration:

LET THE RESPONDENTS OR RESPONDENTS' COUNSEL SHOW CAUSE before
this court, at the Albany County Courthouse located at 16 Eagle Street, Albany, New York, on

September 9, 2022, at 9:30 a.m., or as soon thereafter as counsel may be heard, why a judgment should not be entered in this proceeding:

1. Granting judgment, pursuant to Article 78 of the New York Civil Practice Law and Rules (“CPLR”), compelling the New York State Independent Redistricting Commission and its commissioners to fulfill their constitutional duty under Article III, Sections 4 and 5 of the New York Constitution by submitting a second round of proposed congressional and state legislative districting plans for consideration by the Legislature, in order to ensure that a lawful plan is in place immediately following the 2022 elections and can be used for subsequent elections this decade; and

2. Grant such other and further relief as this Court may find just and proper.

And it is further ORDERED, that service of a copy of this order, together with the papers upon which is granted, on the Attorney General, Independent Redistricting Commission Chairperson David Imamura, Independent Redistricting Commissioner Ross Brady, Independent Redistricting Commissioner John Conway III, Independent Redistricting Commissioner Ivelisse Cuevas-Molina, Independent Redistricting Commissioner Elaine Frazier, Independent Redistricting Commissioner Lisa Harris, Independent Redistricting Commissioner Charles Nesbitt, and Independent Redistricting Commissioner Willis H. Stephens, or counsel thereof, by electronic mail service, on or before the 5th day of August, 2022, be deemed good and sufficient service upon Respondents thereof; and it is further

ORDERED that Respondents’ answering papers shall be filed on or before the 23rd day of August, 2022; and it is further

ORDERED that Petitioners’ reply papers, if any, shall be filed on or before the 2nd day of September, 2022.

ENTER:

HON. PETER A. LYNCH, J.S.C.

EMERY CELLI BRINCKERHOFF
& ABADY, LLP

/s/ Matthew D. Brinckerhoff
Matthew D. Brinckerhoff
Andrew G. Celli
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/s/ Aria C. Branch
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Jonathan P. Hawley*
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jhawley@elias.law

**Pro hac vice applications forthcoming*

AFFIRMATION OF JAMES R. PELUSO, ESQ., FOR PETITIONER,
IN SUPPORT OF AMENDED VERIFIED PETITION,
DATED AUGUST 4, 2022 [292 - 293]

FILED: ALBANY COUNTY CLERK 08/04/2022 04:55 PM
NYSCEF DOC. NO. 49

INDEX NO. 904972-22
RECEIVED NYSCEF: 08/04/2022

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ALBANY

-----X

Anthony S. Hoffmann; Marco Carrión; Courtney Gibbons;
Lauren Foley; Mary Kain; Kevin Meggett; Clinton Miller;
Seth Pearce; Verity Van Tassel Richards; and Nancy Van
Tassel,

Index No. 904972-22

**ATTORNEY AFFIRMATION
OF JAMES R. PELUSO
IN SUPPORT OF AMENDED
VERIFIED PETITION**

Petitioners,

-against-

The New York State Independent Redistricting
Commission; Independent Redistricting Commission
Chairperson David Imamura; Independent Redistricting
Commissioner Ross Brady; Independent Redistricting
Commissioner John Conway III; Independent Redistricting
Commissioner Ivelisse Cuevas-Molina; Independent
Redistricting Commissioner Elaine Frazier; Independent
Redistricting Commissioner Lisa Harris; Independent
Redistricting Commissioner Charles Nesbitt; and
Independent Redistricting Commissioner Willis H.
Stephens,

Respondents.

-----X

JAMES R. PELUSO, an attorney admitted to practice in the courts of this State, and not a party to the within action, affirms the following to be true under the penalties of perjury pursuant to CPLR § 2106:

1. I am an attorney at law duly admitted to practice before this Court and partner with the law firm of Dreyer Boyajian LLP.
2. I submit this Affirmation to present to the Court certain unreported court opinions and pleadings underlying said authority in support of Petitioners' Amended Verified Petition submitted herewith, which materials are attached hereto as described below.

3. A true and correct copy of the Petition, dated February 3, 2022, from the action captioned *Harkenrider v. Hochul*, No. E2022-0116CV (Sup Ct, Steuben County, Feb. 3, 2022), is annexed hereto as “Ex. 1.”

4. A true and correct copy of the Amended Petition, dated February 14, 2022, from the action captioned *Harkenrider v. Hochul*, No. E2022-0116CV (Sup Ct, Steuben County, Feb. 14, 2022) and attached as Exhibit B to an Order to Show Cause in that action, is annexed hereto as “Ex. 2.”

5. A true and correct copy of the Decision and Order, dated March 31, 2022, from the action captioned *Harkenrider v. Hochul*, No. E2022-0116CV (Sup Ct Steuben County, Mar. 31, 2022), is annexed hereto as “Ex. 3.”

6. A true and correct copy of the Decision, dated April 8, 2022, from the action captioned *Harkenrider v. Hochul*, No. CAE 22-00506 (4th Dept, Apr. 8, 2022), is annexed hereto as “Ex. 4.”

7. A true and correct copy of the Preliminary Order, dated April 29, 2022, from the action captioned *Harkenrider v. Hochul*, No. E2022-0116CV (Sup Ct, Steuben County, Apr. 29, 2022) is annexed hereto as “Ex. 5.”

8. A true and correct copy of the Decision and Order, dated May 21, 2022, from the action captioned *Harkenrider v. Hochul*, No. E2022-0116CV (Sup Ct, Steuben County, May 21, 2022) is annexed hereto as “Ex. 6.”

Dated: August 4, 2022
Albany, New York

By: /s/ James R. Peluso
James R. Peluso

EXHIBIT 1 TO PELUSO AFFIRMATION -
PETITION, DATED FEBRUARY 3, 2022, FROM THE
ACTION CAPTIONED HARKENRIDER V. HOCHUL,
INDEX NO. E2022-0116CV
(REPRODUCED HEREIN AT PP. 51-117)

EXHIBIT 2 TO PELUSO AFFIRMATION -
AMENDED PETITION FROM
HARKENRIDER V. HOCHUL,
INDEX NO. E2022-0116CV
(REPRODUCED HEREIN AT PP. 118-200)

EXHIBIT 3 TO PELUSO AFFIRMATION -
DECISION AND ORDER, DATED MARCH 31, 2022,
FROM HARKENRIDER V. HOCHUL,
INDEX NO. E2022-0116CV
(REPRODUCED HEREIN AT PP. 201-218)

EXHIBIT 4 TO PELUSO AFFIRMATION -
DECISION, DATED APRIL 8, 2022, HARKENRIDER V. HOCHUL, CAE 22-00506
(REPRODUCED HEREIN AT PP. 219-222)

EXHIBIT 5 TO PELUSO AFFIRMATION -
PRELIMINARY ORDER, DATED APRIL 29, 2022,
FROM HARKENRIDER V. HOCHUL,
INDEX NO. E2022-0116CV
(REPRODUCED HEREIN AT PP. 223-224)

EXHIBIT 6 TO PELUSO AFFIRMATION -
DECISION AND ORDER, DATED MAY 21, 2022,
FROM HARKENRIDER V. HOCHUL,
INDEX NO. E2022-0116CV
(REPRODUCED HEREIN AT PP. 225-255)

**SIGNED ORDER TO SHOW CAUSE,
DATED AUGUST 5, 2022 [295 - 297]**

FILED: ALBANY COUNTY CLERK 08/05/2022 03:58 PM

NYSCEF DOC. NO. 58

INDEX NO. 904972-22

RECEIVED NYSCEF: 08/05/2022

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ALBANY

-----X
Anthony S. Hoffmann; Marco Carrión; Courtney Gibbons;
Lauren Foley; Mary Kain; Kevin Meggett; Clinton Miller;
Seth Pearce; Verity Van Tassel Richards; and Nancy Van
Tassel,

Index No. 904972-22

ORDER TO SHOW CAUSE

Petitioners,

Oral argument requested

For an Order and Judgment Pursuant to Article 78 of the
New York Civil Practice Law and Rules

-against-

The New York State Independent Redistricting
Commission; Independent Redistricting Commission
Chairperson David Imamura; Independent Redistricting
Commissioner Ross Brady; Independent Redistricting
Commissioner John Conway III; Independent Redistricting
Commissioner Ivelisse Cuevas-Molina; Independent
Redistricting Commissioner Elaine Frazier; Independent
Redistricting Commissioner Lisa Harris; Independent
Redistricting Commissioner Charles Nesbitt; and
Independent Redistricting Commissioner Willis H.
Stephens,

Respondents.

-----X
UPON reading and filing the annexed Amended Verified Petition of Petitioners Anthony
S. Hoffmann, Marco Carrión, Courtney Gibbons, Lauren Foley, Mary Kain, Kevin Meggett,
Reverend Clinton Miller, Seth Pearce, Verity Van Tassel Richards, and Nancy Van Tassel, dated
August 4, 2022, and the Affirmation of James R. Peluso and the exhibits attached thereto, and the
accompanying Memorandum of Law, dated August 4, 2022, and upon due consideration:

LET THE RESPONDENTS OR RESPONDENTS' COUNSEL SHOW CAUSE before
this court, at the Albany County Courthouse located at 16 Eagle Street, Albany, New York, on

FILED: ALBANY COUNTY CLERK 08/05/2022 03:58 PM

NYSCEF DOC. NO. 58

INDEX NO. 904972-22

RECEIVED NYSCEF: 08/05/2022

September 9, 2022, at 9:30 a.m., or as soon thereafter as counsel may be heard, why a judgment should not be entered in this proceeding:

1. Granting judgment, pursuant to Article 78 of the New York Civil Practice Law and Rules ("CPLR"), compelling the New York State Independent Redistricting Commission and its commissioners to fulfill their constitutional duty under Article III, Sections 4 and 5 of the New York Constitution by submitting a second round of proposed congressional and state legislative districting plans for consideration by the Legislature, in order to ensure that a lawful plan is in place immediately following the 2022 elections and can be used for subsequent elections this decade; and

2. Grant such other and further relief as this Court may find just and proper.

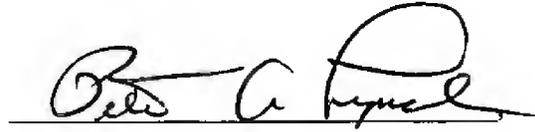
And it is further ORDERED, that service of a copy of this order, together with the papers upon which is granted, on the Attorney General, Independent Redistricting Commission Chairperson David Imamura, Independent Redistricting Commissioner Ross Brady, Independent Redistricting Commissioner John Conway III, Independent Redistricting Commissioner Ivelisse Cuevas-Molina, Independent Redistricting Commissioner Elaine Frazier, Independent Redistricting Commissioner Lisa Harris, Independent Redistricting Commissioner Charles Nesbitt, and Independent Redistricting Commissioner Willis H. Stephens, or counsel thereof, by electronic mail service, on or before the ^{9th} 5th day of August, 2022, be deemed good and sufficient service upon Respondents thereof; and it is further

ORDERED that Respondents' answering papers shall be filed on or before the 23rd day of August, 2022; and it is further

ORDERED that Petitioners' reply papers, if any, shall be filed on or before the 2nd day of September, 2022.

ENTER:

8/5/2022



HON. PETER A. LYNCH, J.S.C.

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& ABADY, LLP

/s/ Matthew D. Brinckerhoff
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ELIAS LAW GROUP LLP



08/05/2022

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jhawley@elias.law

**Pro hac vice applications forthcoming*

VERIFIED ANSWER OF RESPONDENTS, DAVID IMAMURA,
IVELISSE CUEVAS-MOLINA, AND ELAINE FRAZIER,
DATED AUGUST 26, 2022 [298 - 314]

FILED: ALBANY COUNTY CLERK 08/26/2022 05:19 PM

NYSCEF DOC. NO. 105

INDEX NO. 904972-22

RECEIVED NYSCEF: 08/26/2022

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ALBANY

- - - - - X

Anthony S. Hoffmann et al.

Petitioners,

-against-

Index No. 904972-22

Hon. Peter A. Lynch

The New York State Independent Redistricting
Commission et al.,

Respondents.

**VERIFIED ANSWER OF
RESPONDENTS DAVID
IMAMURA, IVELISSE
CUEVAS-MOLINA, AND
ELAINE FRAZIER**

Respondents DAVID IMAMURA, IVELISSE CUEVAS-MOLINA, and ELAINE FRAZIER (“Undersigned Respondents”), by their attorneys Jenner & Block LLP, as and for their answer to the Amended Verified Petition for Writ of Mandamus (Dkt. 47) (the “Amended Petition”), respectfully answer the allegations of each paragraph of the Amended Petition as follows:

1. Undersigned Respondents lack sufficient knowledge about this allegation to admit or deny.
2. Admitted.
3. The allegations contained in this paragraph purport to describe the contents of the Redistricting Amendments, the contents of which speak for themselves, and no further response is required. To the extent a response is required, Undersigned Respondents respectfully refer to the Redistricting Amendments for the best evidence of their content.

4. Admitted that “the Redistricting Amendments provided for the creation of an independent redistricting commission (the ‘IRC’)” and that “[t]he Redistricting Amendments require the IRC to submit proposed redistricting plans for consideration by the Legislature.” The remaining allegations contained in this paragraph purport to describe the contents of the Redistricting Amendments, the contents of which speak for themselves, and no further response is required. To the extent a response is required, Undersigned Respondents respectfully refer to the Redistricting Amendments for the best evidence of their content.

5. Admitted, except that to the extent the allegations contained in this paragraph purport to describe the contents of Article III, Section 4 of the New York Constitution, the contents speak for themselves and no further response is required. To the extent a response is required, Undersigned Respondents respectfully refer to Article III, Section 4 of the New York Constitution for the best evidence of its content.

6. Admitted, except denied that “each delegation submitted a proposed map in January 2022.” Two proposed congressional redistricting plans were submitted by the IRC, not by any particular delegation. The submitted plans are incorporated herein by reference. *See* N.Y. State Indep. Redistricting Comm’n, *Plans*, <https://www.nyirc.gov/plans> (last visited Aug. 24, 2022).

7. Admitted, except denied that “the IRC abandoned its constitutional duty.” Undersigned Respondents demanded a meeting to vote on a second round of maps to submit to the Legislature; however, other Commissioners refused to meet, which denied the IRC a quorum to hold a vote. Undersigned Respondents thereafter acted in accord with their understanding of the applicable constitutional and statutory procedures and their duties under the circumstances, which preceded any judicial interpretation of the relevant constitutional and statutory provisions.

8. The allegations contained in this paragraph purport to describe the content of the 2021 Legislation, the contents of which speak for themselves, and no response is required. To the extent a response is required, Undersigned Respondents refer to the 2021 Legislation for the best evidence of its content.

9. Undersigned Respondents lack sufficient knowledge about this allegation to admit or deny.

10. The allegations contained in this paragraph purport to describe the content of the New York Court of Appeals' decision in *Harkenrider v. Hochul*, the contents of which speak for themselves, and no response is required. To the extent a response is required, Undersigned Respondents refer to the New York Court of Appeals' decision in *Harkenrider v. Hochul* for the best evidence of its content.

11. The allegations contained in this paragraph purport to describe the content of the New York Court of Appeals' decision in *Harkenrider v. Hochul*, the contents of which speak for themselves, and no response is required. To the extent a response is required, Undersigned Respondents refer to the New York Court of Appeals' decision in *Harkenrider v. Hochul* for the best evidence of its content.

12. The allegations contained in this paragraph purport to describe the contents of the Redistricting Amendments, the contents of which speak for themselves, and no further response is required. To the extent a response is required, Undersigned Respondents respectfully refer to the Redistricting Amendments for the best evidence of their content. Undersigned Respondents otherwise lack sufficient knowledge about this allegation to admit or deny.

13. Undersigned Respondents lack sufficient knowledge about this allegation to admit or deny.

14. To the extent this allegation requests relief from the Court, no response is required. Undersigned Respondents otherwise lack sufficient knowledge about this allegation to admit or deny.

15. Undersigned Respondents lack sufficient knowledge about this allegation to admit or deny.

16. Undersigned Respondents lack present awareness sufficient to admit or deny the allegation. The records of who spoke at different hearings and the contents of their positions, as well as the contents of public comment submissions to the IRC, are reflected in public records which speak for themselves. *See* N.Y. State Indep. Redistricting Comm'n, *Meetings*, <https://www.nyirc.gov/meetings> (last visited Aug. 24, 2022); *see also* N.Y. State Indep. Redistricting Comm'n, *Submissions*, <https://nyirc.gov/submissions> (last visited Aug. 24, 2022). The record of the hearings and submissions is incorporated herein.

17. Undersigned Respondents lack present awareness sufficient to admit or deny the allegation. The records of who spoke at different hearings and the contents of their positions, as well as the contents of public comment submissions to the IRC, are reflected in public records which speak for themselves. *See* N.Y. State Indep. Redistricting Comm'n, *Meetings*, <https://www.nyirc.gov/meetings> (last visited Aug. 24, 2022); *see also* N.Y. State Indep. Redistricting Comm'n, *Submissions*, <https://nyirc.gov/submissions> (last visited Aug. 24, 2022). The record of the hearings and submissions is incorporated herein.

18. Undersigned Respondents lack present awareness sufficient to admit or deny the allegation. The records of who spoke at different hearings and the contents of their positions, as well as public comment submissions to the IRC, are reflected in public records which speak for themselves. *See* N.Y. State Indep. Redistricting Comm'n, *Meetings*,

<https://www.nyirc.gov/meetings> (last visited Aug. 24, 2022); *see also* N.Y. State Indep.

Redistricting Comm'n, *Submissions*, <https://nyirc.gov/submissions> (last visited Aug. 24, 2022).

The record of the hearings and submissions is incorporated herein.

19. Undersigned Respondents lack present awareness sufficient to admit or deny the allegation. The records of who spoke at different hearings and the contents of their positions, as well as public comment submissions to the IRC, are reflected in public records which speak for themselves. *See* N.Y. State Indep. Redistricting Comm'n, *Meetings*,

<https://www.nyirc.gov/meetings> (last visited Aug. 24, 2022); *see also* N.Y. State Indep.

Redistricting Comm'n, *Submissions*, <https://nyirc.gov/submissions> (last visited Aug. 24, 2022).

The record of the hearings and submissions is incorporated herein.

20. Denied that "Chairman David Imamura, Commissioner Ross Brady, Commissioner John Conway III, Commissioner Ivelisse Cuevas-Molina, Commissioner Elaine Frazier, Commissioner Lisa Harris, Commissioner Charles Nesbitt, and Commissioner Willis H. Stephens" comprise the entire New York State Independent Redistricting Commission. The remaining allegations in this paragraph are a legal conclusion to which no response is required. To the extent a response is required, Undersigned Respondents stand ready to propose a second set of congressional redistricting plans to the Legislature.

21. Admitted.

22. Certain of the allegations contained in this paragraph purport to describe the content of Article III, Section 4 of the New York Constitution, the contents of which speak for themselves, and no response is required. To the extent a response is required, Undersigned Respondents respectfully refer to Article III, Section 4 of the New York Constitution for the best

evidence of its contents. Admitted that “[i]n 2014 New York voters amended the state constitution, establishing new procedural and substantive requirements for redistricting.”

23. The allegations contained in this paragraph purport to describe the contents of the Redistricting Amendments, the contents of which speak for themselves, and no further response is required. To the extent a response is required, Undersigned Respondents respectfully refer to the Redistricting Amendments for the best evidence of their content.

24. The allegations contained in this paragraph purport to describe the contents of the Redistricting Amendments, the contents of which speak for themselves, and no further response is required. To the extent a response is required, Undersigned Respondents respectfully refer to the Redistricting Amendments for the best evidence of their content.

25. The allegations contained in this paragraph purport to describe the contents of the Redistricting Amendments, the contents of which speak for themselves, and no further response is required. To the extent a response is required, Undersigned Respondents respectfully refer to the Redistricting Amendments for the best evidence of their content.

26. The allegations contained in this paragraph purport to describe the contents of the Redistricting Amendments, the contents of which speak for themselves, and no further response is required. To the extent a response is required, Undersigned Respondents respectfully refer to the Redistricting Amendments for the best evidence of their content.

27. The allegations contained in this paragraph purport to describe the contents of the Redistricting Amendments, the contents of which speak for themselves, and no further response is required. To the extent a response is required, Undersigned Respondents respectfully refer to the Redistricting Amendments for the best evidence of their content.

28. The allegations contained in this paragraph purport to describe the contents of the Redistricting Amendments, the contents of which speak for themselves, and no further response is required. To the extent a response is required, Undersigned Respondents respectfully refer to the Redistricting Amendments for the best evidence of their content.

29. The allegations contained in this paragraph purport to describe the content of the 2021 Legislation, the contents of which speak for themselves, and no response is required. To the extent a response is required, Undersigned Respondents refer to the 2021 Legislation for the best evidence of its content.

30. Certain of the allegations contained in this paragraph purport to describe the content of the 2021 Legislation, the contents of which speak for themselves, and no response is required. To the extent a response is required, Undersigned Respondents refer to the 2021 Legislation for the best evidence of its content. Undersigned Respondents lack sufficient knowledge to admit or deny the allegation “presumably to ensure that the Legislature could benefit from the IRC record in adopting new redistricting plans.”

31. The allegations contained in this paragraph purport to describe the contents of the Redistricting Amendments, the contents of which speak for themselves, and no further response is required. To the extent a response is required, Undersigned Respondents respectfully refer to the Redistricting Amendments for the best evidence of their content.

32. The allegations contained in this paragraph purport to describe the contents of the Redistricting Amendments, the contents of which speak for themselves, and no further response is required. To the extent a response is required, Undersigned Respondents respectfully refer to the Redistricting Amendments for the best evidence of their content.

33. The allegations contained in this paragraph purport to describe the contents of the Redistricting Amendments, the contents of which speak for themselves, and no further response is required. To the extent a response is required, Undersigned Respondents respectfully refer to the Redistricting Amendments for the best evidence of their content.

34. Admitted.

35. Admitted.

36. Denied that “the IRC refused to submit a second set of congressional plans and the necessary implementing legislation.” Undersigned Respondents attempted to submit one or more second set of congressional plans to the Legislature, and requested a meeting to vote on proposed second sets of plans. However, other Commissioners refused to attend such a meeting, denying the IRC a quorum to conduct business. *See* N.Y. Const. Art III § 5-b(f) (“a minimum of seven members shall constitute a quorum” when the Commission is fully constituted). Admitted that the IRC did not submit a second set of congressional plans or implementing legislation to the Legislature. To the extent the allegations contained in this paragraph purport to describe the contents of Article III, Section 4(b) of the New York Constitution, the contents speak for themselves, and no further response is required. To the extent a response is required, Undersigned Respondents respectfully refer to the cited portion of the New York Constitution for the best evidence of its content.

37. Admitted.

38. Admitted.

39. Admitted that the IRC did not submit a second congressional redistricting plan or set of plans to the Legislature by January 25, 2022 or February 28, 2022. The remaining allegations contained in this paragraph purport to describe the content of the 2021 Legislation,

the contents of which speak for themselves, and no response is required. To the extent a response is required, Undersigned Respondents refer to the 2021 Legislation for the best evidence of its content.

40. Admitted that the Legislature passed a congressional map on February 3, 2022 and Governor Kathy Hochul signed the plan into law later than day. As to the remaining allegations, Undersigned Respondents lack sufficient knowledge about these allegations to admit or deny.

41. The allegations contained in this paragraph purport to describe the content of the filings, hearings, and/or rulings in the *Harkenrider v. Hochul* action, the contents of which speak for themselves, and no response is required. To the extent a response is required, Undersigned Respondents refer to the filings, hearings, and rulings in the *Harkenrider v. Hochul* action for the best evidence of their content.

42. The allegations contained in this paragraph purport to describe the content of the filings, hearings, and/or rulings in the *Harkenrider v. Hochul* action, the contents of which speak for themselves, and no response is required. To the extent a response is required, Undersigned Respondents refer to the filings, hearings, and rulings in the *Harkenrider v. Hochul* action for the best evidence of their content.

43. The allegations contained in this paragraph purport to describe the content of the Supreme Court's decision and order in the *Harkenrider v. Hochul* action, the contents of which speak for themselves, and no response is required. To the extent a response is required, Undersigned Respondents refer to the Supreme Court's decision and order in the *Harkenrider v. Hochul* action for the best evidence of its content.

44. The allegations contained in this paragraph purport to describe the content of the Supreme Court's decision and order in the *Harkenrider v. Hochul* action, the contents of which speak for themselves, and no response is required. To the extent a response is required, Undersigned Respondents refer to the Supreme Court's decision and order in the *Harkenrider v. Hochul* action for the best evidence of its content.

45. The allegations contained in this paragraph purport to describe the content of the Fourth Department's rulings in the *Harkenrider v. Hochul* action, the contents of which speak for themselves, and no response is required. To the extent a response is required, Undersigned Respondents refer to the Fourth Department's rulings in the *Harkenrider v. Hochul* action for the best evidence of their content.

46. The allegations contained in this paragraph purport to describe the content of the New York Court of Appeals' decision in *Harkenrider v. Hochul*, the contents of which speak for themselves, and no response is required. To the extent a response is required, Undersigned Respondents refer to the New York Court of Appeals' decision in *Harkenrider v. Hochul* for the best evidence of its content.

47. The allegations contained in this paragraph purport to describe the content of the New York Court of Appeals' decision in *Harkenrider v. Hochul*, the contents of which speak for themselves, and no response is required. To the extent a response is required, Undersigned Respondents refer to the New York Court of Appeals' decision in *Harkenrider v. Hochul* for the best evidence of its content.

48. The allegations contained in this paragraph purport to describe the content of the New York Court of Appeals' decision in *Harkenrider v. Hochul*, the contents of which speak for themselves, and no response is required. To the extent a response is required, Undersigned

Respondents refer to the New York Court of Appeals' decision in *Harkenrider v. Hochul* for the best evidence of its content.

49. The allegations contained in this paragraph purport to describe the content of the New York Court of Appeals' decision in *Harkenrider v. Hochul*, the contents of which speak for themselves, and no response is required. To the extent a response is required, Undersigned Respondents refer to the New York Court of Appeals' decision in *Harkenrider v. Hochul* for the best evidence of its content.

50. The allegations contained in this paragraph purport to describe the content of the New York Court of Appeals' decision in *Harkenrider v. Hochul*, the contents of which speak for themselves, and no response is required. To the extent a response is required, Undersigned Respondents refer to the New York Court of Appeals' decision in *Harkenrider v. Hochul* for the best evidence of its content.

51. The allegations contained in this paragraph purport to describe the content of the Supreme Court's decision and order in the *Harkenrider v. Hochul* action, the contents of which speak for themselves, and no response is required. To the extent a response is required, Undersigned Respondents refer to the Supreme Court's decision and order in the *Harkenrider v. Hochul* action for the best evidence of its content.

52. Undersigned Respondents lack sufficient knowledge about this allegation to admit or deny.

53. Certain of the allegations contained in this paragraph purport to describe the content of Article III, Section 5-b(c) of the New York Constitution, the contents of which speak for themselves, and no response is required. To the extent a response is required, Undersigned Respondents respectfully refer to Article III, Section 5-b(c) of the New York Constitution for the

best evidence of its contents. Undersigned Respondents otherwise lack sufficient knowledge about this allegation to admit or deny the remaining allegations in this paragraph.

54. Undersigned Respondents lack sufficient knowledge about this allegation to admit or deny.

55. Undersigned Respondents lack sufficient knowledge about this allegation to admit or deny.

56. Undersigned Respondents lack sufficient knowledge about this allegation to admit or deny.

57. The allegations in this paragraph are a legal conclusion to which no response is required. To the extent a response is required, Undersigned Respondents lack sufficient knowledge about this allegation to admit or deny.

58. Undersigned Respondents allege that no response is necessary to Petitioners' reallegation of prior paragraphs of the Amended Petition.

59. The allegations contained in this paragraph purport to describe the content of CPLR § 7803(1), the contents of which speak for themselves, and no response is required. To the extent a response is required, Undersigned Respondents refer to CPLR § 7803(1) for the best evidence of its content.

60. Certain of the allegations contained in this paragraph purport to describe the content of Article III, Section 4(b) of the New York Constitution, the contents of which speak for themselves, and no response is required. To the extent a response is required, Undersigned Respondents respectfully refer to Article III, Section 4(b) of the New York Constitution for the best evidence of its contents. Undersigned Respondents otherwise admit the allegations in this paragraph.

61. Denied that “[a]fter the Legislature rejected the IRC’s first set of congressional plans, the IRC refused to prepare and submit a second set of plans.” Admitted that the IRC did not submit a second set of plans to the Legislature, because Commissioners other than the Undersigned Respondents prevented the submission of second set of plans by refusing to attend an official meeting to vote on a second set of plans. That refusal to meet denied the IRC a quorum to conduct official business, including voting on and submitting a second set of plans to the Legislature.

62. The allegations contained in this paragraph purport to describe the content of the 2021 Legislation, the contents of which speak for themselves, and no response is required. To the extent a response is required, Undersigned Respondents refer to the 2021 Legislation for the best evidence of its content.

63. The allegations contained in this paragraph purport to describe the content of the New York Court of Appeals’ decision in *Harkenrider v. Hochul*, the contents of which speak for themselves, and no response is required. To the extent a response is required, Undersigned Respondents refer to the New York Court of Appeals’ decision in *Harkenrider v. Hochul* for the best evidence of its content.

64. The allegations contained in this paragraph purport to describe the content of the New York Court of Appeals’ decision in *Harkenrider v. Hochul*, the contents of which speak for themselves, and no response is required. To the extent a response is required, Undersigned Respondents refer to the New York Court of Appeals’ decision in *Harkenrider v. Hochul* for the best evidence of its content.

65. The allegations in this paragraph are a legal conclusion to which no response is required. To the extent a response is required, Undersigned Respondents stand ready to

complete the duty to submit a second set of congressional plans to the Legislature for consideration.

WHEREFORE Respondents DAVID IMAMURA, IVELISSE CUEVAS-MOLINA, and ELAINE FRAZIER do not oppose the relief identified in the first paragraph of Petitioners' prayer for relief as set forth in the Amended Petition.

DATED: August 26, 2022
New York, New York

Respectfully Submitted,

By: /s/ Jeremy H. Ershow

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*Attorneys for Respondents David
Imamura, Ivelisse Cuevas-Molina,
and Elaine Frazier*

FILED: ALBANY COUNTY CLERK 08/26/2022 05:19 PM

NYSCEF DOC. NO. 105

INDEX NO. 904972-22

RECEIVED NYSCEF: 08/26/2022

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Counsel for Petitioners

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Counsel for Respondents Ross Brady, John Conway III, Lisa Harris, Charles Nesbitt, and Willis H. Stephens

Above parties served by NYSCEF

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ALBANY

----- x
Anthony S. Hoffman et al.

Petitioners,

-against-

The New York State Independent Redistricting
Commission et al.,

Respondents.

Index No. 904972-22

Hon. Peter A. Lynch

VERIFICATION
PURSUANT TO CPLR
§ 3020(d)(2)

COUNTY OF WESTCHESTER)

STATE OF NEW YORK) SS:

DAVID IMAMURA, of full age, being duly sworn, hereby deposes and says as follows:

- 1. I am the chairperson of the New York State Independent Redistricting Commission and am an attorney admitted to practice before the Courts of New York State.
- 2. I have read the foregoing Verified Answer, and know the contents thereof, and the same is true except as to the matters therein stated to be alleged upon information and belief, and as to those matters I believe it to be true.
- 3. I am familiar with the facts and circumstances at hand herein based upon my personal experience as Chairperson of the New York State Independent Redistricting Commission and based on a review of books, papers, and records maintained by the respondents.
- 4. This verification is made as to the foregoing Respondents under CPLR § 3020(d) because the foregoing Respondents are united in interest and I am acquainted with the facts.

FILED: ALBANY COUNTY CLERK 08/26/2022 05:19 PM

NYSCEF DOC. NO. 105

INDEX NO. 904972-22

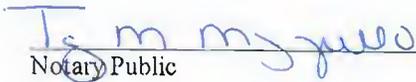
RECEIVED NYSCEF: 08/26/2022

DATED: August 26, 2022
Kapolei, Hawaii



David Imanura

Sworn to before me this
26 Day of August, 2022


Notary Public

TAMMY MARIE MAZZULLO
NOTARY PUBLIC, STATE OF NEW YORK
Registration No. 01MA6301698
Qualified in Westchester County
Commission Expires April 21, 2026

**NOTICE OF MOTION TO DISMISS, BY RESPONDENTS,
INDEPENDENT REDISTRICTING COMMISSIONERS
ROSS BRADY, JOHN CONWAY III, LISA HARRIS,
CHARLES NESBITT AND WILLIS H. STEPHENS,
(MOVING RESPONDENTS), DATED AUGUST 26, 2022 [315 - 316]**

FILED: ALBANY COUNTY CLERK 08/26/2022 09:16 PM

NYSCEF DOC. NO. 106

INDEX NO. 904972-22

RECEIVED NYSCEF: 08/29/2022

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ALBANY

Anthony S. Hoffmann; Marco Carrion; Courtney Gibbons;
Lauren Foley; Mary Kain; Kevin Meggett; Clinton Miller;
Seth Pearce; Verity Van Tassel Richards; and Nancy Van
Tassel,

Petitioners,

For an Order and Judgement Pursuant to Article 78 of the
New York Civil Practice Law and Rules

- against -

The New York State Independent Redistricting
Commission; Independent Redistricting Commission
Chairperson David Imamura; Independent Redistricting
Commissioner Ross Brady; Independent Redistricting
Commissioner John Conway III; Independent Redistricting
Commissioner Ivelisse Cuevas-Molina; Independent
Redistricting Commissioner Elaine Frazier; Independent
Redistricting Commissioner Lisa Harris; Independent
Redistricting Commissioner Charles Nesbitt; and
Independent Redistricting Commissioner Willis H.
Stephens,

Respondents.

Index No.: 904972-22

NOTICE OF MOTION
TO DISMISS

PLEASE TAKE NOTICE that upon the Affirmation of Timothy Hill, Esq., dated August 26, 2022 and the Memorandum of Law in Support of even date, Respondents, Independent Redistricting Commissioners: Ross Brady; John Conway III; Lisa Harris; Charles Nesbitt and Willis H. Stephens, (hereinafter the “Moving Respondents”) will move this Court, at the Courthouse located at 16 Eagle Street, Albany, New York, on the 12th day of September, 2022, at 9:30 a.m., or as soon thereafter as counsel may be heard, for an Order pursuant to CPLR 7804(f) and CPLR 3211(a)(5)(7), dismissing the Amended Verified Petition in its entirety, with prejudice, on the grounds that the amended verified petition fails to state a claim, that mandamus does not lie, that the

petition is untimely, and that the relief is not available as against the individual Moving Respondents, together with such other and further relief as the Court deems just and proper.

PLEASE TAKE FURTHER NOTICE that pursuant to CPLR §7804 (c) and (f), this motion is made upon notice within the time for Moving Respondents to file their answer.

PLEASE TAKE FURTHER NOTICE that in the event this motion is denied, in whole or in part, Moving Respondents reserve the right to answer the Verified Petition.

PLEASE TAKE FURTHER NOTICE that pursuant to CPLR §2214(b), answering papers, if any, shall be served upon the undersigned at least seven (7) days before the return date of this motion.

Dated: Sayville, New York
August 26, 2022

Timothy Hill /s/
TIMOTHY HILL
MESSINA PERILLO HILL, LLP
285 W. Main Street, Suite 203
Sayville, New York 11782
thill@mphilawgroup.com
Attorneys for Moving Respondents

To: All counsel via NYSECF

**AFFIRMATION OF TIMOTHY HILL, ESQ., FOR MOVING RESPONDENTS,
IN SUPPORT OF MOTION TO DISMISS, DATED AUGUST 26, 2022 [317 - 319]**

FILED: ALBANY COUNTY CLERK 08/26/2022 09:16 PM

NYSCEF DOC. NO. 107

INDEX NO. 904972-22

RECEIVED NYSCEF: 08/26/2022

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ALBANY

Anthony S. Hoffmann; Marco Carrion; Courtney Gibbons;
Lauren Foley; Mary Kain; Kevin Meggett; Clinton Miller;
Seth Pearce; Verity Van Tassel Richards; and Nancy Van
Tassel,

Petitioners,

For an Order and Judgement Pursuant to Article 78 of the
New York Civil Practice Law and Rules

- against -

The New York State Independent Redistricting
Commission; Independent Redistricting Commission
Chairperson David Imamura; Independent Redistricting
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Commissioner John Conway III; Independent Redistricting
Commissioner Ivelisse Cuevas-Molina; Independent
Redistricting Commissioner Elaine Frazier; Independent
Redistricting Commissioner Lisa Harris; Independent
Redistricting Commissioner Charles Nesbitt; and
Independent Redistricting Commissioner Willis H.
Stephens,

Respondents.

Index No.: 904972/22

**AFFIRMATION IN
SUPPORT OF
MOTION TO DISMISS**

Timothy Hill, Esq., an attorney duly admitted to practice law before the Courts of the
State of New York, hereby affirms the following statement to be true:

1. I am a partner at the firm Messina Perillo Hill LLP, attorneys of record for
Respondents, INDEPENDENT REDISTRICTING COMMISSIONERS: COMMISSIONER
ROSS BRADY, COMMISSIONER JOHN CONWAY III; COMMISSIONER LISA HARRIS,
COMMISSIONER CHARLES NESBITT; and COMMISSIONER WILLIS H. STEPHENS (the
“Moving Respondents”). As such, I am fully familiar with the facts and circumstances set forth
herein.

2. This affirmation is submitted in support of the Moving Respondents' motion made pursuant to CPLR 7803 and 7804(f) and CPLR 3211(a)(5)(7), seeking an order dismissing the Petitioners' amended verified petition (the "Petition").

3. A true copy of the Petition is annexed hereto as Exhibit A.

4. Moving Respondents' legal arguments in support of this motion to dismiss are set forth in the accompanying Memorandum of Law in Support of Motion to Dismiss and in Opposition to Order to Show Cause, dated August 26, 2022 (the "Memorandum of Law"). The Memorandum of Law and the arguments therein are hereby incorporated herein as if expressly set forth. The Court is respectfully referred to said Memorandum of Law and the arguments therein in support of dismissal.

5. Finally, the Moving Respondents respectfully reserve the right to answer the underlying Petition if this motion to dismiss is denied, in whole or in part. See CPLR 7804(f) & CPLR 3211(f).

WHEREFORE, for the reasons set forth herein and in the Memorandum of Law, Moving Respondents respectfully request an order pursuant to CPLR § 7804(f) and CPLR § 3211(a), dismissing the Amended Verified Petition in its entirety, denying the relief requested therein, and granting such other and further relief as the Court may deem just and proper together with costs and disbursements herein.

Dated: Sayville, New York
August 26, 2022

Timothy Hill /s/
TIMOTHY HILL
MESSINA PERILLO HILL, LLP
285 W. Main Street, Suite 203
Sayville, New York 11782
Attorneys for Moving Respondents

To: All counsel via NYSECF

FILED: ALBANY COUNTY CLERK 08/26/2022 09:16 PM

NYSCEF DOC. NO. 107

INDEX NO. 904972-22

RECEIVED NYSCEF: 08/26/2022

CERTIFICATION PURSUANT TO 22 NYCRR § 202.8-b

I, Timothy Hill, Esq., an attorney duly admitted to practice law before the Courts of the State of New York, hereby certify that the within Affirmation submitted and filed in the above-captioned proceeding contains 555 words, excluding the parts exempted by § 202.8-b(b) and, as such, complies with the word count limits set forth in 22 NYCRR § 202.8-b.

In preparing this certification, I relied on the word count of the word processing system (Microsoft Word) used to prepare the document.

Dated: Sayville, New York
August 26, 2022

Timothy Hill

TIMOTHY HILL, ESQ

EXHIBIT 1 TO HILL AFFIRMATION -
AMENDED VERIFIED PETITION FOR WRIT OF MANDAMUS,
DATED AUGUST 4, 2022
(REPRODUCED HEREIN AT PP. 265-288)

**AFFIRMATION OF TIMOTHY HILL, ESQ., FOR MOVING RESPONDENTS,
IN OPPOSITION TO ORDER TO SHOW CAUSE, DATED AUGUST 26, 2022 [321 - 323]**

FILED: ALBANY COUNTY CLERK 08/26/2022 09:19 PM

NYSCEF DOC. NO. 110

INDEX NO. 904972-22

RECEIVED NYSCEF: 08/26/2022

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ALBANY

Anthony S. Hoffmann; Marco Carrion; Courtney Gibbons;
Lauren Foley; Mary Kain; Kevin Meggett; Clinton Miller;
Seth Pearce; Verity Van Tassel Richards; and Nancy Van
Tassel,

Petitioners,

For an Order and Judgement Pursuant to Article 78 of the
New York Civil Practice Law and Rules

- against -

The New York State Independent Redistricting
Commission; Independent Redistricting Commission
Chairperson David Imamura; Independent Redistricting
Commissioner Ross Brady; Independent Redistricting
Commissioner John Conway III; Independent Redistricting
Commissioner Ivelisse Cuevas-Molina; Independent
Redistricting Commissioner Elaine Frazier; Independent
Redistricting Commissioner Lisa Harris; Independent
Redistricting Commissioner Charles Nesbitt; and
Independent Redistricting Commissioner Willis H.
Stephens,

Respondents.

Index No.: 904972/22

**AFFIRMATION IN
OPPOSITION TO
ORDER TO SHOW CAUSE**

Timothy Hill, Esq., an attorney duly admitted to practice law before the Courts of the State
of New York, hereby affirms the following statement:

1. I am a partner at the firm Messina Perillo Hill LLP, attorneys of record for
Respondents, COMMISSIONER ROSS BRADY, COMMISSIONER JOHN CONWAY III,
COMMISSIONER LISA HARRIS, COMMISSIONER CHARLES NESBITT, and
COMMISSIONER WILLIS H. STEPHENS (the "Moving Respondents"). As such, I am fully
familiar with the facts and circumstances set forth herein.

2. This Affirmation, together with the accompanying Memorandum of Law, is
submitted in opposition to Petitioners' Order to Show Cause seeking that the Court grant judgment

pursuant to CPLR Article 78, compelling the New York State Redistricting Commission and its commissioners to submit a second round of proposed redistricting plans for consideration by the Legislature.

3. The Moving Respondents are filing, simultaneously with this Affirmation in Opposition, a Motion to Dismiss the Amended Verified Petition pursuant to CPLR 7803, 7804(f), CPLR 3211(a)(5) and (7). The Memorandum is submitted both in support of the Moving Respondents' motion to dismiss, as well as in opposition to the Petitioners' Order to Show Cause.

4. Moving Respondents hereby incorporate and reassert, as if fully set forth herein, in opposition to the Petitioners Order to Show Cause, all of the factual and legal arguments set forth in their Memorandum of Law dated August 26, 2022.

WHEREFORE, it is respectfully submitted that the Order to Show Cause be denied in its entirety, together with such other and further relief as the Court deems just and proper.

Dated: Sayville, New York
August 26, 2022

Timothy Hill /s/ _____
TIMOTHY HILL
MESSINA PERILLO HILL, LLP
285 W. Main Street, Suite 203
Sayville, New York 11782
thill@mphlawgroup.com
Attorneys for Moving Respondents

To: All counsel via NYSECF

FILED: ALBANY COUNTY CLERK 08/26/2022 09:19 PM

NYSCEF DOC. NO. 110

INDEX NO. 904972-22

RECEIVED NYSCEF: 08/26/2022

CERTIFICATION PURSUANT TO 22 NYCRR § 202.8-b

I, Timothy Hill, Esq., an attorney duly admitted to practice law before the Courts of the State of New York, hereby certify that the within Affirmation dated August 26, 2022 submitted and filed in the above-captioned proceeding contains 509 words, excluding the parts exempted by § 202.8-b(b) and, as such, complies with the word count limits set forth in 22 NYCRR § 202.8-b.

In preparing this certification, I relied on the word count of the word processing system (Microsoft Word) used to prepare the document.

Dated: Sayville, New York
August 26, 2022

Timothy Hill

Timothy Hill

PROPOSED ORDER TO SHOW CAUSE REGARDING THE HARKENRIDER INTERVENORS' MOTION TO DISMISS, FILED SEPTEMBER 2, 2022 [324 - 325]

At IAS Part __ of the Supreme Court of the State of New York, held in and for the County of Albany, at the Courthouse located at 20 Eagle Street, Albany, New York, on the __ day of August, 2022.

PRESENT: _____

HON. PETER A LYNCH, J.S.C.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ALBANY

-----X

Anthony S. Hoffmann; Marco Carrión; Courtney Gibbons; Lauren Foley; Mary Kain; Kevin Meggett; Clinton Miller; Seth Pearce; Verity Van Tassel Richard; and Nancy Van Tassel,

Index No. 904972-22

Petitioners,

-against-

The New York State Independent Redistricting Commission; Independent Redistricting Commission Chairperson David Imamura; Independent Redistricting Commissioner Ross Brady; Independent Redistricting Commissioner John Conway III; Independent Redistricting Commissioner Ivelisse Cuevas-Molina; Independent Redistricting Commissioner Elaine Frazier; Independent Redistricting Commissioner Lisa Harris; Independent Redistricting Commissioner Charles Nesbitt; and Independent Redistricting Commissioner Willis H. Stephens,

**ORDER TO SHOW CAUSE
REGARDING THE
HARKENRIDER
INTERVENORS' MOTION
TO DISMISS**

Respondents,

-and-

Tim Harkenrider; Guy C. Brought; Lawrence Canning; Patricia Clarino; George Dooher, Jr.; Stephen Evans; Linda Fanton; Jerry Fishman; Jay Frantz; Lawrence Garvey; Alan Nephew; Susan Rowley; Josephine Thomas; and Marianne Violante,

Intervenors-Respondents.

-----X

UPON reading of the Harkenrider Intervenors’ Memorandum Of Law In Support Of Their Motion To Dismiss, and all of the pleadings and proceedings heretofore had herein, Petitioners and Respondents are hereby:

ORDERED to appear and show cause before this Court, at IAS Part __, Room ____, at the Courthouse located at 20 Eagle Street, Albany, New York, on the ___th day of August, 2022, at 9:30 a.m., or as soon thereafter as counsel can be heard, why an Order should not be issued granting Harkenrider Intervenors’ Motion To Dismiss; and it is

FURTHER ORDERED that the Harkenrider Intervenors shall serve a copy of this Order and all papers in support thereof upon counsel for Petitioners and Respondents via NYSCEF, on or before the ____ day of August, 2022; and it is

FURTHER ORDERED that Petitioners and Respondents shall serve any papers in opposition to the Harkenrider Intervenors’ Motion To Dismiss by NYSCEF no later than the ____ day of September, 2022; and it is

FURTHER ORDERED that Harkenrider Intervenors shall serve any reply papers in further support of their Motion To Dismiss by NYSCEF no later than the ____ day of September, 2022.

DATED: Albany, New York
August __, 2022

ENTER:

HON. PETER A. LYNCH, J.S.C.

AFFIRMATION OF BENNET J. MOSKOWITZ, ESQ., FOR PROPOSED INTERVENOR-RESPONDENTS TIM HARKENRIDER, GUY C. BROUGHT, LAWRENCE CANNING, PATRICIA CLARINO, GEORGE DOOHER, JR., STEPHEN EVANS, LINDA FANTON, JERRY FISHMAN, JAY FRANTZ, LAWRENCE GARVEY, ALAN NEPHEW, SUSAN ROWLEY, JOSEPHINE THOMAS, AND MARIANNE VIOLANTE (PROPOSED INTERENORS), FILED SEPTEMBER 2, 2022 [326 - 327]

FILED: ALBANY COUNTY CLERK 09/02/2022 12:58 PM
NYSCEF DOC. NO. 145

INDEX NO. 904972-22
RECEIVED NYSCEF: 09/02/2022

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ALBANY
-----X

Anthony S. Hoffmann; Marco Carrión; Courtney Gibbons;
Lauren Foley; Mary Kain; Kevin Meggett; Clinton Miller;
Seth Pearce; Verity Van Tassel Richard; and Nancy Van
Tassel,

Index No. 904972-22

Petitioners,

-against-

AFFIRMATION

The New York State Independent Redistricting
Commission, *et al.*,

Respondents,

-and-

Tim Harkenrider; Guy C. Brought; Lawrence Canning;
Patricia Clarino; George Dooher, Jr.; Stephen Evans; Linda
Fanton; Jerry Fishman; Jay Frantz; Lawrence Garvey; Alan
Nephew; Susan Rowley; Josephine Thomas; and Marianne
Violante,

Intervenors-Respondents.

-----X

BENNET J. MOSKOWITZ, an attorney duly admitted to practice before the Courts
of the State of New York, hereby affirms the following under penalty of perjury:

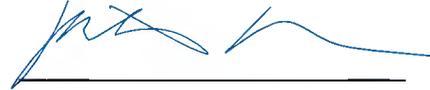
1. I am a Partner at Troutman Pepper Hamilton Sanders LLP, counsel for Proposed Intervenor-Respondents Tim Harkenrider, Guy C. Brought, Lawrence Canning, Patricia Clarino, George Dooher, Jr., Stephen Evans, Linda Fanton, Jerry Fishman, Jay Frantz, Lawrence Garvey, Alan Nephew, Susan Rowley, Josephine Thomas, and Marianne Violante (hereinafter, collectively, “Proposed Intervenors”) in this CPLR Art. 78 special proceeding.

2. I submit this Affirmation solely to present to the Court information and materials relating to Proposed Intervenors' Motion To Dismiss, which materials are attached hereto as described below.

3. Attached hereto as Exhibit 1 is a letter filed with the Steuben County Supreme Court in *Harkenrider v. Hochul*, Index No. E2022-0116CV, on behalf of Petitioners Courtney Gibbons, Lauren Foley, Seth Pearce, Verity Van Tassel Richard, and Nancy Van Tassel, filed with that Court on May 18, 2022, and served on counsel for Proposed Intervenors via email on May 19, 2022.

WHEREFORE, it is respectfully requested that the Court grant Proposed Intervenors' Motion To Dismiss.

Dated: New York, New York
August 23, 2022



BENNET J. MOSKOWITZ

EXHIBIT 1 TO MOSKOWITZ AFFIRMATION -
LETTER FILED WITH THE STEUBEN COUNTY SUPREME COURT IN
HARKENRIDER V. HOCHUL, INDEX NO. E2022-0116CV [328 - 338]

FILED: ALBANY COUNTY CLERK 09/02/2022 12:58 PM

NYSCEF DOC. NO. 146

INDEX NO. 904972-22

RECEIVED NYSCEF: 09/02/2022



10 G Street NE, Suite 600 | Washington, DC 20002

May 18, 2022

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

Re: *Harkenrider v. Hochul*, Index No. E2022-0116CV – Letter on behalf of DCCC and New York Voters Lauren Foley, Belinda de Gaudemar, Lauren Furst, Courtney Gibbons, Seth Pearce, Leah Rosen, Susan Schoenfeld, Nancy Van Tassel, Verity Van Tassel Richards, and Ronnie White, Jr.

Dear Judge McAllister:

On behalf of DCCC, the national political party committee dedicated to electing Democrats to the U.S. House of Representatives, and a group of diverse voters from different parts of New York, including Brooklyn, Manhattan, Long Island, Rochester, Syracuse, the Hudson River Valley, and the Utica area, we write to express serious concerns about the congressional map proposed by Special Master Jonathan Cervas (the “Proposed Map”).

First, the Proposed Map pairs four Black incumbents in two districts, suggesting that they should run against each other. This would result in fewer Black members of Congress from New York, undoing decades of hard-fought racial progress that began with the creation of a majority-Black congressional district in Brooklyn represented by Shirley Chisholm following the enactment of the Voting Rights Act of 1965 (“VRA”). Second, the Proposed Map fractures important communities of interest throughout New York in contravention of the New York Constitution. The Proposed Map dismantles historic minority communities in New York City, including Brooklyn, Woodside, and the Bronx. It also splits communities of interest on Long Island and in the Hudson River Valley. The Proposed Map is the result of a flawed process that did not provide the public, including minority voters who live in historically marginalized communities, with an opportunity to provide input.

We urge the Special Master to uncouple Black incumbents and reunite communities of interest around New York City, on Long Island, and in the Hudson River Valley. Additionally, we urge this court to ensure that the map drawn by the Special Master only be used for the 2022 congressional election. The Court should then require the elected representatives of the people—who are best equipped to consider the interests of local populations and to weigh the specific equities involved—to enact a congressional map that complies with both the United States and New York Constitutions to be used for the rest of the decade.

- I. **The Proposed Map pairs four Black incumbents, which is likely to result in fewer Black members of the New York congressional delegation.**

Harkenrider v Hochul, Civil Action No. E2022-0116CV

Letter objection to proposed congressional map on behalf of DCCC and New York Voters—2

New York’s congressional delegation is currently comprised of 27 members. Of those, seven are Black: Rep. Jamaal Bowman, Rep. Yvette Clarke, Rep. Antonio Delgado, Rep. Hakeem Jeffries, Rep. Mondaire Jones, Rep. Gregory Meeks, and Rep. Ritchie Torres, all of whom are Democrats. The Proposed Map pairs four of those members in two districts.¹ Rep. Yvette Clarke and Rep. Hakeem Jeffries are paired in NY-09, and Rep. Jamaal Bowman and Rep. Mondaire Jones are paired in NY-16. The Proposed Map appears to suggest that these Black Members should run against each other, which would result in a reduction in the number of Black members in New York’s congressional delegation.

The Black members of the New York congressional delegation all represent minority opportunity districts. These districts are not comprised of a majority of Black voters, but Black voters in these districts nonetheless have the opportunity to elect representatives of their choice. In many ways, these districts embody the spirit of the Voting Rights Act, which was enacted to “remedy 95 years of pervasive racial discrimination in voting” and “enable[] racial minorities to participate in the political life of the nation.” S. Rep. No. 109-925, at 2 (2006) (S. Rep. accompanying 2006 amendments to VRA). Black members of New York’s congressional delegation have built diverse coalitions of support; they represent communities of Black, Brown, and White voters. The Proposed Map threatens to undo this significant progress.

After Illinois, New York voters have elected more African-American representatives to Congress than any other state—a total of 14.² But this is the result of hard-fought progress. New York has a history of discrimination in voting that deprived Black voters of the opportunity to elect their candidates of choice. The New York State Senate recently recognized that history in a 2021 report: “Although its record has significantly improved in recent years, New York has a long history of discrimination against racial, ethnic, and language minority groups in voting. The result is a persistent gap between white and non-white New Yorkers in political participation **and elected representation.**” Rep. and Findings of the N.Y. State S. Elections Comm. (Nov. 15, 2021), at 35, https://nysenate.gov/sites/default/files/press-release/attachment/elex1115_vfinal.pdf (emphasis added). Indeed, New York voters did not elect a Black member of Congress until 1944, and not again until after the passage of the VRA, which led to the creation of a majority-Black congressional district in Brooklyn represented by Shirley Chisolm, who was the first African-American woman elected to Congress. Prior to the enactment of the VRA—which was aimed at overcoming nearly 100 years of barriers at the state and local levels that prevented Black Americans from exercising their right to vote after the passage of the 15th Amendment—Black voters were divided among several predominantly white congressional districts.³

¹ Antonio Delgado is not running for Congress. Out of the six Black candidates who are running for re-election in 2022, four—a majority—are paired.

² See <https://history.house.gov/Exhibitions-and-Publications/BAIC/Historical-Data/Black-American-Representatives-and-Senators-by-State-and-Territory/>.

³ Debra Michaels, *Shirley Chisolm (1924-2005)*, National Women’s History Museum (2015), <https://www.womenshistory.org/education-resources/biographies/shirley-chisolm>; Voting Rights Act, Gotham Gazette, <https://www.gothamgazette.com/index.php/about/1856-voting-rights-act>.

Harkenrider v Hochul, Civil Action No. E2022-0116CV

Letter objection to proposed congressional map on behalf of DCCC and New York Voters—3

Not only do these pairings threaten to reduce Black representation, they also disfavor incumbents. Under the New York Constitution, maps cannot be drawn for the purpose of favoring or disfavoring incumbents, particular candidates, or political parties. *See* N.Y. Const. art. III, § 4 (c)(5). But the Special Master’s map does just that, bunking six Democratic incumbent representatives and pairing no Republican incumbents who are running for re-election. Courts have found far less to be compelling evidence of illicit intent to favor or disfavor particular incumbents. As the North Carolina trial court recently found in determining the plan to be an illegal Republican gerrymander, that map’s single instance of “double bunking” of incumbents that disadvantaged Democrats was evidence of “intentional, pro-Republican partisan redistricting.” *Harper v. Hall*, Nos. 21 CVS 015426 and 21 CVS 500085 ¶¶ 549, 551 (Wake Cnty. Sup. Ct.), *cf. d. Harper v. Hall*, 868 S.E.2d 499 (N.C. Feb. 14, 2022).

Whether these pairings were intended or not, their effect is real and threatens to harm New York’s voters and the diversity of representation in New York. The U.S. Supreme Court has recognized that avoiding contests between incumbents and preserving the relationship between an elected official and their constituents is a legitimate redistricting goal. *See Karcher v. Daggett*, 462 U.S. 725, 740 (1983); *White v. Weiser*, 412 U.S. 783, 797 (1973). In *Diaz v. Silver*, the Eastern District of New York explained why courts adopting redistricting plans should respect “the ability of representatives to maintain relationships they had already developed with their constituents.” 978 F. Supp. 96, 123 (E.D.N.Y. 1997). As that court and many others have recognized, this provides continuity to residents and helps ensure that their elected officials are familiar with their concerns. *See, e.g., Arizonans for Fair Representation v. Symington*, 828 F. Supp. 684, 688-89 (D. Ariz. 1992) (“The court [plan] also should avoid unnecessary or invidious outdistricting of incumbents. Unless outdistricting is required by the Constitution or the Voting Rights Act, the maintenance of incumbents provides the electorate with some continuity. The voting population within a particular district is able to maintain its relationship with its particular representative and avoids accusations of political gerrymandering.”) (citation omitted), *cf. d. sub nom. Hisp. Chamber of Com. v. Arizonans for Fair Representation*, 507 U.S. 981 (1993).

These relationships are particularly critical in districts with a substantial number of minority voters, whose representatives are already acutely familiar with the needs of the voters in that district. The Special Master’s Proposed Map jeopardizes those relationships for millions of New York’s voters, including in particular for at least hundreds of thousands of New York’s Black voters.

II. The Proposed Map unnecessarily divides important communities of interest—particularly minority communities—across the state.

The Proposed Map needlessly fractures communities of interest across the state in direct contravention of the New York Constitution, which mandates the consideration of several different factors, including keeping together communities of interest. N.Y. Const. art. III, § 4(c)(5). Although the New York Constitution does not provide an explicit definition of what constitutes a “community of interest,” that term has a specialized meaning in the redistricting context. Other state constitutions, for instance, define a “community of interest” as a community of voters who

Harkenrider v Hochul, Civil Action No. E2022-0116CV

Letter objection to proposed congressional map on behalf of DCCC and New York Voters—4

are united by certain social, cultural, racial, economic, and historical issues and dynamics. *See, e.g.*, Mich. Const. art. IV, § 6(13)(c) (“Districts shall reflect the state’s diverse population and communities of interest. Communities of interest may include, but shall not be limited to, populations that share cultural or historical characteristics or economic interests.”); Cal. Const. art. XXI, § 2(d)(4) (“A community of interest is a contiguous population which shares common social and economic interests that should be included within a single district for purposes of its effective and fair representation. Examples of such shared interests are those common to an urban area, a rural area, an industrial area, or an agricultural area, and those common to areas in which the people share similar living standards, use the same transportation facilities, have similar work opportunities, or have access to the same media of communication relevant to the election process.”). Dividing communities of interest, in particular minority communities of interest, disregards and disturbs on-the-ground political, cultural, and social realities.

It is not surprising that that the Proposed Map dismantles communities that have long been united in one congressional district. The remedial map-drawing process has taken place in a vacuum, essentially closed off to the public. The Special Master has thus drawn a map based on what may look visually pleasing but that ignores the realities on the ground. Indeed, this Court explicitly prohibited anyone other than the Respondents from submitting a proposed remedial plan. *See* Second Am. Order (Apr. 29, 2022), NYSCEF Doc. No. 296. And once maps were submitted, there was no meaningful opportunity for the public to comment. The Court held only one hearing on a weekday in Bath, New York. It was nearly impossible for most voters, including minority voters, to attend that hearing because Bath is nearly five hours away from New York City and essentially inaccessible via public transportation. As a result, the voices of the richly diverse communities of New York have not been heard in the remedial map-drawing process. The consequence of that process is the deeply flawed Proposed Map. We urge the Special Master to unite the following communities in the final map.

a. New York City

First, the Brooklyn neighborhoods of Bedford-Stuyvesant, Prospect Heights, Fort Greene, East New York, and Canarsie should be kept together in one congressional district. These communities have historically been grouped together in one congressional district, a seat once held by Shirley Chisholm, who, as noted above, was the first African-American woman elected to Congress. As discussed below, the Proposed Map instead needlessly fractures these communities between several districts when they should be united in one.

- Even though the Bedford-Stuyvesant neighborhood has been kept together in the same congressional district for decades, the Proposed Map splits it between two districts—NY-8 and NY-9—fracturing a community that has been the center of Brooklyn’s Black community since the early 1800s.⁴ The Bedford-Stuyvesant

⁴ *See, e.g.*, Melanie Eversley, *Protecting black history from gentrification*, USA Today (Feb. 2, 2016), <https://www.usatoday.com/story/news/nation-now/2016/02/02/black-history-gentrification-new-york-brooklyn/78685354/>; Sam Roberts, *Striking Change in Bedford-Stuyvesant as the White Population Soars*, New

Harkenrider v Hochul, Civil Action No. E2022-0116CV

Letter objection to proposed congressional map on behalf of DCCC and New York Voters—5

communities have large Black populations with shared business districts, public safety concerns, transportation modalities, and education concerns, and their issues should be represented by one member of Congress.

- Prospect Heights is cracked between NY-9 and NY-10, which means that part of the predominantly working-class Black community in that area has been combined with the wealthy Manhattan residents in the Financial District and Tribeca.⁵ These communities have very few shared interests. Prospect Heights should be reunited with other Brooklyn neighborhoods with which its voters have shared interests.
- The neighborhood of Fort Greene alone is inexplicably split across *three* congressional districts—NY-7, NY-9, and NY-10.

The Proposed Map severely fractures these predominantly Black communities and should be revised to restore the congressional district lines that have housed these communities for so long.

Second, Woodside should remain whole. The predominantly South Asian community in Woodside is cracked between NY-6, NY-7, and NY-14, diluting that community’s voting strength and voice. NY-7, for example, reaches into increasingly gentrified Williamsburg and Greenpoint, which are neighborhoods whose voters share few concerns with the South Asian community in Woodside.⁶

Third, Black voters in Northeast Bronx should be kept together in NY-16. In yet another example of cracking minority communities with shared interests across multiple districts, the predominantly Black voters of Northeast Bronx, including residents of Williamsbridge, Baychester, Wakefield, Edenwald, and Co-Op City, are split among NY-14, NY-15, and NY-16. Those communities were previously all residents of NY-16. Not only is this area predominantly

York Times (Aug. 4, 2011), <https://www.nytimes.com/2011/08/05/nyregion/in-bedford-stuyvesant-a-black-stronghold-a-growing-pool-of-whites.html> (noting that Bedford-Stuyvesant “traces its African-American roots to the early 19th century and has been the borough’s black cultural capital for decades”).

⁵ Compare NYC Health Community Health Profiles 2018: Crown Heights and Prospect Heights (noting that 64% of the population of Crown Heights and Prospect Heights is Black, and that its poverty rate is higher than New York City as a whole), with Shelly Hagan and Wei Lu, *NYC’s Trendy Neighborhood Leaps Into Top Five Richest Zip Codes*, Bloomberg (Mar. 4, 2019), <https://www.bloomberg.com/news/articles/2019-03-04/nyc-s-trendy-neighborhood-leaps-into-top-five-richest-zip-codes>, and Katie Warren, *NYC’s richest and most expensive ZIP code has an average income of \$879,000 and a median sale price of \$3.9 million*, Business Insider (Nov. 18, 2019, 5:18 PM), <https://www.businessinsider.com/tribeca-new-york-city-richest-neighborhood-photos-tour-2019-6> (noting that Tribeca contains one of the top five richest zip codes in America).

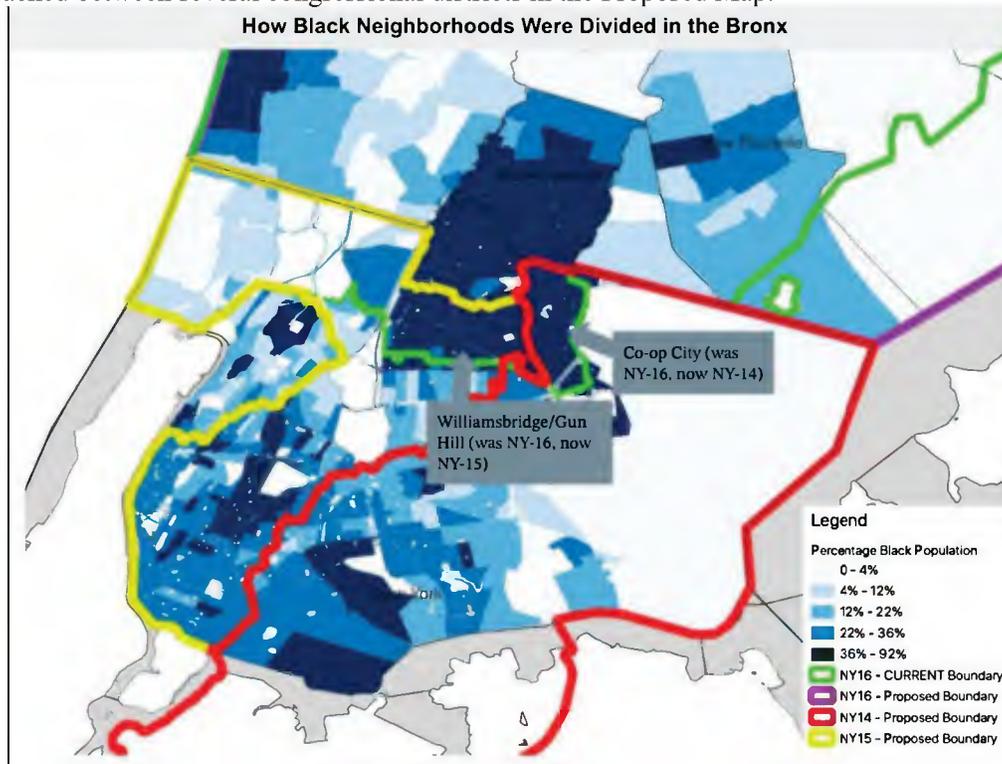
⁶ See, e.g., NYC Health Community Health Profiles 2018: Greenpoint and Williamsburg at 7, available at: <https://www1.nyc.gov/assets/doh/downloads/pdf/data/2018chp-bk1.pdf>; John V. Santore, *Study: Williamsburg and Greenpoint Are NYC’s Gentrification Capitals*, Patch (May 11, 2016), <https://patch.com/new-york/williamsburg/study-williamsburg-greenpoint-are-nycs-gentrification-capitals>.

Harkenrider v Hochul, Civil Action No. E2022-0116CV

Letter objection to proposed congressional map on behalf of DCCC and New York Voters—6

Black in a part of the City that is predominantly Hispanic,⁷ but it includes Co-Op city, which is historically the largest housing cooperative in the world and an obvious and important community that should be represented by one Member of Congress. Under the Proposed Map, however, Co-Op City is split between two districts, including one—NY-15—that snakes around to group some of these residents of affordable housing with predominantly affluent, white Woodlawn and Riverdale. In the Proposed Map, the residents of public housing in Edenwald are separated from the other parts of the Bronx Black community. They should continue to be connected with the predominantly Black city of Mount Vernon, but also joined with other parts of the Bronx such as Co-Op City, Baychester and Williamsbridge. This area makes one connected community of interest as they share an interest in common issues such as affordable housing.

The figure below shows how the predominantly Black community in the Northeast Bronx is cracked between several congressional districts in the Proposed Map:



The Northeast Bronx community should remain united in NY-16. These residents send their children to the same public schools and are grappling with shared political interests and issues

⁷ See Co-Op City: History (last visited May 17, 2022), <https://coopcitynyc.com/aboutus>; NYC Housing Preservation and Development, City Secures Affordability and Prevents Displacement for Over 16,000 NYC Households (Apr. 3, 2020), <https://www1.nyc.gov/site/hpd/news/021-20/city-secures-affordability-prevents-displacement-over-16-000-nyc-households#/0>.

Harkenrider v Hochul, Civil Action No. E2022-0116CV

Letter objection to proposed congressional map on behalf of DCCC and New York Voters—7

including combatting the threat of gun violence in their neighborhoods.

b. Long Island

The New York Constitution requires the consideration of “pre-existing political subdivisions including counties, cities, and towns, and of communities of interest,” making each criteria equally important. N.Y. Const. art. III, § 4(c)(5). The Proposed Map, however, seems to prioritize minimizing county splits in Long Island over all other criteria, including preserving existing communities of interest. The Special Master must correct this problem when finalizing the map by uniting communities of interest across Long Island.

Long Island should be divided using district lines that run from East to West instead of North to South. This would result in three districts across the majority of Long Island: a North Shore district, a South Shore district, and a Central Long Island district. East-to-West lines would allow voters with similar socio-economic interests to vote together, and shared economic interests is a traditional ground for recognizing a community of interest. *See Diaz*, 978 F. Supp. at 123 (“Courts will find the existence of a community of interest where residents share substantial cultural, economic, political and social ties.”).

In addition, the East-to-West division reflects common commuter patterns, which courts often consider as part of a community-of-interest analysis. *See Kelley v. Bennett*, 96 F. Supp. 2d 1301, 1321 (M.D. Ala. 2000), *vacated on other grounds by Sinkfield v. Kelley*, 531 U.S. 28 (2000); *Johnson v. Miller*, 864 F. Supp. 1354, 1389 (S.D. Ga. 1994); *see also Caster v. Merrill*, No. 2:21-cv-1536-AMM, 2022 WL 264819, at *20 (N.D. Ala. Jan. 24, 2022) (quoting *Johnson*, 864 F. Supp. at 1389-90). The commuter patterns on Long Island are divided between the North Shore, South Shore, and Central areas and would correspond to districts being drawn in those regions. The Babylon/Montauk branch of the Long Island Railroad runs all the way across the South Shore and is a thoroughfare for people commuting into New York City. The North Shore has the Port Washington, Oyster Bay, and Port Jefferson railroad branches, in addition to ferries that cross the Long Island Sound to bring passengers to Connecticut. Those in Central Long Island have access to the Long Island Expressway and the Ronkonkoma Branch of the Long Island Railroad.⁸

Creating districts using East-to-West lines also provides a greater opportunity for minority voters who have been historically marginalized on Long Island to have the opportunity to elect candidates of their choice. Practices like redlining, restrictive zoning, blockbusting, discriminatory tax assessments, and racial steering have caused Long Island to be one of most segregated regions in the country.⁹ Just ten years ago, a 2012 report concluded that one in three Black Long Islanders have experienced housing discrimination first-hand or within their immediate family. And *Newsday*, a newspaper that serves Long Island, conducted a three-year investigation culminating

⁸ *See* Long Island Railroad Map, Metropolitan Transportation Authority, <http://web.mta.info/lirr/Timetable/SystemMap.pdf>.

⁹ The planned community of Levittown famously excluded people of color with a restrictive covenant and remains overwhelmingly white. Olivia Winslow, *Dividing Lines, Visible and Invisible*, *Newsday* (Nov. 17, 2019), <https://projects.newsday.com/long-island/segregation-real-estate-history/#nd-promo>.

Harkenrider v Hochul, Civil Action No. E2022-0116CV

Letter objection to proposed congressional map on behalf of DCCC and New York Voters—8

in 2019 that revealed that real estate agents continue to show Black residents houses in predominantly Black areas, and white people houses in predominantly white areas. This practice has had the effect of pushing people of color into a small number of communities towards Central Long Island. Census estimates from 2017, for example, showed that half of Long Island's black residents lived in just 11 communities, and 90% lived in 62 communities.¹⁰

These communities with large minority populations are currently split among Districts 1, 2, 3, and 4. Cities with some of the highest minority populations are located relatively close to each other in West-Central Long Island—like Elmont, Roosevelt, Hempstead, Uniondale, Westbury, North Amityville, and Wyandanch—yet are split between districts. A map that unites these cities, and runs East-to-West in the center of the Island, would afford minority voters a greater chance to elect candidates who represent their interests. It seems particularly unjust that, after using discriminatory tactics to force people of color into these locations, we would also divide their political power in a part of the state that has highly racially polarized voting. While these voters would not currently make up a majority of any district, they would be well-positioned to build coalitions and, by the end of the decade, there could be a compact Central Long Island majority-minority district.

Finally, environmental factors favor building East-to-West districts. As Dr. Stephen Ansolabehere presented to this Court in his expert report, the North Shore of Long Island is a unique ecological zone. It is part of the Long Island Sound Watershed and is managed by the New York Department of Environmental Conservation and under the oversight of the Long Island Sound Study. Expert Rep. of Dr. Stephen Ansolabehere ¶ 74 (Feb. 24, 2022), NYSCEF Doc. No. 92. Keeping the communities of the North Shore together in one district, rather than splitting them between several districts, would allow voters there to prioritize their environmental needs. Because the next decade is poised to have an increasing policy focus on climate change and clean energy, this court should put New York's residents in the best position possible to have a representative who can focus on their specific circumstances and resources. *See Diaz*, 978 F. Supp. at 123 (listing shared political interests as a factor that defines a community).

c. Hudson River Valley

The Congressional district lines along the Hudson River Valley should be drawn North-to-South to account for the communities of interest that live in this region. Under the Proposed Map, this region is divided East-to-West. New York's Hudson River towns in Greenburgh and Rockland should be united—across the river—in one district that includes White Plains, the urban and transit center of that part of the region. Instead, the Proposed Map divides the Hudson River towns between NY-16 and NY-17, a division that splits a community of interest and creates an arguably

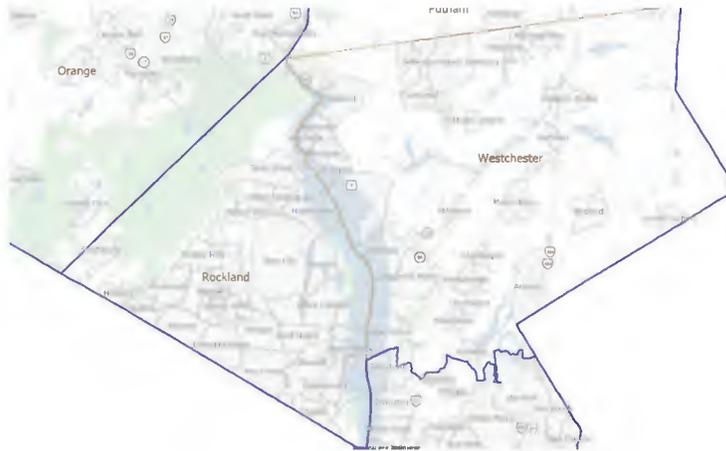
¹⁰ *See* Erase Racism, Housing and Neighborhood Preferences of African Americans on Long Island at 2 (Feb. 2012), http://www.eraseracismny.org/storage/documents/FINAL_ERASE_Racism_2012_Housing_Survey_Report_web_version.pdf; Winslow, *supra* note 8.

Harkenrider v Hochul, Civil Action No. E2022-0116CV

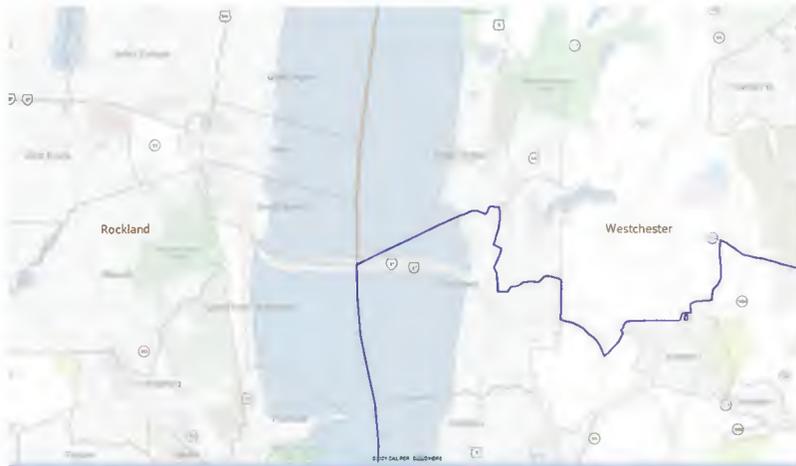
Letter objection to proposed congressional map on behalf of DCCC and New York Voters—9

not contiguous 17th district that cannot be traversed by bridge without entering another district, as shown in the maps below.¹¹

District 17



Governor Mario M. Cuomo (Tappan Zee) Bridge



¹¹ No bridge directly connects both sides of the NY-17. The Governor Mario M. Cuomo (Tappan Zee) Bridge and the Bear Mountain Bridge are the only two options for crossing the Hudson in the area. However, once across a bridge, a person would have to cross through NY-16 or NY-18, respectively, to get back to NY-17, meaning the district cannot be traversed in whole without entering another district. See *Matter of Schneider v. Rockefeller*, 31 N.Y. 2d 420, 430 (1972) (finding contiguity when it is not “necessary to travel through an adjoining district to keep within the boundaries of the challenged district”); *Ince v. Rockefeller*, 290 F. Supp. 878, 883 (S.D.N.Y. 1968) (finding contiguity when “no part of any district separates the two sections of the ... District”). Further, the entrance and exit ramps off the Bear Mountain Bridge appear to be in NY-18, rather than NY-17, requiring residents to enter NY-18 in order to traverse back to NY-17.

Harkenrider v Hochul, Civil Action No. E2022-0116CV

Letter objection to proposed congressional map on behalf of DCCC and New York Voters—10

Bear Mountain Bridge



Residents of the Hudson River towns share a common identity. The villages (Hastings-on-Hudson, Dobbs Ferry, Irvington, Tarrytown, Elmsford, and Ardsley) and unincorporated areas that comprise the town of Greenburgh share public services like a common police department and sanitation department. These Westchester River towns are connected by infrastructure and commuter lines including the Metro North’s Hudson Railroad line, the Old Croton Aqueduct, and U.S. Route 9. The towns spanning both sides of the Hudson River share significant environmental concerns—several were affected by Hurricane Sandy and other recent weather events. These towns, situated on the Hudson River floodplain are likely to experience flooding in the future, and having singular congressional representation is important for that interest. The court must not split this community of interest.

Additionally, White Plains should be part of any district that includes the Hudson River towns. White Plains is an important hub for the minority communities in the Hudson River valley; Hispanic residents along the towns of the Hudson River congregate in White Plains. Additionally, the National Association for the Advancement of Colored People (“NAACP”) chapter in this region is headquartered in White Plains and is aptly called the “NAACP White Plains/Greenburgh” Branch because it serves the Black residents of both White Plains and Greenburgh.

Conclusion

For the reasons above, we urge the Court to recognize the limitations of the Proposed Map and to promptly direct the Special Master to make immediate changes to account for these problems. Additionally, the Court should allow the duly elected representatives of the people an

FILED: ALBANY COUNTY CLERK 09/02/2022 12:58 PM

NYSCEF DOC. NO. 146

INDEX NO. 904972-22

RECEIVED NYSCEF: 09/02/2022

Harkenrider v Hochul, Civil Action No. E2022-0116CV

Letter objection to proposed congressional map on behalf of DCCC and New York Voters—11

opportunity to draw this state's electoral map consistent with both the United States and New York Constitutions to be used in this state the rest of the decade.

Dated: May 18, 2022

Respectfully Submitted,

**EMERY CELLI BRINCKERHOFF
ABADY WARD & MAAZEL LLP**By: */s/ Andrew G. Celli, Jr.*

Andrew G. Celli, Jr.

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ELIAS LAW GROUP LLPBy: */s/ Aria C. Branch*

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SIGNED ORDER TO SHOW CAUSE REGARDING THE HARKENRIDER INTERVENORS' MOTION TO DISMISS, DATED SEPTEMBER 2, 2022 [339 - 340]

FILED: ALBANY COUNTY CLERK 09/06/2022 10:50 AM

NYSCEF DOC. NO. 147

INDEX NO. 904972-22

RECEIVED NYSCEF: 09/02/2022

At IAS Part XXX of the Supreme Court of the State of New York, held in and for the County of Albany, at the Courthouse located at 20 Eagle Street, Albany, New York, on the 2nd day of September, 2022.

PRESENT: HON. PETER A LYNCH, J.S.C.

SUPREME COURT OF THE STATE OF NEW YORK COUNTY OF ALBANY

-----X

Anthony S. Hoffmann; Marco Carrión; Courtney Gibbons; Lauren Foley; Mary Kain; Kevin Meggett; Clinton Miller; Seth Pearce; Verity Van Tassel Richard; and Nancy Van Tassel,

Petitioners,

Index No. 904972-22
RJI No.: 01-22-ST2408

-against-

The New York State Independent Redistricting Commission; Independent Redistricting Commission Chairperson David Imamura; Independent Redistricting Commissioner Ross Brady; Independent Redistricting Commissioner John Conway III; Independent Redistricting Commissioner Ivelisse Cuevas-Molina; Independent Redistricting Commissioner Elaine Frazier; Independent Redistricting Commissioner Lisa Harris; Independent Redistricting Commissioner Charles Nesbitt; and Independent Redistricting Commissioner Willis H. Stephens,

Respondents,

-and-

Tim Harkenrider; Guy C. Brought; Lawrence Canning; Patricia Clarino; George Dooher, Jr.; Stephen Evans; Linda Fanton; Jerry Fishman; Jay Frantz; Lawrence Garvey; Alan Nephew; Susan Rowley; Josephine Thomas; and Marianne Violante,

Intervenors-Respondents.

-----X

**ORDER TO SHOW CAUSE
REGARDING THE
HARKENRIDER
INTERVENORS' MOTION
TO DISMISS**

UPON reading of the Harkenrider Intervenors' Memorandum Of Law In Support Of Their Motion To Dismiss, and all of the pleadings and proceedings heretofore had herein, Petitioners and Respondents are hereby:

ORDERED to appear om person and show cause before this Court, at Room TBD, at the Courthouse located at 20 Eagle Street, Albany, New York, on the 12th day of September, 2022, at 1:30 p.m., or as soon thereafter as counsel can be heard, why an Order should not be issued granting Harkenrider Intervenors' Motion To Dismiss; and it is

FURTHER ORDERED that the Harkenrider Intervenors shall serve a copy of this Order and all papers in support thereof upon counsel for Petitioners and Respondents via NYSCEF, on or before the 2nd day of September, 2022; and it is

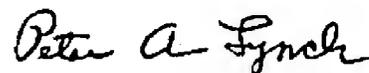
FURTHER ORDERED that Petitioners and Respondents shall serve any papers in opposition to the Harkenrider Intervenors' Motion To Dismiss by NYSCEF no later than the 8th day of September, 2022; and it is

FURTHER ORDERED that Harkenrider Intervenors shall serve any reply papers in further support of their Motion To Dismiss by NYSCEF no later than the 9th day of September, 2022.

DATED: Albany, New York

September 2, 2022

ENTER:



HON. PETER A. LYNCH, J.S.C.



09/06/2022

NOTICE TO COUNTY CLERK – CPLR §8019(C), TO CHANGE CAPTION,
DATED SEPTEMBER 7, 2022 WITH COPY OF DECISION AND ORDER,
DATED SEPTEMBER 1, 2022 GRANTING INTERVENTION [341 - 349]

FILED: ALBANY COUNTY CLERK 09/07/2022 11:51 AM
NYSCEF DOC. NO. 158

INDEX NO. 904972-22
RECEIVED NYSCEF: 09/08/2022

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ALBANY**

-----X
ANTHONY S. HOFFMAN, ET AL.,

Plaintiff(s)/Petitioner(s),

Index No. 904972-22

- against -

THE NYS INDEPENDENT
REDISTRICTING COMMISSION, ET AL.

Defendant(s)/Respondent(s).
-----X

NOTICE TO COUNTY CLERK – CPLR § 8019(c)

By order dated September 1, 2022, and entered on September 2, 2022, the Court directed the County Clerk to make an entry on the docket of this matter. As required by CPLR § 8019 (c), notice of the order is hereby given to the County Clerk with the request that the County Clerk make such entry.

Dated: 09/07/22

Bennet J. Moskowitz (Name)

Trpoutman Pepper, et al. (Firm)

875 Third Avenue (Address)

New York, NY 10022

(212) 704-6000 (Phone)

(212) 704-6288 (Fax)

BONNET.MOSKOWITZ@TROUTMAN.COM (E-Mail)

Attorney(s) for Intervenors

[THE ORDER MUST ACCOMPANY THIS NOTICE AS A SINGLE PDF]

FILED: ALBANY COUNTY CLERK 09/07/2022 11:51 AM

NYSCEF DOC NO. 15841

INDEX NO. 904972-22

RECEIVED NYSCEF 09090202022

SUPREME COURT OF THE STATE OF NEW YORK
 COUNTY OF ALBANY

-----X
 Anthony S. Hoffmann; Marco Carrión; Courtney Gibbons;
 Lauren Foley; Mary Kain; Kevin Meggett; Clinton Miller;
 Seth Pearce; Verity Van Tassel Richard; and Nancy Van
 Tassel,

Index No. 904972-22

Petitioners,

-against-

NOTICE OF ENTRY

The New York State Independent Redistricting
 Commission; Independent Redistricting Commission
 Chairperson David Imamura; Independent Redistricting
 Commissioner Ross Brady; Independent Redistricting
 Commissioner John Conway III; Independent Redistricting
 Commissioner Ivelisse Cuevas-Molina; Independent
 Redistricting Commissioner Elaine Frazier; Independent
 Redistricting Commissioner Lisa Harris; Independent
 Redistricting Commissioner Charles Nesbitt; and
 Independent Redistricting Commissioner Willis H.
 Stephens,

Respondents,

-and-

Tim Harkenrider; Guy C. Brought; Lawrence Canning;
 Patricia Clarino; George Dooher, Jr.; Stephen Evans; Linda
 Fanton; Jerry Fishman; Jay Frantz; Lawrence Garvey; Alan
 Nephew; Susan Rowley; Josephine Thomas; and Marianne
 Violante,

Intervenors-Respondents.

-----X
 PLEASE TAKE NOTICE that a Decision And Order, NYSCEF No.140, a copy of which
 is attached as **Exhibit A**, was duly signed in this special proceeding by the Hon. Peter A. Lynch,
 J.S.C., on September 1, 2022, and duly entered in the Office of the Clerk of Albany County on
 September 2, 2022.

FILED: ALBANY COUNTY CLERK 09/07/2022 11:51 AM

NYSCEF DOC NO 15841

INDEX NO. 904972-22

RECEIVED BY NYSCEF 09/07/2022

Dated: New York, New York
September 2, 2022

TROUTMAN PEPPER HAMILTON
SANDERS LLP

By: 

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Misha Tseytlin, Reg. No. 4642609
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TO: All Counsel of Record via NYSCEF

FILED: .ALBANY .COUNTY .CLERK..09/07/2022_11:51_AM..

NYNCSCEFDCTOC NQO .15841

INDEX NO. 904972-22

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Exhibit A

Susan Rowley, Josephine Thomas, and Marianne Violante's, moved to intervene in this proceeding.¹ Intervenors were the successful Petitioners in Matter of Harkenrider v. Hochul, 204 A.D. 3d 1366 [4th Dept. 2022], modified 2022 N.Y. LEXIS 874 [2022].

In Harkenrider v. Hochul, the Court held that that the 2022 congressional redistricting map adopted by the Legislature was unconstitutional and remitted the matter to Supreme Court (McAllister, J.), which, in turn, by Decision and Order dated May 20, 2022, corrected by Decision and Order dated June 2, 2022, certified the 2022 Congressional Maps prepared by the Special Master "as being the official approved 2022 Congressional map...."² Intervenors claim that limiting the 2022 Congressional Map to the 2022 election, would undermine the integrity of the relief granted in Harkenrider v. Hochul.

MOTION TO INTERVENE

Movants seek to intervene as a matter of right, or by permission of the Court. CPLR §1012 Intervention as of right..., provides, inter alia:

(a) "Intervention as of right. Upon timely motion, any person shall be permitted to intervene in any action:

2. when the representation of the person's interest by the parties is or may be inadequate and the person is or may be bound by the judgment"

Since Respondents, Independent Redistricting Commissioners: Ross Brady; John Conway III; Lisa Harris; Charles Nesbitt and Willis H. Stephens, filed a motion to dismiss the Petition on essentially the same grounds as the Intervenors, the Court cannot readily determine whether Intervenor's interests would not be adequately protected.³ Since permissive intervention is

¹ NYSCEF Doc. No. 74.

² See Harkenrifer et al v. Hochul et al, Supreme Court, Steuben County Index No. E2022-0116CV – NYSCEF Doc. No. 670 @ p. 5 and NYSCEF doc. No. 696.

³ NYSCEF Doc. Nos. 106-111.

appropriate, however, it is not necessary to determine whether intervention by right has been established.

CPLR §1013 Intervention by permission, provides:

“Upon timely motion, any person may be permitted to intervene in any action when a statute of the state confers a right to intervene in the discretion of the court, or when the person’s claim or defense and the main action have a common question of law or fact. In exercising its discretion, the court shall consider whether the intervention will unduly delay the determination of the action or prejudice the substantial rights of any party.” (Emphasis added)

Here, Intervenors claim that the 2022 Congressional Map adopted by the Court in Harkenrider v. Hochul remains in full force and effect until a new redistricting plan is adopted following the 2030 census. In stark contrast, Petitioners contend that the 2022 Congressional Map should be limited to the 2022 election, and the IRC should be compelled to submit a second redistricting plan based on the 2020 census to the Legislature for consideration. In such event, the Legislature would have to vote to approve or disapprove. If disapproved, the Legislature would then be able to propose and adopt its own redistricting plan for successive elections after 2022. In fine, the common question of law is whether the IRC has authority to propose a second redistricting plan to the Legislature in the first instance.

Since Intervenors are ready to file a motion to dismiss the Petition herein, intervention will not unduly delay the determination of the action.⁴ Intervention will not prejudice the rights of any party since the disputed issue has already been squarely raised by the pending motion to dismiss.⁵

⁴ NYSCEF Doc. Nos. 69 and 70.

⁵ NYSCEF Doc. Nos. 106-111.

FILED: ALBANY COUNTY CLERK 09/07/2022 11:51 AM

NYCEFDOC NQNo.15840

INDEX NO. 904972-22

RECEIVED NY SCJP 0909020202

CONCLUSION

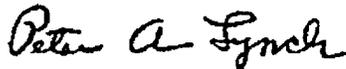
For the reasons more fully stated above, Intervenor's motion for permission to intervene is granted, and it is further,

ORDERED, that Intervenor is granted leave to file the documents attached to the Affirmation of Bennet Moskowitz In Support Of Motion For Leave To Intervene, and it is further,

ORDERED, that the caption shall be amended to add Tim Harkenrider, Guy C. Brought, Lawrence Canning, Patricia Clarino, George Doohar, Jr., Stephen Evans, Linda Fanton, Jerry Fishman, Jay Frantz, Lawrence Garvey, Alan Nephew, Susan Rowley, Josephine Thomas, and Marianne Violante's, as Intervenor-Respondents.

This memorandum constitutes both the decision and order of the Court.⁶

Dated: Albany, New York
September 1, 2022



PETER A. LYNCH, J.S.C

PAPERS CONSIDERED:

All e-filed pleadings, with exhibits.



09/02/2022

To: TROUTMAN PEPPER HAMILTON SANDERS LLP
By: Bennet J. Moskowitz
Attorneys for Intervenor-Respondents
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New York, New York 10022

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MESSINA PERILLO HILL, LLP
Attorneys for Respondents
Ross Brady, John Conway III, Lisa Harris,
Charles Nesbitt and Willis H. Stephens
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Sayville, New York 11782

⁶ Compliance with CPLR R 2220 is required.

FILED: ALBANY COUNTY CLERK 09/07/2022 11:51 AM

NYCSCEFDOC.NVO.1580

INDEX NO. 904972-22

RECEIVED NYCSCEF 09080202022

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Seattle, Washington 98101

AFFIRMATION OF AARON M. MUKERJEE, ESQ., IN SUPPORT OF PETITIONERS' OPPOSITION TO INTERVENOR-RESPONDENTS' MOTION TO DISMISS, DATED SEPTEMBER 8, 2022 [350 - 351]

FILED: ALBANY COUNTY CLERK 09/08/2022 04:50 PM
NYSCEF DOC. NO. 162

INDEX NO. 904972-22
RECEIVED NYSCEF: 09/08/2022

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ALBANY

-----X

Anthony S. Hoffmann; Courtney Gibbons; Lauren Foley;
Seth Pearce; and Nancy Van Tassel,

Index No. 904972-22

Petitioners,

**ATTORNEY AFFIRMATION
OF AARON M. MUKERJEE
IN SUPPORT OF
PETITIONERS'
OPPOSITION TO
INTERVENOR-
RESPONDENTS' MOTION
TO DISMISS**

For an Order and Judgment Pursuant to Article 78 of the
New York Civil Practice Law and Rules,

-against-

The New York State Independent Redistricting
Commission; Independent Redistricting Commission
Chairperson David Imamura; Independent Redistricting
Commissioner Ross Brady; Independent Redistricting
Commissioner John Conway III; Independent Redistricting
Commissioner Ivelisse Cuevas-Molina; Independent
Redistricting Commissioner Elaine Frazier; Independent
Redistricting Commissioner Lisa Harris; Independent
Redistricting Commissioner Charles Nesbitt; and
Independent Redistricting Commissioner Willis H.
Stephens,

Respondents.

-and-

Tim Harkenrider; Guy C. Brought; Lawrence Canning;
Patricia Clarino; George Dooher, Jr.; Stephen Evans; Linda
Fantom; Jerry Fishman; Jay Frantz; Lawrence Garvey; Alan
Nephew; Susan Rowley; Josephine Thomas; and Marianne
Violante,

Intervenor-Respondents.

-----X

AARON M. MUKERJEE, an attorney admitted to practice in the courts of this State, and
not a party to this action, affirms the following to be true under the penalties of perjury pursuant
to CPLR § 2106:

1. I am an attorney at law duly admitted to practice before this Court and associate with the law firm of Elias Law Group LLP.
2. I submit this Affirmation solely to present to the Court information and materials supporting Petitioners' Opposition to Intervenor-Respondents' Motion to Dismiss submitted herewith, which materials are attached hereto as described below.
3. A true and correct copy of a letter from Speaker Carl E. Heastie, dated September 6, 2022, is annexed hereto as "Ex. 1."

Dated: September 8, 2022
Washington, DC

By: /s/ Aaron M. Mukerjee
Aaron M. Mukerjee

EXHIBIT 1 TO MUKERJEE AFFIRMATION -
LETTER FROM SPEAKER CARL E. HEASTIE,
DATED SEPTEMBER 6, 2022

FILED: ALBANY COUNTY CLERK 09/08/2022 04:50 P

NYSCEF DOC. NO. 163

RECEIVED NYSCEF: 09/08/2022



CARL E. HEASTIE
Speaker

THE ASSEMBLY
STATE OF NEW YORK
ALBANY

Room 902
Legislative Office Building
Albany, New York 12224
518-455-3791
FAX: 518-455-1408

1446 East Con Hill Road
Bronx, New York 10454
718-654-6500
FAX: 718-654-6826

250 Broadway, Suite 1001
New York, New York 10007
212-512-1400
FAX: 212-512-1418

September 6, 2022

Honorable Andrea Stewart-
Cousins
Temporary President and
Majority Leader
New York State Senate
Capitol, Room 330
Albany, New York 12247

Honorable Robert G. Ort
Republican Conference Leader
New York State Senate
LOB, Room 907
Albany, New York 12247

Honorable William Barclay
Minority Leader
New York State Assembly
LOB, Room 933
Albany, New York 12248

Dear Colleagues,

I hereby appoint Yovan Samuel Collado, of the Bronx, New York, as members of the Independent Redistricting Commission effective immediately replacing Eugene Benger, who resigned.

Sincerely yours,

CARL E. HEASTIE
SPEAKER

CEH:bh

cc: Yovan Samuel Callado
Karen Blatt
Douglas Breakell

**RESPONSE TO ORDER TO SHOW CAUSE, BY RESPONDENTS
DAVID IMAMURA, IVELISSE CUEVAS-MOLINA, AND ELAINE FRAZIER,
DATED SEPTEMBER 8, 2022 [353 - 357]**

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ALBANY

- - - - - x

Anthony S. Hoffmann et al.

Petitioners,

-against-

Index No. 904972-22

Hon. Peter A. Lynch

The New York State Independent Redistricting
Commission et al.,

**RESPONSE TO ORDER TO
SHOW CAUSE**

Respondents

-and-

Tim Harkenrider et al.

*Intervenors-
Respondents.*

Respondents David Imamura, Ivelisse Cuevas-Molina, and Elaine Frazier (“Undersigned Respondents”), by their attorneys Jenner & Block LLP, respectfully respond to the Court’s Order to Show Cause Regarding the Harkenrider Intervenors’ Motion to Dismiss ([Dkt. No. 147](#)) as follows. Undersigned Respondents defer to Petitioners in responding to the legal arguments made in the Harkenrider Intervenors’ Memorandum of Law in Support of their Motion to Dismiss ([Dkt. No. 144](#)) (“Harkenrider Mot.”), but are herein responding to several erroneous assertions of fact in that filing.

First, the Harkenrider Intervenors assert that the New York State Independent Redistricting Commission (“IRC”) is “now-constitutionally-disabled.” Harkenrider Mot. at 2. In fact, the Constitution does not set forth any process for disabling or disbanding the IRC and the IRC continues to be fully constituted with all ten commissioners, including two new commissioners

appointed to replace commissioners who resigned after the IRC submitted its maps to the Legislature in January 2022. *See* Affidavit of David Imamura in Support of Response (“Imamura Aff.”) ¶¶ 2–4.

Second, the Harkenrider Intervenors state that “the IRC apparently no longer has all ten constitutionally mandated commissioners.” Harkenrider Mot. at 2. In fact, the IRC currently has all ten commissioners. *See* Imamura Aff. ¶ 4.

Third, the Harkenrider Intervenors state that “Commissioner John Flateau has apparently resigned from the IRC, meaning that the IRC currently apparently only has nine commissioners.” Harkenrider Mot. at 19. In fact, the IRC is fully constituted with all ten commissioners, including Mr. Flateau. *See* Imamura Aff. ¶¶ 3–4.

Fourth, the Harkenrider Intervenors state that the Commission is “lacking key staff” and that “[s]hould this Court order the IRC to reconvene . . . additional staff would likely need to be hired.” Harkenrider Mot. at 19. In fact, there are no current staffing vacancies that would preclude the Commission from expeditiously undertaking the task of submitting a second round of proposed congressional districting plans for consideration by the Legislature. *See* Imamura Aff. ¶ 5.

Fifth, the Harkenrider Intervenors assert that the “IRC declared its decision to violate its constitutional duties on January 24, 2022.” Harkenrider Mot. at 18. In fact, on January 24, 2022, Respondents Imamura, Frazier, and Cuevas-Molina, along with two of their fellow Commissioners, announced: “We have repeatedly attempted to schedule a meeting by [January 25, 2022], and our Republican colleagues have refused. This is the latest in a repeated pattern of Republicans obstructing the Commission doing its job.” It also stated: “We have negotiated with our Republican colleagues in good faith for two years to achieve a single consensus plan. At every step, they have refused to agree to a compromise.” *See* Imamura Aff. ¶ 6.

WHEREAS, Undersigned Respondents respectfully submit this response to certain factual representations in the Harkenrider Intervenors' Motion to Dismiss for the Court's consideration.

DATED: September 8, 2022
New York, New York

Respectfully Submitted,

By: /s/ Jeremy H. Ershow

Jeremy H. Ershow
Allison N. Douglis
JENNER & BLOCK LLP
1155 Avenue of the Americas
New York, NY 10036
Telephone: (212) 891-1600
Facsimile: (212) 891-1699
jershow@jenner.com
adouglis@jenner.com

Jessica Ring Amunson (*pro hac vice*)
Sam Hirsch (*pro hac vice*)
JENNER & BLOCK LLP
1099 New York Avenue, NW
Suite 900
Washington, DC 20001
Telephone: (202) 639-6000
Facsimile: (202) 639-6066
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AFFIDAVIT OF DAVID IMAMURA, SWORN TO ON SEPTEMBER 8, 2022 [358 - 361]

FILED: ALBANY COUNTY CLERK 09/08/2022 05:11 PM
NYSCEF DOC. NO. 165

INDEX NO. 904972-22
RECEIVED NYSCEF: 09/08/2022

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ALBANY

----- X
Anthony S. Hoffmann et al.

Petitioners,

-against-

Index No. 904972-22

Hon. Peter A. Lynch

The New York State Independent Redistricting
Commission et al.,

**AFFIDAVIT OF DAVID
IMAMURA**

Respondents

-and-

Tim Harkenrider et al.

*Intervenors-
Respondents.*

COUNTY OF WESTCHESTER)

STATE OF NEW YORK) SS:

DAVID IMAMURA, of full age, being duly sworn, hereby deposes and says as follows:

1. I was appointed to the New York State Independent Redistricting Commission (“IRC”) by Senate Majority Leader and Temporary President Andrea Stewart-Cousins in January 2020, and was unanimously elected Chair of the Commission by all commissioners in May 2021. I continue to serve as Chair of the IRC.

2. The Independent Redistricting Commission (“IRC”) continues to be fully constituted with all ten commissioners, including two new commissioners appointed to replace commissioners who resigned after the IRC submitted its maps to the Legislature in January 2022. Lisa Harris was appointed to replace Vice-Chair Jack Martins after Vice-Chair Martins resigned

from the Commission and announced his candidacy for New York State Senate District 7. Moreover, on September 6, 2022, Speaker Carl Heastie appointed Yovan Samuel Collado to serve on the Commission to replace Eugene Bengier, who resigned on September 2, 2022. A copy of the appointment letter signed by Speaker Heastie, effective as of its signing, is attached as Exhibit A.

3. Commissioner John Flateau was reappointed to the IRC on August 1, 2022, after previously resigning from the Commission. A copy of the reappointment letter signed by Senate Majority Leader and Temporary President Andrea Stewart-Cousins is attached as Exhibit B.

4. Following Mr. Flateau's re-appointment and the appointment of Ms. Harris and Mr. Collado, as discussed above, all ten commissioners are in place.

5. There are no current staffing vacancies that would preclude the IRC from expeditiously undertaking the task of submitting a second round of proposed congressional districting plans for consideration by the Legislature if the IRC were ordered to do so by this Court.

6. It is not the case that the IRC declared a decision to violate its constitutional duties on January 24, 2022. On January 24, 2022, Respondents Frazier and Cuevas-Molina, Commissioner Flateau, then-Commissioner Bengier and I released a public statement stating: "We have repeatedly attempted to schedule a meeting by [January 25, 2022], and our Republican colleagues have refused. This is the latest in a repeated pattern of Republicans obstructing the Commission doing its job." It also stated: "We have negotiated with our Republican colleagues in good faith for two years to achieve a single consensus plan. At every step, they have refused to agree to a compromise." That statement was reproduced in various news sources, such as the one quoted in Paragraph 38 of the Amended Petition ([Dkt. No. 47](#)).

FILED: ALBANY COUNTY CLERK 09/08/2022 05:11 PM

NYSCEF DOC. NO. 165

INDEX NO. 904972-22

RECEIVED NYSCEF: 09/08/2022

7. Consistent with the above-referenced Respondents' Verified Answer ([Dkt. No. 105](#)), the above-referenced Respondents do not oppose the relief identified in the first paragraph of Petitioners' prayer for relief as set forth in the Amended Petition.

FILED: ALBANY COUNTY CLERK 09/08/2022 05:11 PM

NYSCEF DOC. NO. 165

INDEX NO. 904972-22

RECEIVED NYSCEF: 09/08/2022

DATED: September 8, 2022
White Plains, New York



David Imamura

Sworn to before me this
8 Day of September, 2022



Notary Public

TAMMY MARIE MAZZULLO
NOTARY PUBLIC, STATE OF NEW YORK
Registration No. 01MA6301698
Qualified in Westchester County
Commission Expires April 21, 2026

EXHIBIT A TO IMAMURA AFFIDAVIT -
LETTER FROM SPEAKER CARL E. HEASTIE,
DATED SEPTEMBER 6, 2022
(REPRODUCED HEREIN AT P. 352)

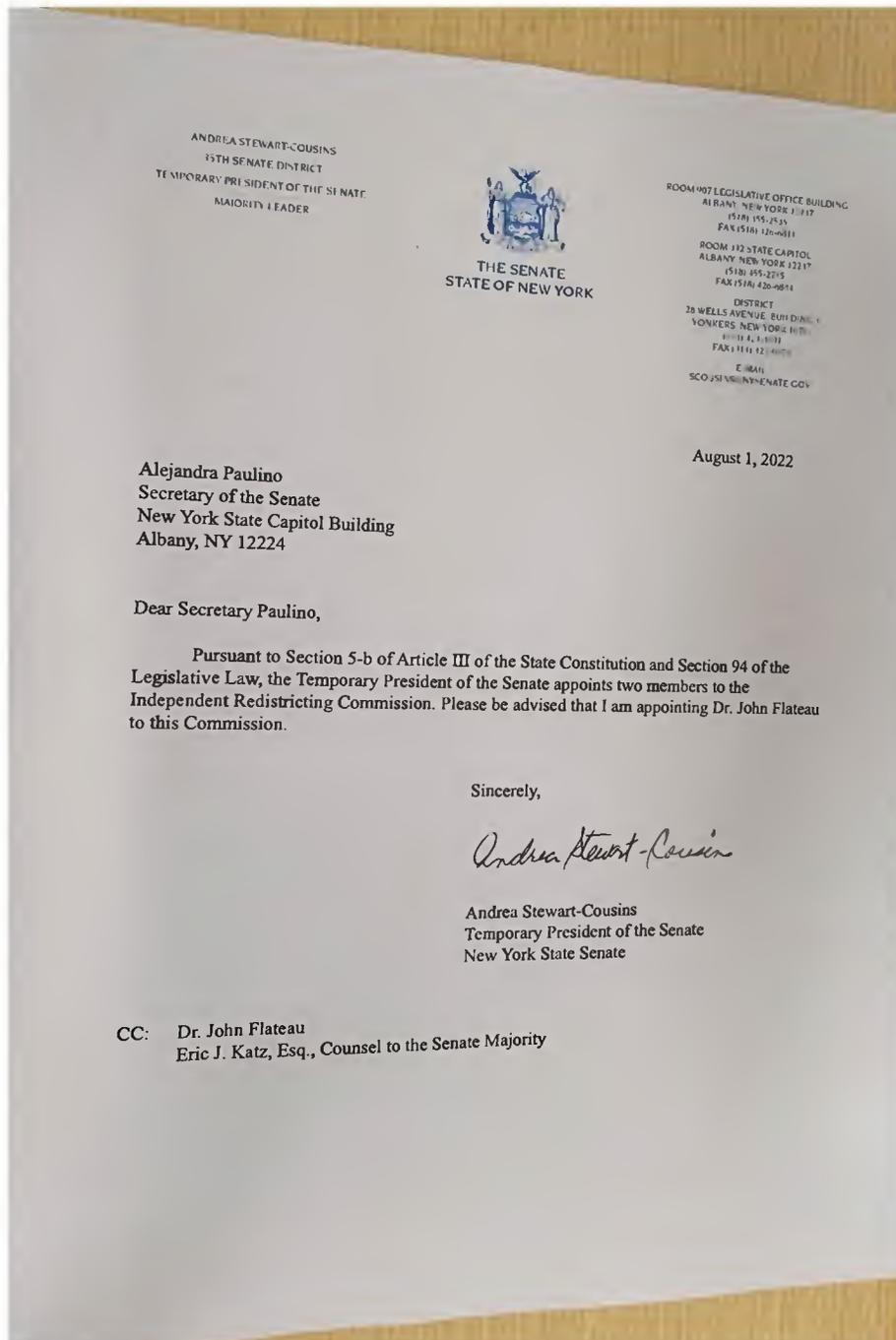
**EXHIBIT B TO IMAMURA AFFIDAVIT -
REAPPOINTMENT LETTER SIGNED BY SENATE MAJORITY LEADER AND
TEMPORARY PRESIDENT ANDREA STEWART-COUSINS, DATED AUGUST 1, 2022**

FILED: ALBANY COUNTY CLERK 09/08/2022 05:11 PM

NYSCEF DOC. NO. 167

INDEX NO. 904972-22

RECEIVED NYSCEF: 09/08/2022



**CERTIFIED TRANSCRIPT OF THE
SEPTEMBER 12, 2022 HEARING [364 - 397]**

FILED: ALBANY COUNTY CLERK 12/02/2022 09:36 AM

INDEX NO. 904972-22

NYSCEF DOC. NO. 185

RECEIVED NYSCEF: 12/02/2022

1

STATE OF NEW YORK
SUPREME COURT

COUNTY OF ALBANY

Anthony S. Hoffmann; Courtney Gibbons;
Lauren Foley; Seth Pearce; Nancy Van Tassel,

Petitioners,

-against-

Index No.:
904972-22

The New York State Independent Redistricting
Commission; Independent Redistricting
Commission Chairperson David Imamura;
Independent Redistricting Commissioner
Ivelisse Cuevas-Molina; Independent
Redistricting Commissioner Elaine Frazier;
Independent Redistricting Commissioner Ross
Brady; Independent Redistricting Commissioner
John Conway III; Independent Redistricting
Commissioner Lisa Harris; Independent
Redistricting Commissioner Charles Nesbitt;
Independent Redistricting Commissioner
Willis H. Stephens,

Respondents,

-and-

Tim Harkenrider; Guy C. Brought; Lawrence
Canning; Patricia Clarino; George Doohar, Jr.;
Stephen Evans; Linda Fanton; Jerry Fishman;
Jay Frantz; Lawrence Garvey; Alan Nephew;
Susan Rowley; Josephine Thomas; Marianne
Violante.

Intervenors-Respondents.

ORAL ARGUMENT

Albany County Courthouse
16 Eagle Street
Albany, NY 12207
September 12, 2022

BEFORE: HON. PETER A. LYNCH
 Supreme Court Justice

A P P E A R A N C E S

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Attorneys for the Harkenrider
Intervenors-Respondents

1 THE COURT: This is the matter of Hoffmann, et
2 al. against the New York State Independent Redistricting
3 Commission, et al., Respondents, and the Harkenrider
4 Intervenor-Respondents.

5 What I'm going to do first of all is, Counsel,
6 would you put your respective appearances on the record.

7 MS. BRANCH: Yes. Good afternoon. My name is
8 Aria Branch, I represent the Petitioners in this action.

9 THE COURT: Are you going to put yours on?

10 MS. GAMBHIR: Yes, Your Honor. Good afternoon.
11 My name is Harleen Gambhir, I also represent the
12 Petitioners.

13 MS. RING AMUNSON: Good afternoon, Your Honor.
14 Jessica Ring Amunson, I represent Respondents
15 Commissioners Imamura, Frazier and Cuevas-Molina.

16 MR. HILL: Good afternoon, Your Honor. My name
17 is Timothy Hill, I represent Respondent Commissioners
18 Brady, Conway, Harris, Nesbitt and Stephens.

19 THE COURT: Okay. Feel free to use the
20 microphone too. You don't have a microphone.

21 MR. TSEYTLIN: Your Honor, I will attempt to
22 speak loudly.

23 THE COURT: Okay. Put your appearance on the
24 record.

25 MR. TSEYTLIN: Misha Tseytlin for the

1 Harkenriders. The Harkenrider Intervenors-Respondents.

2 THE COURT: What's the fairness? Everybody else
3 has a microphone except for you, Misha. What is that?

4 MR. TSEYTLIN: Your Honor, I raised it with
5 staff and I made clear that I could speak as loud as
6 necessary.

7 THE COURT: Okay. Before we get going, just a
8 housekeeping thing. I have an email request from Vaughn
9 Golden. Is Vaughn Golden here?

10 MR. GOLDEN: Yes.

11 THE COURT: Okay, Vaughn, come on up. So the
12 request was sent to my law clerk. And you're requesting
13 the right to record this proceeding via audio and take
14 still photos; is that correct?

15 MR. GOLDEN: Yes, sir.

16 THE COURT: And you're a member of the media?

17 MR. GOLDEN: Yes, sir.

18 THE COURT: In what capacity?

19 MR. GOLDEN: I'm a reporter-producer for WSKG
20 Public Media.

21 THE COURT: Okay. And could you tell us why you
22 think this is a matter of public importance that would
23 justify the audio recording as well as the photographs
24 that you seek to take?

25 MR. GOLDEN: Yes. Given the requested remedy

1 brought by petitioners would greatly impact several
2 million people in the State of New York, I think it is of
3 the public's best interest to have a reporter in these
4 proceedings.

5 I also previously was allowed to record the
6 Harkenrider case in Steuben County and was able to produce
7 audio and still photographs of that case as well.

8 THE COURT: Okay. So before I make a
9 determination, under Part 131 of the Rules of the Chief
10 Judge I do have to give all the parties an opportunity to
11 be heard.

12 Aria, for the Petitioners?

13 MS. BRANCH: We do not oppose the request, Your
14 Honor.

15 THE COURT: Okay. Jessica?

16 MS. RING AMUNSON: No objection, Your Honor.

17 THE COURT: Tim?

18 MR. HILL: No objection, Your Honor.

19 THE COURT: Misha?

20 MR. TSEYTLIN: No objection.

21 THE COURT: Okay, then the application is
22 granted. What do you need to do to set up?

23 MR. GOLDEN: I have to run downstairs to get my
24 recorders and come back. It will take me a good five
25 minutes.

1 THE COURT: They didn't let you in with them?

2 MR. GOLDEN: They did not.

3 THE COURT: Really? Okay. Go ahead. We'll
4 take a couple-minute break.

5 MR. GOLDEN: I appreciate it.

6 (There was a short suspension of the
7 proceedings.)

8 THE COURT: This is the matter of Anthony
9 Hoffmann, Petitioners -- Anthony Hoffmann, et al.,
10 petitioners, against the New York State Independent
11 Redistricting Commission, et al., Respondents, and the
12 Harkenrider Intervenor-Respondents.

13 What I would like counsel to do is to put your
14 respective appearances on the record, please. And we'll
15 start with the petitioner.

16 MS. BRANCH: Good afternoon. Aria Branch for
17 the Petitioners.

18 MS. GAMBHIR: Good afternoon. Harleen Gambhir
19 for the Petitioners.

20 MS. RING AMUNSON: Good afternoon. Jessica Ring
21 Amunson for Respondents Imamura, Frazier and
22 Cuevas-Molina.

23 MR. HILL: Good afternoon. Timothy Hill for
24 Respondent Commissioners Brady, Conway, Harris, Nesbitt
25 and Stephens.

1 MR. TSEYTLIN: Misha Tseytlin for the
2 Harkenrider Intervenors.

3 THE COURT: Okay, so this matter is on today for
4 oral argument. I do note that we have -- the proceeding
5 has been commenced. I do note that there are two separate
6 motions to dismiss which are really at issue here today.
7 And I have thoroughly reviewed all of the papers.

8 What I would invite you all to do is to focus on
9 what I think is really the critical issue here. And when
10 you are making your arguments, the issue that jumps off
11 the page is essentially what authority exists for the
12 Redistricting Commission to prepare a second set of plans
13 based on the 2020 census.

14 And if such authority exists with respect to the
15 mandamus to compel issue, would such an order be doable
16 based upon the demonstrated lack of a bipartisan effort
17 this year.

18 So what I'm going to do, we're going to start
19 off with the first movant. Misha, you made the motion
20 initially to dismiss on behalf of the intervenors. Go
21 ahead.

22 MR. TSEYTLIN: Thank you, Your Honor. I will
23 train my remarks to what you're saying, but first I'd like
24 to create a little context for why we're here.

25 In Harkenrider we brought a lawsuit in Steuben

1 County --

2 THE COURT: I know all about Harkenrider.

3 MR. TSEYTLIN: That's right, Your Honor, but
4 it's very important that we brought under -- the relief we
5 sought was under Article III, Section 4E.

6 We obtained a particular remedy from that court
7 and then it went up to the Court of Appeals and then we
8 went back down and ultimately there was a particular
9 remedy that was adopted, which was a judicially adopted
10 map.

11 That remedy was for the same constitutional
12 violation that petitioners seek to raise here. It was not
13 the only remedy that anyone suggested in that proceeding.
14 Judge Troutman of the Court of Appeals suggested a remedy
15 that in many ways is similar to what the petitioners are
16 asking here.

17 The petitioners here in Steuben County during
18 their remedial proceedings suggested a remedy very close
19 to what they're asking here which is limit the map to 2022
20 and then let the Legislature, speaking for the people they
21 claim, adopt the new map going forward.

22 THE COURT: Well, wasn't the judicial remedy
23 built into the constitutional structure here?

24 MR. TSEYTLIN: That was, of course, our
25 position.

1 THE COURT: And wasn't the constitutional
2 structure here that an approved map be in place until the
3 next census in 2030?

4 MR. TSEYTLIN: That's exactly what Section 4E
5 provides. That is the argument that we raised throughout
6 the proceedings. Judge Troutman had a different view
7 about the way the judicial remedy would work.

8 In footnote 20 of the Harkenrider decision we
9 could read the Court of Appeals in Harkenrider as having
10 adopted our argument that is exactly like you say, Your
11 Honor, if there is a constitutional violation of the
12 procedure, the 4E remedy is a judicially adopted map.

13 It is not reenlisting the IRC. It is not the
14 procedure that Judge Troutman floated at the Court of
15 Appeals. And I think the remedy that they're asking for
16 is doubly hard. Not only is it not the one in 4E, the
17 constitution actually provides only two circumstances when
18 the Commission can act. One is before that February
19 deadline --

20 THE COURT: Well, February 28th has come and
21 gone.

22 MR. TSEYTLIN: That's right, Your Honor.

23 THE COURT: They were not able to do the second
24 set of redistricting maps for consideration by the
25 Legislature. What would their authority be to reconvene

1 now?

2 MR. TSEYTLIN: They have no authority. The
3 constitution only provides one other circumstance where
4 the Commission can reconvene.

5 THE COURT: And what would that be?

6 MR. TSEYTLIN: That is when a court orders an
7 amendment to a map. That is provided in the
8 constitutional amendment very specifically. And we
9 thought that that's what they were asking for initially in
10 their original papers. Well, this is the only way the
11 Commission can be brought back, it has to be this
12 provision that says you can bring the Commission back.
13 It's under Section Article III 5B(1) (a).

14 They did not say that they are basing it under
15 that. And the reason they didn't say that is because then
16 they would have to be asking this Court to amend the
17 Steuben County Supreme Court's map which, of course, would
18 be a collateral attack and, frankly, absurd.

19 THE COURT: There was no direct appeal from
20 that, was there?

21 MR. TSEYTLIN: That's right, Your Honor, nobody
22 appealed. Well, there was an appeal initially when we won
23 on the merits.

24 THE COURT: I'm talking about after the judge
25 with the benefit of the special master approved the 2022

1 maps. That final decision was not appealed.

2 MR. TSEYTLIN: That's correct, your Honor. And
3 my friends, the petitioners, almost all of them
4 participated in that proceeding and in fact --

5 THE COURT: Well, kind of. They wrote a letter
6 to the judge.

7 MR. TSEYTLIN: It wasn't just like a, you know,
8 hey, like signed by citizens letter, it was a --

9 THE COURT: They weren't parties.

10 MR. TSEYTLIN: That is true, they could have
11 moved to intervene. But it was a letter on the letterhead
12 of the Elias Law Group, one of the premiere election law
13 law firms in the country representing the D Triple C and
14 almost all of the petitioners here. They raised the same
15 argument. And certainly they could have perfected any
16 conversion of an interested party to an interventional (sic)
17 status in order to appeal if they so wanted to do that.

18 THE COURT: But just for purposes of this
19 record, Justice McAllister's final decision and order
20 making some amendments to the 2022 congressional map that
21 he approved was dated June 2, 2022. From my review of the
22 record, it appears that no appeal was taken from that
23 decision and order; is that correct?

24 MR. TSEYTLIN: That is exactly correct, Your
25 Honor. And there were criticisms lodged against that map,

1 some of the same ones that my friends lodged in their
2 petition here. We thought there might be an appeal. We
3 had that docketed on all of our calendars waiting for that
4 appeal to come and that appeal never came. So the
5 judgment was final.

6 There is, of course, a mechanism to reopen a
7 final judgment that's very common. Our respectful
8 submission is that if they want to reopen that final
9 judgment, they should go back to Steuben County. We think
10 that should not be successful because nothing has changed.
11 And also that the relief they're asking for would be
12 unconstitutional as determined by the Harkenrider Court of
13 Appeals. That's the proper procedure to reopen a final
14 judgment that no one appealed from.

15 And by the way, to reopen a CPLR provision
16 allows non-parties to move to reopen if they so choose.

17 THE COURT: Okay. Tim, you're up.

18 MR. HILL: Thank you, Your Honor. I won't
19 repeat some of the arguments that are on line with what my
20 colleague just mentioned, but I would emphasize that it's
21 really of those twofold defect, both the date and the fact
22 that the Steuben County went through the constitutional
23 process and arrived at that judicial remedy, which is
24 really the end phase. That is the last part of that
25 judicial process, that being the constitutional process,

1 when it results in a court-ordered plan.

2 That has happened here. So as far as -- and
3 this petition concerns only the congressional maps. So
4 with respect to the congressional maps, those maps have
5 gone through the constitutional process. That defect, to
6 the extent it was identified, to be remedied through the
7 only procedure that's available to it and the result is
8 that final determination which, Judge, you just pointed
9 out has not been appealed from.

10 THE COURT: Would it be doable to send this back
11 to the Commission for the drawing of a second set of
12 redistricting maps based on the 2022 census -- excuse me,
13 based on the 2020 census, when the Commission already
14 demonstrated on their first set of maps they couldn't come
15 to terms, they submitted two separate maps to the
16 Legislature which were rejected and then they deadlocked
17 well in advance of February 28th saying they weren't going
18 to be able to come forward with redistricting -- a second
19 set of redistricting maps?

20 So wouldn't an order in the form of a mandamus
21 to compel them to act, wouldn't that be an exercise in
22 futility?

23 MR. HILL: That might be a fair assessment from
24 a political calculation. I don't know from a legal
25 standpoint if it went back if you would just be sending it

1 back for the purpose of winding up in the same impasse
2 that it was stuck in from perhaps the outset, but
3 certainly the end.

4 So I don't know -- I appreciate the inquiry. I
5 don't know personally, you know, how to forecast that
6 except to say I think that's a very fair assessment based
7 on how the IRC proceeded to date. I don't know that that
8 has to be reached because I think what Your Honor
9 identified as the first issue that jumps off the page is
10 so conclusively in favor of not permitting the release
11 sought by this petition that I don't know that you need to
12 reach the futility question.

13 THE COURT: Okay. Jessica, it appears to me
14 that on behalf of your clients, who are Commissioners
15 David Imamura, Ivelisse Cuevas-Molina and Elaine Frazier,
16 that you were not opposed to the relief sought in the
17 petition; is that correct?

18 MS. RING AMUNSON: That's correct, your Honor.

19 THE COURT: Other than supporting the petition,
20 before I hear from the petitioners is there anything that
21 you would like to add?

22 MS. RING AMUNSON: I would just like to briefly
23 address the futility question that Your Honor just
24 directed to Mr. Hill.

25 THE COURT: Yes, go ahead.

1 MS. RING AMUNSON: Which is to say that my
 2 clients do not believe that it would be an exercise in
 3 futility. The Commission is fully staffed. All 10
 4 commissioners are on the Commission now. There are no
 5 staffing shortages that would preclude the Commission from
 6 expeditiously undertaking the redrawing of a second set of
 7 maps. And, of course, the situation would have changed in
 8 that the Commission would be under a court order to submit
 9 a second set of maps to the Legislature.

10 At the time that the Commission was last --

11 THE COURT: Hasn't the -- in the Harkenrider
 12 case on remittal the court did approve the 2022
 13 redistricting map predicated on the 2020 census which has
 14 been utilized for the election process in 2022.

15 Didn't the constitutional structure contemplate
 16 that when you have an approved congressional map, whether
 17 it be by the process outlined in the constitution, that is
 18 the Legislature adopting either a map presented by the
 19 Commission, or in the event the Legislature rejects the
 20 maps proposed by the Commission, as well as a second set
 21 of maps proposed by the Commission, if the Legislature
 22 adopted -- rejected both sets of maps and then went
 23 forward, did their own redistricting map and approved it
 24 as contemplated by the constitution, or as here where the
 25 approved maps were based under the judicial remedy built

1 into the structure under paragraph B, whatever process is
2 utilized in the adopting of the maps, doesn't the
3 constitution contemplate by its structure that those maps
4 are to be in place for a 10-year period and that only
5 after the 2030 census is generated would the Commission
6 then be in a position to prepare new maps?

7 So no matter how you got the maps approved this
8 year, doesn't the constitution require that those maps
9 stay in place for the next 10 years?

10 MS. RING AMUNSON: Your Honor, I will defer to
11 petitioners for addressing the legal issues. I believe
12 their position is that this is an interim judicial remedy
13 for the 2022 elections and that the defect of the
14 Commission submitting a second map can be remedied by a
15 mandamus action to our clients.

16 I would simply point out, Your Honor, that the
17 situation has changed in that at the time that the
18 Commission was last attempting to send a second set of
19 maps to the Legislature there was legislation then in
20 place that specifically contemplated what would happen if
21 the Commission was unable to vote.

22 THE COURT: You're talking about the 2021
23 legislation that the Court of Appeals rejected?

24 MS. RING AMUNSON: Yes, Your Honor. And my
25 clients were attempting to schedule a vote on a second set

1 of maps. Mr. Hill's clients were refusing to hold a
2 meeting and refusing to have a vote on a second set of
3 maps, which is ultimately what precluded the Commission
4 from being able to vote.

5 I'm merely addressing Your Honor's question
6 about futility in that if it were sent back to the
7 Commission and the Commission were under order from this
8 Court demanding this order to submit a second set of maps
9 to the Legislature, presumably the Commission would comply
10 with this Court's order.

11 THE COURT: Okay. For the petitioners, Aria, I
12 want you to answer this question: Does the constitutional
13 structure contemplate -- the intent of the constitutional
14 structure contemplate that any approved map, regardless of
15 whether it was approved by the Legislature under the
16 structure defined in the constitution or by the court,
17 also a recognized remedy in the constitution, does the
18 constitutional intent require that that approved map be in
19 place for 10 years?

20 MS. BRANCH: So with respect to the remedy that
21 was put in place by Steuben County, I think the answer is
22 clearly no. The New York Constitution, the 2014
23 amendments that the People of New York approved, clearly
24 intended for the Commission to send two proposed maps to
25 the Legislature that would then be approved or rejected by

1 the Legislature.

2 The people of New York intended for the
3 Commission to get two chances to send those maps, and that
4 didn't happen. So that is the sort of background.

5 THE COURT: Right. It didn't happen.

6 MS. BRANCH: Exactly. And so we brought a
7 mandamus action to ask the court to compel the
8 commissioners to pick up where they left off. To send the
9 second set of maps to the Legislature since that is the
10 action that didn't take place.

11 THE COURT: Do I have the authority to tell them
12 to agree?

13 MS. BRANCH: You do, Your Honor, because --

14 THE COURT: What if they don't?

15 MS. BRANCH: What did you say?

16 THE COURT: What if they don't?

17 MS. BRANCH: You don't have the authority to
18 tell them to agree, but I think that under Section 4E you
19 have the authority to issue a writ of mandamus, which is
20 the relief we're requesting here.

21 THE COURT: Why would I issue a writ of mandamus
22 directing the Commission to meet anew for the purposes of
23 coming forth with a second redistricting plan based on the
24 2020 census when that issue has not only already been
25 resolved in the Harkenrider litigation, culminating in the

1 McAllister mess in June, but also in context of the fact
2 that the constitutional structure necessitates that any
3 approved map be in place for 10 years until the next
4 census in 2030?

5 So where is the authority to order interim
6 relief, as you're requesting, when it would appear to
7 violate the constitutional intent that approved maps be in
8 place for 10 years?

9 MS. BRANCH: So I don't think that the
10 constitution intends for remedial maps drawn pursuant to
11 Section 4E to be in place for the remainder of --

12 THE COURT: What do you base that on?

13 MS. BRANCH: So if you look at Section 4E,
14 literally the text of it, there's nothing in the text of
15 that provision that states that it's a single-use
16 provision. There's nothing that says that maps drawn
17 according to that provision must be in place for the
18 remainder of the decade.

19 THE COURT: Can you read Section 4E without
20 reading Section 4B, for example? Don't they have to be
21 read in context where 4B is clearly recognizing the need
22 for maps to be in place for 10 years.

23 MS. BRANCH: Your Honor, if you look at section
24 5B, subsection A, it states on or before February 1st of
25 each year ending in zero, and at any other time a court

1 orders that a congressional or state legislative districts
2 be amended.

3 So there you clearly see that the IRC can be
4 reestablished later in the decade pursuant to court order.
5 That is the intent of the Commission. The people of New
6 York intended for the IRC to get two chances to propose
7 their map to the Legislature.

8 THE COURT: Yeah, they did, and they didn't do
9 it.

10 MS. BRANCH: And because that didn't happen, the
11 remedial map that's in place is not required to be in
12 place for the remainder of the decade. This has
13 happened --

14 THE COURT: That's your interpretation of it.
15 So if you have let's say annual revisits, would that
16 section 5B(a) allow for the court to order the
17 redistricting maps to be amended annually?

18 MS. BRANCH: Your Honor, I think Section 4E is
19 the provision under which this Court has authority to
20 issue a writ of mandamus. And under that provision there
21 must be a violation of law.

22 Here the violation of law is clear. The IRC
23 failed to set the second set of maps. If there is no
24 violation that has occurred with respect to the remedial
25 map or the interim map that's put in place, then there can

1 be no redistricting anew. So there couldn't be annual
2 redistricting without an underlying violation of law.

3 THE COURT: Okay. So you've got a
4 constitutional amendment in 2014 where it really kicks in
5 for the first time this year. And you've got a structure
6 laid out for the Redistricting Commission to really have
7 two opportunities to submit maps. Here the Legislature
8 rejected the first submission, which, by the way, were two
9 separate maps.

10 The Commission deadlocks and does not set forth
11 or submit to the Legislature a second redistricting plan.
12 Didn't the Legislature, when they contemplated the
13 amendments in 2014 which were ultimately adopted, wasn't
14 it contemplated that this type of deadlock is a realistic
15 possibility? And isn't that why the amendment provides
16 for judicial relief under 4E to prepare a map? Isn't that
17 the entire structure?

18 So in context of that question -- and I'll let
19 you respond in a moment -- is there any difference between
20 a map approved judicially under 4E versus a map that is
21 approved under 4B by the Legislature, is there any real
22 difference as to the length of time that those maps have
23 to be in place, recognizing that there has to be a
24 reasoned period, here 10 years in the constitution, to
25 provide stability in the election process as distinguished

1 from an annual or a periodic review which could
2 potentially wreak havoc in the election process? So what
3 do you think?

4 MS. BRANCH: I understand your question and the
5 concern about, you know, having frequent redistricting.
6 But I think it goes back to the point I was raising
7 earlier, which is when there is a legal violation and
8 Section 4E provides for a remedy, that is appropriate for
9 the court to provide that remedy. I think that --

10 THE COURT: But the court already did that.

11 MS. BRANCH: The court provided a remedy with
12 respect to the malapportionment of the prior map, right?
13 So in Harkenrider the issue was that the map that was in
14 place -- so the map that had been passed was declared
15 constitutionally invalid and so the 2012 map was the only
16 map that was in place for the congressional districts and
17 that map was malapportioned, so the court had to put in
18 place a new map in order to run the 2022 elections.

19 But the court in Steuben County never said that
20 that map was to govern for the entire period. For the
21 entire decade.

22 THE COURT: Was the issue even raised?

23 MS. BRANCH: The issue was not raised as far as
24 I understand it and the court --

25 THE COURT: Wait. Hold on one second. I'm

1 sorry. I think that some of the petitioners in the letter
2 to Judge McAllister had made a comment to the effect that
3 whatever map he approved be limited to the 2022 election.
4 And in reviewing Judge McAllister's decisions, I don't
5 think that issue was addressed.

6 MS. BRANCH: I should say the issue was raised
7 by outsiders, it wasn't raised by the parties. And the
8 issue was never addressed, as you stated.

9 So I think the default with respect to remedial
10 maps is that they're put in place for an interim period.
11 If you look at other states -- we cited a couple of cases
12 in our brief. In New Hampshire, for example, in 2000 the
13 Legislature hit an impasse. There was a court-drawn map
14 that was in place for the 2002 elections. And then
15 following that -- subsequent to that the Legislature came
16 back and was able to pass a map that was then in place for
17 the remainder of the decade.

18 There isn't anything in the New York
19 Constitution that prohibits the IRC and the Legislature
20 from engaging in that process at this point. Yes, there
21 are deadlines in the constitution, but Section 4E
22 specifically states that the New York constitutional
23 deadlines are to govern redistricting process except for
24 when a court orders the adoption of a map. And that is
25 where we are. So Section 4E provides the mechanism for

1 this court to order mandamus.

2 And I would also point the court to what
3 happened in the 2000 cycle in New York with the *Rodriguez*
4 *v. Pataki* case. In that case and in that scenario the
5 court issued a remedial map because it appeared that there
6 was going to be a legislative impasse and a map was not
7 going to be in place for the fast-approaching elections.

8 And the Legislature again came back and was able
9 to pass a map. That legislatively passed map is the one
10 that was in place for the remainder of the decade. So I
11 would say it's not uncommon for a remedial map.

12 THE COURT: That was before the 2014 amendments?

13 MS. BRANCH: That was before the 2014
14 amendments. And it was also part of the impetus for the
15 2014 amendments, right?

16 The relief that we're seeking here is very
17 consistent with the 2014 amendments. It is exactly in
18 line with what the people of New York asked for their
19 redistricting process to look like, which is for the IRC
20 and the Legislature, in combination, to implement
21 redistricting maps. It's not for a court to implement a
22 map that would then be in place for the remainder of the
23 cycle. There was a carefully crafted process that the
24 people of New York voted for. And that is what we are
25 asking to begin anew for the 2024 cycle and beyond.

1 THE COURT: You would agree that if the
2 Redistricting Commission had submitted maps to the
3 Legislature for its review and the Legislature approved
4 those maps, then those maps would be in place until the
5 next census in 2030, true?

6 MS. BRANCH: They would, unless they were
7 challenged pursuant to 4E or some other, you know, source
8 of law, right? They could be challenged as part of some
9 gerrymandered or as racially gerrymandered maps. So it's
10 not bad maps that are passed pursuant to the legislative
11 process are, you know, in place for the remainder of the
12 decade regardless of whether they violate the law.

13 THE COURT: They're subject to judicial review?

14 MS. BRANCH: Correct.

15 THE COURT: And if they're upheld on judicial
16 review they stay in place for 10 years?

17 MS. BRANCH: They stay in place for the
18 remainder of the decade, correct.

19 THE COURT: And we have Judge McAllister, on
20 remittal from the Court of Appeals, approving the maps for
21 the 2022 congressional maps, we have a final decision and
22 order without an appeal. Is it your contention that the
23 constitutional intent that redistricting maps be in place
24 for the 10-year period does not apply when the maps are
25 judicially approved as distinguished from being approved

1 or adopted by the Legislature?

2 MS. BRANCH: It is our position that when the
3 maps that are judicially approved were not created
4 pursuant to the process set forth in the 2014 amendments,
5 specifically the combination of the IRC and the
6 Legislature working together to implement constitutional
7 congressional maps, that that map must remain in place for
8 the remainder of the decade.

9 I just don't think that the people of New York
10 meant when they voted for the 2014 amendments that a court
11 in Steuben County, you know, drawn by -- and a map drawn
12 by a special master was meant to be in place for the
13 remainder of the decade. And there's nothing in the
14 constitution that prohibits the remedy and the relief that
15 we're asking for here.

16 THE COURT: So, you keep referring to what the
17 people understood the constitutional amendments to be, but
18 don't we interpret the constitutional mandate by the plain
19 language of its terms?

20 MS. BRANCH: Yes. And the plain language of
21 Section 4E does not prohibit the relief that we're asking
22 for here. It says that a court can order the adoption of
23 or changes to a redistricting plan to remedy a violation
24 of law.

25 There's nothing in that provision or anywhere

1 else in the constitution that says that Section 4E can
2 only be invoked one time in a decade.

3 THE COURT: Is the only violation of law that
4 you are basing your claim on the failure of the
5 Redistricting Commission to submit a second set of
6 redistricting plans prior to February 28th, 2022?

7 MS. BRANCH: The violation of law that our
8 request for mandamus relief is based on is that, yes, that
9 the IRC failed to send a second set of maps and that as a
10 result they did not comply with their mandatory
11 non-discretionary duty, and as a result this is a case
12 that is proper for mandamus relief.

13 And I would point the Court to footnote 10 of
14 the Harkenrider decision which explicitly recognizes that
15 judicial intervention in the form of a mandamus proceeding
16 is a way to compel the IRC to comply with its duties. And
17 this was something that was put in the decision in
18 response to an argument that I think the state respondents
19 and Judge Rivera made which is in future cycles why would
20 the IRC ever do what it is required to do? Why wouldn't
21 maps always be drawn by courts? Because if the IRC
22 doesn't act, the remedial provision will kick in such that
23 the court will draw the map.

24 And the Harkenrider court responded and said
25 judicial intervention in the form of mandamus is one way

1 to compel the IRC to comply with its duties. And that is
2 precisely what we're doing here.

3 We're not asking for relief for 2022. We
4 recognize that the Steuben -- the map that was created by
5 the Steuben County Court is in place for 2022. But
6 there's nothing in that opinion or in the New York
7 Constitution that mandates that that map must be used for
8 the remainder of the decade. And I would contend that
9 that is not consistent with what the people of New York
10 wanted when they passed -- or when they voted for the 2014
11 amendments.

12 THE COURT: Would annual judicial reviews be
13 contrary to the constitutional intent that an approved
14 congressional map, as here we're only talking about the
15 congressional maps, be in place for 10 years? Can we do
16 this every year? Wouldn't that run afoul of the intent
17 defined in the constitution that maps as approved within
18 the structure are to be in place for 10 years?

19 MS. BRANCH: Sure. And I don't think that that
20 is a concern because I don't think that annually there
21 will be a violation of law that will necessitate judicial
22 intervention.

23 THE COURT: Well, how do you know?

24 MS. BRANCH: I mean we don't know, but I
25 think --

1 THE COURT: What if it goes back to the IRC and
2 they do the same thing and they deadlock and then there's
3 a proceeding and then there's a court order for a map?
4 And then it opens up again the following year and once
5 again the IRC because, you know, we had a demonstrated
6 lack of a bipartisan effort here, and couldn't this
7 generate annual reviews, and wouldn't that be contrary to
8 the constitutional intent that maps be in place for 10
9 years to provide stability to the electoral process?

10 MS. BRANCH: Well, so I don't think that there
11 is -- I don't think that the constitution says that maps
12 have to be in place for 10 years if there is a legal
13 violation. Like that is what Section 4E --

14 THE COURT: But the legal violation has been
15 cured.

16 MS. BRANCH: The legal violation hasn't been
17 cured because the map that was put in place by Steuben
18 County was drawn by a special master. It wasn't put in
19 place pursuant to the carefully crafted process that New
20 Yorkers voted for.

21 THE COURT: The carefully crafted process that
22 the Legislature prepared when it proposed the
23 constitutional amendments, the process in adopting Article
24 III when you read Sections 4B and E together recognize the
25 reality that you got a structure for the Legislature to

1 act, but it doesn't happen. It provides for judicial
2 remedy.

3 So what is the violation today that would
4 sustain mandamus relief, whereas here the failure to
5 submit the second set of redistricting plans prior to
6 February 28, 2022, has already been remedied by the
7 McAllister decision approving the 2022 congressional maps?
8 So what's the violation now that necessitates a remedy in
9 the form of mandamus when that relief has already been
10 accomplished?

11 MS. BRANCH: So the Steuben County map has
12 remedied -- so, as I stated before, I don't think that the
13 Steuben County map has remedied the violation that we have
14 identified here. And the reason is because it was not
15 drawn pursuant to the process involving the IRC and the
16 Legislature.

17 THE COURT: But the process contemplates a
18 breakdown legislatively and within the Commission and a
19 judicial remedy.

20 MS. BRANCH: And I think the big difference
21 though between what happened previously and what the
22 current situation is is that previously there was the 2021
23 legislation in place, right? And under that legislation
24 there was this backstop. There was this alternative
25 procedure, such that if the Commission did not send the

1 second set of maps, it was okay for the Legislature to
2 step up and --

3 THE COURT: But didn't the court in Harkenrider
4 rule that as unconstitutional?

5 MS. BRANCH: Right. But when the Commission was
6 determining whether to send the second set of maps, that
7 2021 legislation was still in place. And so what has
8 changed is that that legislation has now been declared
9 invalid and --

10 THE COURT: So absent the 2021 legislation,
11 which has been declared invalid, is it your contention
12 that the Commission would work in good faith together to
13 prepare a second set of redistricting maps for use
14 throughout the balance of the decade?

15 MS. BRANCH: I mean I can't predict the future.
16 But I do think we have on record representations from
17 Ms. Amunson's clients, which includes the chair of the
18 IRC, that if they're ordered to send a second set of maps
19 to the Legislature, they stand ready to do so. The
20 Commission --

21 THE COURT: What if they don't have consensus?
22 You indicated, or someone indicated, I kind of lost track,
23 that -- and I think it was -- Jessica, I think you might
24 have said this earlier, that your clients were willing to
25 work forward in doing the second set of redistricting

1 plans, but that Tim's clients refused to participate at
2 that time. And I believe there was a deadlock in the
3 papers along those lines.

4 MS. RING AMUNSON: Well, Your Honor, I do want
5 to clarify. You used the term deadlocked several times
6 and the constitution does actually contemplate what
7 happens in the event of a deadlock, which is that the
8 commissioners can send two separate sets of plans to the
9 Legislature.

10 THE COURT: They did that the first set.

11 MS. RING AMUNSON: They did that the first time
12 around. What happened the second time around is not just
13 a deadlock but a refusal to meet. Denial of a quorum to
14 meet to even vote such that the Commission was disabled
15 from being able to send either two sets of maps or one set
16 of maps to the Legislature.

17 So, essentially there was no ability to send a
18 second set of maps. At that point, as Ms. Branch pointed
19 out and as Your Honor has acknowledged, the 2021
20 legislation was in place which contemplated that the
21 Legislature would take over in the event that no second
22 set of maps was voted on from the Commission.

23 So that is in fact what happened and that is the
24 violation essentially that was at issue, the Legislature
25 taking over without the Commission having sent a second

1 set of maps, without having voted on a second set of maps.

2 THE COURT: Okay. Well, thank you all for your
3 respective arguments. I will reserve decision. As is my
4 practice, I will be issuing a written decision. Have a
5 nice day.

6 MS. BRANCH: Thank you, Your Honor.

7 MS. RING AMUNSON: Thank you, Your Honor.

8 MR. HILL: Thank you, Your Honor.

9 MR. TSEYTLIN: Thank you.

10 (The proceedings in the above-entitled matter
11 were concluded at approximately 2:16 p.m.)
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C E R T I F I C A T E

I, **COLLEEN B. NEAL**, Senior Court Reporter in and for the Third Judicial District, State of New York, **DO HEREBY CERTIFY** that the foregoing is a true and correct transcript of my stenographic notes in the above-entitled matter.



Colleen B. Neal, Senior Court Reporter
Albany County Courthouse
Albany, New York 12207

STIPULATION AND ORDER OF SUBSTITUTION PURSUANT TO N.Y. CPLR § 1019, DATED DECEMBER 7, 2022 [398 - 400]

FILED: ALBANY COUNTY CLERK 12/07/2022 02:45 PM

NYSCEF DOC. NO. 186

INDEX NO. 904972-22

RECEIVED NYSCEF: 12/07/2022

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ALBANY

----- X
Anthony S. Hoffmann; Marco Carrión; Courtney Gibbons; Lauren Foley; Mary Kain; Kevin Meggett; Clinton Miller; Seth Pearce; Verity Van Tassel Richards; and Nancy Van Tassel,

Petitioners,

For an Order and Judgment Pursuant to Article 78 of the New York Civil Practice Law and Rules

-against-

The New York State Independent Redistricting Commission; Independent Redistricting Commission Chairperson David Imamura; Independent Redistricting Commissioner Ross Brady; Independent Redistricting Commissioner John Conway III; Independent Redistricting Commissioner Ivelisse Cuevas-Molina; Independent Redistricting Commissioner Elaine Frazier; Independent Redistricting Commissioner Lisa Harris; Independent Redistricting Commissioner Charles Nesbitt; and Independent Redistricting Commissioner Willis H. Stephens,

Respondents

-and-

Tim Harkenrider; Guy C. Brought; Lawrence Canning; Patricia Clarino; George Dooher, Jr.; Stephen Evans; Linda Fanton; Jerry Fishman; Jay Frantz; Lawrence Garvey; Alan Nephew; Susan Rowley; Josephine Thomas; and Marianne Violante,

Intervenors-
Respondents

----- X

Index No. 904972-22

STIPULATION AND ORDER OF SUBSTITUTION PURSUANT TO N.Y. C.P.L.R. § 1019

WHEREAS, Respondent David Imamura was named in this lawsuit in his official capacity as a Commissioner of the New York State Independent Redistricting Commission (the “IRC”);

WHEREAS, Mr. Imamura resigned as a member of the IRC effective November 15, 2022;

WHEREAS, Ken Jenkins was appointed to the IRC effective November 16, 2022; and

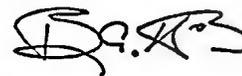
WHEREAS, this matter having come before the Court by stipulation by and between the attorneys for the Petitioners ANTHONY S. HOFFMANN, MARCO CARRIÓN, COURTNEY GIBBONS, LAUREN FOLEY, MARY KAIN, KEVIN MEGGETT, CLINTON MILLER, SETH PEARCE, VERITY VAN TASSEL RICHARDS, AND NANCY VAN TASSEL, and the attorneys for Respondent DAVID IMAMURA and KEN JENKINS, for the substitution of Mr. Jenkins for Mr. Imamura; and these parties, by, between, and among their respective counsel, having stipulated and agreed to the terms set forth herein, and good cause having been shown;

IT IS hereby ORDERED that:

1. Pursuant to N.Y. C.P.L.R. § 1019, Ken Jenkins is substituted for David Imamura in this proceeding and the corresponding appeal noticed in the Appellate Division, Third Department.
2. Upon the ordering of this stipulation by the Supreme Court, Counsel for Petitioners will update the cover page in any filings with the Appellate Division, Third Department to reflect this substitution.
3. Facsimile signatures shall be deemed as effective as original signatures, for purposes of submission of this Stipulation and Order to the Court.

Dated: December 7, 2022

ENTER, 
 HON. PETER A. LYNCH, J.S.C.



FILED: ALBANY COUNTY CLERK 12/07/2022 02:45 PM

NYSCEF DOC. NO. 186

INDEX NO. 904972-22

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STIPULATED AND AGREED:

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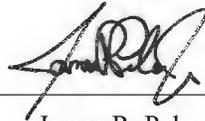
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Attorneys for David Imamura and Ken Jenkins

CERTIFICATION PURSUANT TO CPLR §2105

I, James R. Peluso, Esq., of Dreyer Boyajian, LLP, attorneys for Petitioners-Appellants, hereby certify pursuant to Section 2105 of the CPLR that the foregoing papers constituting the Record on Appeal have been personally compared by me with the originals filed herein and have been found to be true and complete copies of said originals and the whole thereof, all of which are now on file with the Clerk of the County of Albany.

Dated: January 20, 2023



James R. Peluso, Esq.