

Exhibit 2

SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF STEUBEN

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 TIM HARKENRIDER, GUY C. BROUGHT, LAWRENCE :
 CANNING, PATRICIA CLARINO, GEORGE :
 DOOHER, JR., STEPHEN EVANS, LINDA FANTON, :
 JERRY FISHMAN, JAY FRANTZ, LAWRENCE GARVEY, :
 ALAN NEPHEW, SUSAN ROWLEY, JOSEPHINE THOMAS : Index No(s).
 AND MARIANNE VOLANTE, : E2022-0116CV
 Petitioners, :
 -vs- :
 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 : SPECIAL
 CARL HEASTIE, NEW YORK STATE BOARD OF : PROCEEDINGS -
 ELECTIONS, AND THE NEW YORK STATE : MOTION
 LEGISLATIVE TASK FORCE ON DEMOGRAPHIC :
 RESEARCH AND REAPPORTIONMENT, :
 Defendants. :
 -----X

Steuben County Courthouse
 Bath, New York
 May 10, 2022

BEFORE: HON. PATRICK F. McALLISTER
 Acting Supreme Court Justice

APPEARANCES: KEYSER MALONEY & WINNER, LLP
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 Attorneys for Petitioners

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 Governor & Lt. Governor

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PHILIPS LYTLE, LLP
 By: CRAIG R. BUCKI, ESQ.
 Attorneys for Speaker of the Assembly

ELIZABETH M. DAVIS, RPR
Senior Court Reporter

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NEW YORK STATE BOARD OF ELECTIONS

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1 THE COURT: Good morning. All right. This is
2 the matter of Harkenrider, et al. versus Hochul, et al.
3 Just before we start, a word on mask policy. The New
4 York State Courts require that everyone in the courtroom
10:03:48 5 wear their masks due to COVID, and that includes even
6 when you're speaking at the microphone; the whole time.
7 Once you get outside the courtroom, the county, that's
8 the county's space, and they don't require a mask at
9 this time, just so you know, okay?

10:04:06 10 All right. Do we have the stream sound on so
11 everyone can hear?

12 MS. BAREFOOT: That's correct, Judge.

13 THE COURT: All right. Are there any
14 potential intervenor parties present? I'm not talking
10:04:18 15 about the attorneys yet, just the parties themselves.

16 MR. WALDEN: Your Honor, Mr. Greenberg is on
17 the web cam.

18 THE COURT: On the Teams link?

19 MR. WALDEN: Yes, sir.

10:04:30 20 THE COURT: Who's that?

21 MR. WALDEN: Gary Greenberg.

22 THE COURT: Gary Greenberg is present? Can
23 you hear me, Mr. Greenberg?

24 MS. BAREFOOT: I muted his microphone because
10:04:37 25 there was background.

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1 THE COURT: All right. Mr. Greenberg is
2 present. Any others that we know of? Sir?

3 MR. OSTROWSKI: Mr. Carlisle is an intervenor.
4 He's decided not to come in because of the mask issue.
10:04:49 5 And Mr. Egriu is on his way and should be here shortly.
6 He will be in the courtroom.

7 THE COURT: All right. Are you asking for us
8 to hold off until he gets here?

9 MR. OSTROWSKI: No, your Honor. Just
10 responding to your question.

11 THE COURT: I appreciate it.

12 MR. OSTROWSKI: James Ostrowski, I apologize,
13 from Buffalo, New York.

14 THE COURT: For attorneys, let's start with
10:05:19 15 who's representing Gavin Wax; is it Mr. Foldenauer?

16 MR. FOLDENAUER: Yes, your Honor. Aaron
17 Foldenauer.

18 THE COURT: All right. Thank you,
19 Mr. Foldenauer.

10:05:27 20 MS. BAREFOOT: Just so you're aware, when
21 they're speaking back there, the microphones may not
22 pick them up.

23 THE COURT: All right. Not yet,
24 Mr. Foldenauer. Just trying to get the attorneys on the
10:05:36 25 record here.

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1 Who's representing the candidate, potential
2 intervenors, starting with Mr. Carlisle?

3 MR. OSTROWSKI: James Ostrowski, your Honor.

4 THE COURT: Thank you, Mr. Ostrowski. Who's
10:05:49 5 representing Gary Greenberg?

6 MR. WALDEN: Jim Walden and Pete Devlin, your
7 Honor.

8 THE COURT: Thank you, Mr. Walden. Who is
9 here on behalf of Petitioners?

10:06:02 10 MR. WINNER: George Winner, Keyser, Maloney &
11 Winner.

12 THE COURT: Thank you, Mr. Winner. On behalf
13 of the Governor today?

14 MS. MCKAY: Heather McKay of the Attorney
10:06:18 15 General's Office. Good morning, your Honor.

16 THE COURT: Good morning. And thank you,
17 Ms. McKay.

18 Today, representing the senate majority
19 leader?

10:06:26 20 MR. HECKER: Good morning, your Honor. Eric
21 Hecker from Cuti Hecker Wang.

22 THE COURT: Thank you, Mr. Hecker.

23 Representing Speaker of the Assembly?

24 MR. BUCKI: Good morning, your Honor. Craig
10:06:36 25 Bucki from Phillips Lytle in Buffalo representing

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1 Assembly Speaker Heastie. And I believe on Teams we
2 have my co-counsel from Graubard Miller, C. Daniel Chill
3 and Elaine Reich.

4 THE COURT: Thank you, Mr. Bucki.

10:06:51 5 Is there anyone I've missed? Anybody here on
6 behalf of the board of elections; no?

7 MR. QUAIL: Brian Quail on behalf of the New
8 York State Board of Elections.

9 THE COURT: Can we turn his sound up? Thank
10:07:07 10 you, Mr. Quail.

11 MS. BAREFOOT: I can't turn the sound up.

12 Mr. Quail, you may need to speak louder or get
13 closer to your mic when you need to speak, okay?

14 THE COURT: Can you hear me, Mr. Quail?

10:07:22 15 MR. QUAIL: Yes, your Honor, I can hear you.

16 THE COURT: All right. I will ask you to
17 speak into that mic, when I call upon you, a little
18 closer.

19 All right. So, we're here on three motions to
10:07:32 20 intervene. I'm going to start in the order that the
21 matters were filed. That starts with Gavin Wax's motion
22 to intervene. Mr. Foldenauer, would you like to be
23 heard?

24 MR. FOLDENAUER: I would, your Honor.

10:07:45 25 THE COURT: Please step forward.

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1 MR. FOLDENAUER: Good morning, and may it
2 please the court. Aaron Foldenauer on behalf of
3 Proposed Intervenor Gavin Wax.

4 Everyone, your Honor, in this courtroom and
10:08:04 5 everyone watching and participating on the live stream
6 knows that the assembly map is unconstitutional pursuant
7 to the April 27th court of appeals opinion. In the
8 voluminous filings that were submitted in this matter,
9 including all of those that were submitted around 3:30
10:08:23 10 yesterday, no one has argued otherwise. This court can
11 and should act.

12 For some odd reason, the very members of the
13 political class who caused the problem are here today to
14 argue that there is no cure. What this comes down to is
10:08:46 15 delay by design where the political class was hoping
16 that there was no time for judicial intervention. In
17 other words, their argument is that we have to leave the
18 unconstitutional law in place because we've run out of
19 time. But that's only because the state legislature
10:09:08 20 waited until the last minute to break the law.

21 THE COURT: Well, let me ask you this, I mean,
22 didn't Mr. Wax know about this back in February and
23 couldn't he have filed then? Is there a timeliness
24 argument here?

10:09:24 25 MR. FOLDENAUER: Mr. Wax was generally aware

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1 of the litigation, and he understood that the assembly
2 maps were part of the case as reflected in your Honor's
3 order on March 31st, which invalidated the assembly
4 maps, and thus there was no reason for Mr. Wax to act at
10:09:42 5 that time.

6 In fact, I believe it was Mr. Heastie's
7 counsel that attacks a number of Tweets by Mr. Wax, and
8 in none of those tweets does Mr. Wax say that he knew
9 the assembly maps weren't part of the case. And indeed,
10:09:55 10 there was every reason to believe they were part of the
11 case because given your Honor's decision on March 31st.
12 It was really only on appeal, and this is a copy of a
13 cover sheet of the petitioner's brief, where petitioners
14 failed to even defend this court's decision, which sua
10:10:18 15 sponte struck down the assembly maps. And so, in other
16 words, petitioners dropped the issue on appeal, and
17 that's something that, of course, Mr. Wax would not have
18 known about, did not know about.

19 THE COURT: Are you saying Mr. Wax didn't know
10:10:32 20 about when this matter started that the assembly maps
21 weren't being challenged?

22 MR. FOLDENAUER: He did not know. There's no
23 evidence in the record that he knew the assembly maps
24 were being challenged. And again, they've been widely
10:10:45 25 discussed in the case and ruled on, in fact. And it

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1 certainly did, of course, become widely know when the
2 Court of Appeals ruled on, April 27th, on all of the
3 procedural issues upholding basically this court's
4 decision on March 31st. And within days, within two
10:11:09 5 business days, four calendar days, depending how you
6 count, Mr. Wax filed his motion to intervene. So, we do
7 believe that this is timely, and it's appropriate to be
8 heard. And I would ask the court even -- to consider
9 that even if Mr. Wax could have intervened earlier,
10:11:27 10 given the unconstitutional nature of these maps, the
11 assembly map, the court should take a look at that and
12 correct the clear constitutional problem here that no
13 one has submitted.

14 And I would add this, your Honor. In I
10:11:43 15 believe it was the executive respondent's papers filed
16 yesterday, they made a rightness argument with respect
17 to the independent nominating petition process. They
18 said that some of the other intervenors that are here
19 today are here too soon to argue over the independent
10:12:01 20 nominating petition process, which is very odd because
21 that process is set to wind up at the end of this month.

22 So, in other words, there's always arguments
23 too late, too soon, when you're moving to intervene.
24 And Mr. Gavin, we would submit, is here on time, and the
10:12:22 25 court has time to right this wrong, which gets into the

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1 other timeliness point.

2 THE COURT: Well, that's my question. You say
3 I've got time to right the wrong. I'm not so sure
4 you're right in that. I think we're chancing having no
10:12:40 5 maps to go forward on for an election. And I'm
6 including the congressional and state senate in that.

7 If you hitch your wagon to this case, I mean,
8 I've been at this now over two months just on the state
9 senate and congressional maps. If I were to rule in
10:12:57 10 your client's favor, I assume there's going to be
11 appeals up through. If that takes another two months,
12 there's a whole lot of things that have to happen at the
13 board of elections in order to make this fly and make
14 this comport with the law. And I'm worried that that's
10:13:16 15 not going to happen. And my question to you is don't
16 you have an independent right to file an action separate
17 from this one.

18 MR. FOLDENAUER: One could always file an
19 independent action, but, of course, this court has heard
10:13:33 20 arguments about the various maps that are in play.
21 Unfortunately, the Appellate Division didn't allow this
22 court to start the process of redrawing maps until, I
23 believe it was April 18th, when Dr. Cervas was appointed
24 and this court was allowed to begin drafting the
10:13:49 25 congressional maps only. But then, of course, very

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1 recently this court has folded in the state senate maps
2 as part of the process. The maps are not due to be
3 finalized until ten days from now. And the court can
4 now easily also fold in the assembly maps into the
5 process.

10:14:06

6 Many of the considerations for redrawing the
7 maps apply across all three maps. For example, this
8 court had a lengthy hearing on Friday talking about
9 communities of interest. Those considerations apply
10 equally to all three maps. All of the data is in
11 Dr. Cervas' computer. Of course, there has been
12 hearings, of course, that the independent redistricting
13 commission has heard. There have been proposals and
14 counterproposals. The considerations are here for the
15 assembly maps also to be folded in. And you -- and one
16 knows that, want to scrape the bottom of the barrel,
17 when we heard on Friday considerations of sports teams
18 and where sports teams are located and how that may or
19 may not -- and I would argue should not -- play into
20 consideration of the maps, but point being there's been
21 ample opportunity for the public to be heard and for
22 maps to be redone here.

10:14:26

10:14:43

10:15:01

10:15:18

23 And furthermore, all parties should be ready
24 to submit proposed maps. This court could allow parties
25 to submit proposed maps -- proposed assembly maps, later

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1 this week. This court could give parties an opportunity
2 to be heard. Dr. Cervas could then submit proposed maps
3 as scheduled, including the assembly map, on Monday the
4 16th, and then we have until next Friday to finalize
10:15:37 5 those maps.

6 Now, I do, your Honor, want to address the
7 affidavit that came from the board of elections. And
8 again, for some odd reason, we have all sides of the
9 political class opposing correcting the assembly map at
10:15:54 10 issue. And I would like to emphasize that the board of
11 elections is a partisan institution that's controlled by
12 both parties. You have two co-chairs of the board of
13 elections, two other commissioners, two co-executive
14 directors, and they're basically appointed by --
10:16:14 15 suggested by the political parties and then appointed by
16 the Governor. And Nelson Mandela famously said that it
17 always seems impossible until it's done. And if you do
18 a careful -- if you take a careful look, your Honor, at
19 the affidavit, the board of elections never even says
10:16:32 20 it's impossible to redraw the assembly maps. They just
21 say that it would cause additional, I believe
22 quote-unquote, hurdles is the word that they use. The
23 board of elections is already preparing for the June
24 28th primary. And this would, in fact, give them an
10:16:50 25 extra eight weeks to get it right.

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1 Now, one of the main arguments that the board
2 of elections make is that they have to quote-unquote
3 throw away military ballots that are due to be sent out
4 on Friday. Now, of course, throwing away ballots, a
10:17:06 5 small number of ballots, is not a huge deal in and of
6 itself, but, in fact, it's actually not true. The board
7 elections all the time has candidates' names on the
8 ballot where votes are not counted.

9 One of my clients, in 2019, he was running for
10:17:24 10 public advocate, his name was Mike Zumbluskas. His name
11 went out on a military ballot, and then after that
12 point, he was thrown off the ballot by the board of
13 elections. And so what happened was when those ballots
14 came back, any votes for him simply were not counted.

10:17:42 15 It happened to another one my clients this year, Tamika
16 Mapp, in Assembly District 68. She made the ballot in a
17 special election. She was on the ballot on election
18 day, but because she was thrown off the ballot after --
19 after the ballots were printed, any votes for her simply
10:18:00 20 were not counted. So, in fact -- excuse me, your Honor?

21 THE COURT: Well, I'm just saying, I'm -- I've
22 read all the papers here. The board of elections is
23 saying much more than -- I mean, the primary is already
24 certified for the June 28th. The -- in three days, the
10:18:21 25 military and overseas ballots are supposed to go out.

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1 They certified the assembly candidates, the primary
2 ballots have been certified. They're working on the
3 computers for the elections. Judicial delegates would
4 be affected by this as well as Democratic party's state
10:18:42 5 committee because they're all done from the assembly
6 district, as far as the delegates and the judges. I
7 mean, so they're -- I can see they're very concerned.
8 I'm not sure this can work if I were to grant your
9 request.

10:18:56 10 MR. FOLDENAUER: A few points on that, your
11 Honor. The board of elections may have certified the
12 assembly candidates that are under its control. In
13 other words, that would be -- that would be districts
14 where they span across more than one county and the
10:19:13 15 board of elections can certify that. I do a lot of my
16 practice in New York City. I am not aware of the New
17 York City Board of Elections certifying any candidates.
18 In fact, I was just in court late last week over various
19 election challenges, and I have another one coming up on
10:19:30 20 Wednesday, tomorrow, in Suffolk County. So, in fact,
21 challenges are still not -- are still ongoing. All of
22 the candidates are not certified, in fact, and I think
23 the board of elections would have to concede that.

24 And you're right, your Honor. You're right
10:19:49 25 that changing the assembly district would have

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1 ripple-down effects on other races such as judicial
2 delegates and district leaders in New York City, among
3 other things, which is why it's so important that this
4 court act now to correct the unconstitutional maps we
10:20:11 5 have here given the broad impact. Again, the strategy
6 of the political class --

7 THE COURT: But they're procedurally
8 unconstitutional, correct? So, my question is you've
9 got roughly, if I remember correctly, about 13
10:20:29 10 Republican assembly members that voted for the maps.
11 So, here we are, and I'm just wondering, are we just
12 spinning our wheels, because I could declare, you know,
13 procedurally unconstitutional and then replace it with
14 the map that's already out there and been enacted
10:20:49 15 bipartisanly.

16 MR. FOLDENAUER: We don't know why the
17 Republican -- why those 15 Republicans voted in favor of
18 those maps, but the fact of the matter is that they were
19 not allowed to pass those maps into the law. I can tell
10:21:05 20 you, as an election law practitioner, that we were
21 surprised when all of a sudden new maps were posted in
22 mid to late January, and then all of a sudden they were
23 signed into law a couple of days later. That's not the
24 process that was set forth in the constitution by virtue
10:21:22 25 of the 2014 amendments.

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1 The Court of Appeals stated that there is a
2 procedural infirmity here and simply could not
3 technically reach the issue of the assembly maps and
4 their constitutionality because of their procedural
10:21:41 5 technicality here. And it does make you wonder why
6 we're here and why the maps weren't challenged and why
7 the issue was dropped on appeal. The issue of this
8 court's decision to sua sponte reject the assembly maps,
9 that could have been briefed. And the bottom line is
10:22:01 10 that it wasn't, and it should.

11 Now, the board of elections has protested
12 before this court before. I believe it was on March 21,
13 2022, e-filing number 236. The board of elections
14 revealed a parade of horrors of what would happen if
10:22:22 15 the court were to strike down the maps as
16 unconstitutional. But then the court did just that just
17 over a week later. And then, of course, the Court of
18 Appeals acted on April 27th, which again, is why these
19 constitutional issues must be addressed. And again,
10:22:39 20 sure that there are down ballot implications, but here
21 there is time.

22 Now, if the board of elections wants to
23 propose another solution, they could. Now, remember, it
24 was only -- it was just until 2019 a reform was passed
10:22:53 25 that we had primaries the second week of -- the second

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1 Tuesday of September. So, of course, that's an option
2 as well. Now, we believe that there is plenty of time
3 to get the maps right by August 23rd, but there are
4 options available to this court that are --

10:23:15 5 THE COURT: Are you suggesting a third primary
6 date?

7 MR. FOLDENAUER: I'm not, your Honor. I'm
8 just saying there are different options available to you
9 to get this right. I think it can be done on August
10:23:25 10 23rd, but --

11 THE COURT: How do you answer petitioners'
12 argument that they're prejudiced, they didn't get to
13 have discovery? If you had brought the action three
14 months ago, two to three months ago, they would have had
10:23:42 15 the opportunity for discovery, and now that's long since
16 passed.

17 MR. FOLDENAUER: Discovery isn't necessary
18 here because the only argument that Mr. Wax is making is
19 the procedural unconstitutionality argument. We're not
10:23:57 20 making any arguments based on other sort of potential
21 constitutional problems. So, I don't think there's a
22 need for any discovery here. And again, the court can
23 act quite quickly. Practically, you know, we believe
24 that it is not too late at all for this court to hear
10:24:25 25 this action.

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1 THE COURT: Well, didn't Justice Lindley at
2 the Appellate Division Fourth Department refuse to allow
3 candidates to intervene? He said it was too late. And
4 that was weeks ago.

10:24:39 5 MR. FOLDENAUER: I think he did say that, but
6 then the Appellate Division was reversed. And the Court
7 of Appeals then --

8 THE COURT: Well, not on that ground, though,
9 right?

10:24:47 10 MR. FOLDENAUER: Well, there wasn't an appeal
11 of that -- of that decision. But the Appellate Division
12 made its decision and the Court of Appeals reversed
13 them. And the Court of Appeals -- the Court of Appeals
14 stated at the end of its opinion, I believe it was
10:25:03 15 somewhere around page 30, that it wanted parties to
16 quote-unquote promptly offer submissions concerning new
17 maps and these issues. And then, of course, Gavin Wax
18 comes into court just a few days later over the weekend
19 to intervene so that this court can address the issue.

10:25:28 20 And interestingly, we haven't heard any
21 proposals from any of the other parties to this action
22 as to what they would do. They seem to be happy just
23 proceeding with unconstitutional assembly maps in
24 contravention of what the Court of Appeals indicated
10:25:48 25 were, again, unconstitutional.

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1 THE COURT: If Mr. Wax were allowed to
2 intervene, and we go down that road, and for some reason
3 you can't -- you don't have the time to make this work,
4 what happens with the election? An election at large?

10:26:09 5 MR. FOLDENAUER: Your Honor, I think there is
6 time to make it work. Again, you know, if you look
7 at -- looking at the schedule for drawing the maps, we
8 have another ten days. Parties can be asked to make
9 submissions later this week. And the assembly maps can
10:26:29 10 be proposed, redrawn. The considerations concerning
11 drawing the maps are before you.

12 And the court is right. There are -- there is
13 this assembly map that was passed, even though it's
14 unconstitutional. And there are other proposals already
10:26:46 15 out there. There is ample time for people to be heard
16 and the maps to be redrawn.

17 THE COURT: Anything further, Mr. Foldenauer?

18 MR. FOLDENAUER: Just really briefly, one
19 party did make a service argument. We believe that is
10:27:05 20 baseless. We submitted an order to show cause to the
21 court, which the court filled in and signed. That was
22 submitted to the court. All of the other documents were
23 served via NYSCEF. The documents were served on all
24 parties, and we even hired a process server to deliver
10:27:29 25 the documents in person to the Attorney General's office

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1 in Rochester. Thank you very much, your Honor.

2 THE COURT: Thank you, Mr. Foldenauer.

3 Mr. Ostrowski, on behalf of the candidate
4 petitioners to intervene.

10:27:49 5 MR. OSTROWSKI: Thank you, your Honor. Your
6 Honor, I represent -- I want to list the candidates very
7 quickly. Ben Carlisle is here. He is a conscientious
8 objector of wearing masks. He's outside. Mr. Egriu is
9 in the courtroom, candidate for congress. They're both
10:28:03 10 Democratic candidates who already filed their petitions.
11 And then we have three Libertarian Independent
12 nomination candidates: Michael Rakebrandt, Congress 2nd
13 District; Jonathan Howe, Congress 14th District; Howard
14 Rabin, Esquire, Congress 1st District. They may be on
10:28:24 15 the call.

16 We have no quarrel with anything the court has
17 done. We have no quarrel with anything the petitioners
18 have done. We have no quarrel that has any relevance to
19 anything with what the respondents have done because
10:28:37 20 that -- they've already -- the court has already ruled
21 against them. We're not intervening on the merits;
22 we're intervening on the remedies, so it's perfectly --
23 this is the remedy phase. There was no reason to
24 intervene earlier.

10:28:49 25 When it was clear the decision was filed with

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1 the court, we filed in five days. We filed because it
2 was the rights of our candidates, and I think there's
3 many others similarly situated. We don't purport to
4 represent them, but I think there's a lot of interests
10:29:07 5 out there that had to be taken into account. There
6 wasn't clear guidance as to what happens to their
7 campaigns. So, Mr. Carlisle, he already got signatures,
8 your Honor. They were filed. He personally got 900 --
9 approximately 900 signatures. Mr. Egriu expended scarce
10:29:28 10 funds that can never be replaced to get on the ballot
11 for congress. And then the three independent
12 candidates, they're out in the field while this is going
13 on, and apparently running for districts that no longer
14 exist, so it was our belief that we have no criticism of
10:29:45 15 anybody in the case, and obviously not the court, but
16 the interests of these people needed to be represented.
17 That's why they're here. We want to make sure that
18 they're heard in the remedy phase, that they have a
19 right to designate any petitions, they have a right to
10:29:58 20 independent nominating petitions.

21 If those periods are reduced given all the
22 complications the court is dealing with, there should be
23 some compensation in that regard by reducing the
24 signature requirements and also because they've already
10:30:10 25 expended resources that can never be replaced.

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1 Mr. Carlisle cannot get -- he's an attorney; he can't
2 get that time back. Mr. Egriu can't get that money
3 back. All resources are scarce, your Honor, as you
4 know. There's no really -- there's no persuasive
10:30:29 5 reason. And the papers, there's barely any opposition,
6 but the arguments that were made were really not very
7 persuasive.

8 We're not going to interfere with anything,
9 not going to slow anything down. We just want to
10:30:40 10 represent the interests of these five people and really
11 all the other candidates out there because what this
12 case is all about at the end of the day is
13 competitiveness. Who's delivering the competitiveness?
14 It's Mr. Carlisle, it's Mr. Egriu, and the three
10:30:55 15 Libertarian candidates. So, let's not forget their
16 interest. Let's make sure that in any remedy that's
17 fashioned the law bends over backwards. They're at no
18 fault in this at all. This is the fault of the
19 respondents.

10:31:06 20 THE COURT: Are your clients mainly concerned
21 with the signatures they've already gathered and whether
22 they're going to count or not or what is their --

23 MR. OSTROWSKI: Well, there's a lot of gray
24 areas, your Honor. It seems to me the maps have been
10:31:19 25 voided, the Court of Appeals decision indicates there's

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1 going to be another petitioning process so they're going
2 to have to start over. So, from that point of view, I
3 think the fair remedy -- excuse me, your Honor, I don't
4 tolerate masks well. I get short of breath; I
10:31:34 5 apologize.

6 THE COURT: Take your time.

7 MR. OSTROWSKI: I think the proper remedy --
8 and the court has vast powers to remedy constitutional
9 violation. Nobody is saying to the contrary, and
10:31:42 10 certainly not us. This court has the power, the
11 equitable power, to go in and fashion a remedy and say
12 your campaigns were disrupted, you expended all these
13 resources through no fault of your own, we're going to
14 compensate you by reducing the signature requirement
10:31:59 15 that would allow them to competitively get on the ballot
16 with the resources that they have left in their tank.

17 But really, your Honor, we basically want to
18 be heard on all these issues, whatever proposals are
19 made, what the court purposes or other parties propose,
10:32:13 20 we'd like to be able to just file a short statement.
21 You read my -- I don't kill a lot of trees, your Honor.
22 I'm short and sweet, solo practitioner. Everything is
23 produced by me, so I'm not going to overburden the
24 court. I just want to be heard on the interest of these
10:32:27 25 five people who are the competitive -- they are the

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1 competitive edge of New York elections. They are the
2 ones actually giving people a choice; not an abstract
3 choice, but a --

4 THE COURT: But the same questions I asked
10:32:39 5 Mr. Foldenauer sort of apply to everybody that wishes to
6 intervene here. How do you address those?

7 MR. OSTROWSKI: There was no reason to
8 intervene. We had no problem with -- our clients
9 believe that gerrymandering is a gross evil. They're
10:32:54 10 Independents, your Honor. They're the ones that usually
11 are the victims of gerrymandering. So, they had no
12 quarrel with anybody that -- no quarrel with the court,
13 no quarrel with the petitioners. No quarrel with the
14 respondents other than the fact the respondents have
10:33:10 15 already lost the case. We only want to intervene on the
16 remedy phase. All we want to do is be heard, and the
17 court will decide accordingly. I think it's a very
18 small ask, your Honor.

19 THE COURT: Anything further, Mr. Ostrowski?

10:33:23 20 MR. OSTROWSKI: No. I could go on, but I
21 think you've gotten my argument. Thank you, your Honor.

22 THE COURT: Thank you.

23 MR. OSTROWSKI: Appreciate it.

24 THE COURT: Appreciate it. All right. On
10:33:30 25 behalf of Gary Greenberg, Mr. Walden?

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1 MR. WALDEN: Thank you, Judge. This is my
2 first time appearing before you, so thank you very much
3 for having me. Judge, just to set the tone for my
4 remarks, I'm going to have a very short introduction
10:33:43 5 because I think that in the proceedings so far a little
6 bit of the context is missing, and I'd like to fill that
7 in. And then I'm going to spend most of my argument
8 dealing exactly with what you've asked the other two
9 about, the timeliness issue, because I do think that of
10:33:57 10 all the issues that are raised it's the most serious
11 that's been raised. There are a number of other issues
12 that from my perspective are akin to throwing spaghetti
13 against the wall. If your Honor is at all inclined to
14 consider things like the petitioning candidates issue,
10:34:12 15 the service issue, the joinder issue where they're
16 proposing that we're supposed to join a thousand
17 candidates, even though they didn't -- they waived that
18 argument with respect to the senate and the
19 congressional districts and now they're raising it for
10:34:27 20 the first time, we're happy to make a very short
21 submission by Friday morning of five pages and not more.
22 And I'm going to focus on the issues that I think,
23 through your questioning, you care about.

24 THE COURT: Thank you.

10:34:38 25 MR. WALDEN: Your Honor, as I was reading

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1 these hyper technical arguments that really have nothing
2 to do with intervention, I thought about the bigger
3 picture, your Honor. And I thought, you know, it's not
4 a secret that Americans are worrying about our democracy
10:34:51 5 and that election integrity is one of the critical
6 things that people are concerned about. The Pew
7 Research Center did a study in 2018 where they found
8 that in 1958 Americans had a 75 percent confidence
9 integral in their government. And by 2017, it had
10:35:11 10 fallen below 20 percent. And why is that, your Honor?
11 It is because Americans no longer trust the political
12 class to protect the integrity of our democracy.

13 And with a bit of irony, your Honor, I thought
14 about all of the arguments that were made by the
10:35:30 15 petitioners, which surprised me, and the respondents,
16 which did not surprise me. And I thought well, maybe
17 this is one example of bipartisanship because the one
18 thing Republicans and Democrats can seem to agree on is
19 keeping Mr. Greenberg out of this case. But, your
10:35:47 20 Honor, respectfully, they're wrong.

21 Mr. Greenberg should be allowed to intervene
22 in this case, and to explain why, I'd like to develop
23 this context by quoting this court's wisdom. In your
24 opinion, your Honor, you said words that I hope every
10:36:00 25 New Yorker reads: The people of the state of New York

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1 have spoken clearly. First, in the 2014 constitutional
2 amendment, not only did the people include language to
3 prevent gerrymandering, they also set forth the process
4 to attain bipartisan redistricting maps through the IRC.
10:36:18 5 The people of the state of New York again spoke loudly
6 when they soundly voted down the proposed 2021
7 constitutional amendment that would have granted
8 authority for the legislature to bypass the IRC
9 redistricting process, which is exactly what they did.
10:36:32 10 And they did it even though in the opinion you gave them
11 opportunity to correct their mistake, and they didn't
12 want to do it. And so your Honor found, I think
13 completely appropriately, that not only were the senate
14 and the congressional maps invalid, but the court found
10:36:49 15 that the same faulty process was used for all three
16 maps; therefore, new maps will need to be prepared for
17 the assembly districts as well.

18 So, I read with great interest, your Honor,
19 the board of election's affidavit. And what it does not
10:37:01 20 do is to offer any candor to this court about this
21 central fact. Between the date of your opinion, March
22 31st, and the date of the Court of Appeals decision a
23 month later on April 27th, the board of elections
24 couldn't possibly have known what the outcome was going
10:37:17 25 to be. They would have had to have assumed, as all of

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1 the local parties and the implements of the election
2 system would have had to have assumed, that the Court of
3 Appeals might have seen it differently and might have
4 agreed with your perspective, your Honor, and agreed
10:37:32 5 with you that the assembly maps could have been thrown
6 out or should have been thrown out, too. The Court of
7 Appeals chose not to do that because of a circumstance
8 that has never been explained. And I'm going to talk
9 about it in a minute, your Honor, when I get to the
10:37:45 10 timeliness issue, because this is an important issue.

11 Why? Why is it that before this court the
12 petitioners never challenged the assembly maps? Why is
13 it that for the first time on appeal did they declare
14 not only were they weren't challenging but they agreed
10:38:03 15 with the assembly maps? Why did they not defend this
16 court's principled decision as the guardians of our
17 democracy, as our elected officials? Why did they not
18 defend it? We're going to get to that in a second, your
19 Honor. But the Court of Appeals not only embraced but
10:38:24 20 fully embraced, your reasoning putting aside the
21 technicality of the assembly districts when they said
22 nearly a half century ago we wrote that the constitution
23 is the voice of the people speaking in their sovereign
24 capacity and must be heeded. And in that regard, they
10:38:39 25 said there's a fundamental principle to conclude that a

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1 legislative apportionment cannot stand as a valid
2 exercise of discretionary power by the legislature when
3 it is -- when it is manifest that the constitutional
4 provisions have been disregarded because any other
10:38:55 5 determination by the courts might result in the
6 constitutional standards being broken down and wholly
7 disregarded. That's binding precedent. And the Court
8 of Appeals refused to permit the legislative misconduct
9 that arose here to quote subject the people of this
10:39:13 10 state to an election conducted pursuant to an
11 unconstitutional reapportionment.

12 Your Honor must have read those words with a
13 great deal of pride. Certainly, I felt it for the
14 court, because you made a determination that the
10:39:27 15 assembly maps were not just unconstitutional, they were
16 void and not useable. Not useable, that was what this
17 court found.

18 And all Mr. Greenberg is trying to do, his
19 primary form of relief, is to give the court the vehicle
10:39:44 20 to vindicate the rights of the people that have not been
21 spoken about so far in this proceeding, the voters, to
22 restore election integrity. And there are procedural
23 hurdles, your Honor, but despite what all of the other
24 parties are saying, it is not impossible. And I'll show
10:40:00 25 you that's it not impossible.

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1 But, your Honor, just to end my introductory
2 remarks, the Court of Appeals also very clearly talked
3 about why this matters. And it doesn't just matter what
4 you do here in this case substantively, and we're not
10:40:18 5 even at the substance yet. Everyone wants to go to the
6 substance, wants to go to the merits, but that's not why
7 we're here. We're just here as to whether or not we're
8 going to be able to intervene.

9 Burden isn't an issue with respect to an
10:40:31 10 intervention application. Ninety percent of the papers
11 were about burden. All of the affidavits were about
12 burden. Burden is irrelevant here. It is whether or
13 not we are going to cause undue delay, which we are not.
14 There's no evidence that they put forth in this record
10:40:48 15 whatsoever that would support a finding of undue delay
16 that affects -- that prejudices their rights in the
17 proceeding. They're talking about burden. We're
18 talking apples and oranges.

19 But to conclude the context, your Honor, this
10:41:03 20 is why it matters not just for political gerrymandering.
21 The Court of Appeals, again, binding precedent, as your
22 Honor knows, delaying a remedy in this election cycle,
23 permitting an election to go forward on unconstitutional
24 maps, which is just as true for the assembly maps as it
10:41:20 25 is for the others, I don't need to tell your Honor that,

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1 would set a troubling precedent for future cases raising
2 similar partisan gerrymandering claims as well as other
3 types of challenges such as racial gerrymandering
4 claims. So, whatever we do here, your Honor, it's going
10:41:38 5 to have consequences beyond the political world because
6 it will be precedent.

7 THE COURT: How are you going to make that
8 fit, Mr. Walden? You're saying there's time, there's
9 time.

10 MR. WALDEN: There is time.

11 THE COURT: Are you aware of all the things
12 the board of elections has to do?

13 MR. WALDEN: Yes, your Honor, I am. I've read
14 the papers very carefully. And what -- again, I am not
10:41:58 15 going to conclude, as Mr. Foldenauer did, that the BOE
16 is just a bunch of partisan people. I don't know them.
17 I've looked them all up, they seem like people of good
18 conscience. But, your Honor, you have been hearing
19 since the very start of this case impossible,
10:42:16 20 impossible, impossible. And then the board of elections
21 goes to Judge Kaplan in the southern district of New
22 York and says oh, well, you know, forget about what we
23 said to the judge, we have time. We've heard Speaker
24 Heastie saying this from the beginning it's impossible,
10:42:30 25 it's impossible.

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1 Guess what; your Honor did it anyway with
2 respect to the senate and the congressional and the
3 assembly maps. And the Court of Appeals agreed. And
4 the whole point of the Court of Appeals decision is if
10:42:42 5 our politicians are going to monkey around with the
6 constitution, the courts have complete power to change
7 all statutory deadlines. You have the power, as
8 Mr. Foldenauer suggested.

9 And I agree whole-heartedly with the position
10:43:00 10 that the attorney general took before your Honor in this
11 case, a fundamental and important principle that no one
12 is talking about anymore. The Attorney General of the
13 State of New York's position was multiple primaries of
14 any kind cause great risks. Great risks to who? To the
10:43:18 15 voters, your Honor. The voters, because it's going to
16 double or triple, depending on how many there are, the
17 cost of the election. It's going to cause voter
18 confusion because people -- we're already trying to get
19 people to come to the poll in greater numbers, and now
10:43:34 20 they can't keep track of who's -- what races are even
21 up. And it's going to cause lower voter turnout, which
22 is bad for democracy. We all know it.

23 I could quote politicians and thinkers from
24 every side of the aisle, and everyone agrees that those
10:43:51 25 three things are things that should be avoided. And in

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1 this case, there cannot be, and I suggest to you will
2 not be any of the people that are opposing our
3 intervention say that it's the fault of anyone other
4 than the legislature for doing this knowingly and
10:44:04 5 willfully in the first place.

6 And so, your Honor, I'm now going to get to
7 the point that you've made, which is why are we here.
8 Are we here really to talk about the burden and the
9 schedule? Not really. I would love to talk to you
10:44:18 10 about it because unlike what I think you're going to
11 hear, which is a parade of horrors, it's like as we've
12 seen in affidavit and testimony time and time again,
13 can't be done, can't be done. I think that there is a
14 way. And I think that if your Honor ordered the parties
10:44:31 15 to meet and confer, whether they agreed or they didn't
16 agree, and simply ignore all of the statutory deadlines
17 and come up with a schedule that has a single primary
18 for every single race and all of the other incremental
19 steps that need to be done, this election could happen
10:44:49 20 with constitutional maps and a process that while
21 imperfect is better than the very ill the Court of
22 Appeals directed everyone to avoid, which is forcing an
23 election with unconstitutional maps. The Court of
24 Appeals could not have been clearer on that point.

10:45:06 25 And so, intervention. Let's address the

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1 questions that your Honor asked, because they're fair
2 questions. But let me make one point first, your Honor.
3 Of all the argument that you saw in these dozens and
4 dozens and dozens of pages, there were certainly
10:45:24 5 arguments about timeliness. But you know what there
6 wasn't? There wasn't case law. No one talked about
7 what the law says. No one talked about what the Fourth
8 Department has held in cases that have precedential
9 value because the Fourth Department explained their
10:45:41 10 reasoning.

11 But it's not just the Fourth Department, your
12 Honor. There is, amazing, unanimity among all of the
13 departments about four basic principles. Principle
14 number one: If there is a party that has a real and
10:45:55 15 substantial interest in the outcome of the case, putting
16 aside any other issue, the law is clear the courts
17 should weigh strongly in favor of granting intervention.

18 Again, we'll get to the merits. I'd love to
19 stay here and talk about the merits. We've asked for
10:46:12 20 preliminary injunction to stop the military ballots; in
21 part, to stop the alleged harm of them being printed and
22 then thrown out, but that's number one.

23 Number two: Who bears the burden of opposing
24 the opposition? They do. They have to show that there
10:46:30 25 is undue prejudice in the proceeding which will

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1 prejudice their rights. They cite not a single case.
2 Because we've looked, your Honor. We haven't found one.
3 It doesn't exist because it's not consistent with the
4 law. The whole purpose of mandatory intervention is
10:46:52 5 that unless that person is going to come in and drag
6 their feet or raise new claims or take some other sort
7 of position that's going to prejudice rights, they
8 haven't carried their burden, and we should be allowed
9 to intervene.

10:47:08 10 THE COURT: But timeliness is a reason even to
11 deny mandatory intervention, isn't it?

12 MR. WALDEN: It is, your Honor. Timeliness
13 is, and I'm going to get there right after I get through
14 these four core principles, your Honor, because I
10:47:21 15 listened to you. And I'm a lawyer that loves the law.
16 So, I love the case law, and I love these questions.

17 So, the third principle, very quickly, your
18 Honor, is what seems to drive each of the decisions that
19 I'm going to talk about is the gravity of the harm,
10:47:34 20 right, that -- because intervention focuses primarily on
21 timeliness, as you said, but also then, assuming you
22 have a timely petition, if there's a real and
23 substantial interest, you let the person in unless
24 there's a compelling showing that there's going to be an
10:47:54 25 undue delay that will prejudice rights in the

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1 proceeding. No one's articulated. Look through the
2 affidavits.

3 THE COURT: Well, they didn't cite case law,
4 but I think they articulated that --

10:48:03 5 MR. WALDEN: The only --

6 THE COURT: -- the burden on the board of
7 elections, and that it's going to lead to no elections
8 on the maps including the congressional and state
9 senate.

10:48:15 10 MR. WALDEN: I agree with you, your Honor,
11 that that's the argument that they made. What does that
12 have to do with intervention? That has to do with
13 whether or not we have -- you should grant relief at the
14 end, assuming that they're -- we're in the case.

10:48:27 15 THE COURT: Well, it has to do with prejudice
16 to the petitioners.

17 MR. WALDEN: But it's not prejudice -- if you
18 let us intervene, right, this is why I think burden --
19 it's almost like saying -- if there was a case that said
10:48:39 20 if you assume that the intervenors are right on the law
21 and that they should win and that would cause a burden
22 on one of the parties, wouldn't prejudice their rights
23 other than it will create a burden, that's a reason not
24 to let them intervene. That's not what the law is, your
10:48:57 25 Honor. The law is prejudice to rights in the

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1 proceeding. So, they're talking about burden because
2 they're trying to -- what's the word for the magical
3 term for -- like bait and switch.

4 THE COURT: Circumvent?

10:49:13 5 MR. WALDEN: Circumvent, but there's a pithier
6 expression that was better rhetoric. In any event, your
7 Honor, it's apples and oranges compared to what your
8 Honor has to decide here today, which is just whether or
9 not you're going to grant Mr. Greenberg and the other
10:49:26 10 petitioners a right to be heard. And if we lose, we
11 lose, right? Then there's no burden on them, right?
12 You let us in, we make our arguments, which we're
13 prepared to make tomorrow. I will stay here overnight
14 and attend a proceeding, and we can argue the merits of
10:49:42 15 our petition tomorrow, your Honor. And if you decide
16 that nope, I'm not changing the assembly maps, okay,
17 you've given us our day in court, and we would be very
18 grateful, and they have no burden whatsoever.

19 THE COURT: You're saying you're not going to
10:49:54 20 appeal that decision up and up and up, and then all of a
21 sudden we're out of time, and we can't have any
22 elections on the maps that --

23 MR. WALDEN: Well, your Honor -- well, first
24 of all, I just want to be practical about this, your
10:50:06 25 Honor. I don't know whether we're going to appeal or

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1 not because I don't know what's going to happen. I
2 didn't even talk to my client about that, but who's the
3 one that has been delaying this through endless appeals?
4 That's -- I couldn't think of a better expression than
10:50:18 5 Mr. Foldenauer's of delay by design. They're trying to
6 force the court system into a position where it's like
7 okay, we have to relent. We have to relent to some
8 amount of unconstitutionality.

9 And who is loses it, your Honor? They win,
10:50:31 10 right; that's what they want. And we're going to get to
11 that, because I want to get into the timeliness issue.
12 They win, the voters lose. They win, the candidates
13 that should be on the ballot that they've excluded,
14 right, lose. That can't be our democracy, your Honor.

10:50:48 15 Nobody in this state who's following this
16 proceeding -- and, your Honor, to your credit, I think
17 that the opinion that you wrote was -- I can't imagine
18 there are many lawyers in the state that didn't read
19 that opinion, and many ordinary people, too. Everyone
10:51:02 20 is watching this, your Honor. This is -- this will
21 become not only a bedrock test of the strength of our
22 democracy, but for all of the people nationwide who are
23 hearing voter suppression, voter suppression, voter
24 suppression, and all -- a lot of those cries are coming
10:51:21 25 from democratically controlled states. For the nation

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1 to see that the New York Court System is going to put
2 its imprimatura on a substantively defective
3 unconstitutional map because they're running an
4 intentional game of delay, no one is going to listen to
10:51:40 5 anyone from New York preach about voter rigging ever
6 again. So, the consequences of this, your Honor, are
7 extraordinarily significant. So, the gravity of the
8 harm, there could not be a more invasive and destructive
9 circumstance in the context of an election than vote
10:52:03 10 rigging, and that's exactly what happened here.

11 And your Honor has made a distinction, and I
12 think back, it's been years and years and years since I
13 studied the difference between substantive due process
14 and procedural due process, but I remember this Blackman
10:52:18 15 opinion about the difficulty of determining the two,
16 that there are areas where there's a lot of overlap.
17 Now, when they say -- I'm sorry, your Honor, just need
18 water.

19 THE COURT: That's fine.

10:52:28 20 MR. WALDEN: -- the maps are procedurally
21 defective, they're procedurally defective, what are they
22 trying to do? They're trying to make it seem like it's
23 not a big deal. They're trying to make it seem like
24 it's really just procedural. Why was the procedure put
10:52:38 25 there? Why did the voters insist on putting the

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1 procedure there? Why did the legislature itself,
2 through the process to amend the constitution, put the
3 procedure there? It is to restore integrity in the
4 elections and to prevent manipulations, whether it
10:52:57 5 qualifies as gerrymandering in every single line draw or
6 not.

7 And, your Honor, to be clear, these maps not
8 only violate the process of the constitution, but also
9 violate the notion that if the legislature is going to
10:53:12 10 go to the point of drawing its own maps, right, they
11 couldn't have done that here because the IRC didn't
12 submit a second set, but they did it anyway. They can't
13 change any one by more than two percent, and they did it
14 here and in many districts. And for those voters, it
10:53:29 15 matters because when the special master, who I have an
16 enormous amount of respect for, looks at the detail and,
17 as Common Cause and many of the other good government
18 groups have, I think what they're going to see is that
19 there were line draws to intentionally exclude
10:53:43 20 candidates and move candidates from Assembly District A
21 to Assembly District B. And that's just not right.
22 That's anti-democratic. And it's a circumstance where
23 people are putting party over country and over the New
24 York State Constitution.

10:53:58 25 THE COURT: You had 13 assembly members vote

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1 for that.

2 MR. WALDEN: We're going to get to that in a
3 second, your Honor. So, the fourth -- so, I'm done with
4 the general intervention. I'm going to cover the
10:54:12 5 statute -- the CPL requirements super quickly, your
6 Honor, because you know them like the back of your hand.
7 I'm sure you know them better than I do.

8 So you've got mandatory and you've got
9 permissive, right? What we have to show is pretty
10:54:24 10 clear, right? For mandatory, if there is a statute that
11 gives someone a right, done, it's over, unless the other
12 side can show a delay in prejudice to their rights in
13 this proceeding. If we're not being adequately -- if
14 our client is not being adequately represented and if
10:54:41 15 he's going to be bound by the judgment, we're done
16 unless they can show the same thing.

17 And for permissive, it's an even easier test:
18 Is there a similar set of fact and law. Clearly, there
19 is no credible argument that these things don't apply.
10:54:56 20 So this all comes down to two things and two things
21 alone, as you, not surprisingly, astutely put your
22 finger on, right? Timeliness and whether they have
23 actually carried their burden of proof by offering
24 burden as a result of final relief that is not at issue
10:55:13 25 here, right? That's -- they're trying to distract you.

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1 They're trying to get you to watch the hand here and
2 they're producing the ball hand. Slight of hand; that's
3 what I was trying to refer to.

4 So, let me get to the timeliness issues, your
10:55:27 5 Honor. What they did not talk about, which is really
6 surprising to me, your Honor, because I take my duties
7 to the court very seriously, very seriously. And I
8 believe when there's adverse authority, you cite it, you
9 explain it, you distinguish it, but you don't just not
10:55:43 10 talk about it. And here, your Honor, there is plenty of
11 authority on the timeliness issue because there are
12 three governing principles in almost every case
13 including the Fourth Department cases that actually
14 explain why they're keeping people out or letting people
10:55:59 15 in.

16 Number one is there's no specific time limit,
17 right, it's a sua generous case by case determination.
18 Number two, it is not a mechanical measure of time. And
19 number three, courts in this department and across the
10:56:14 20 state have allowed people to intervene in circumstances
21 that are much more delayed, where the rights at stake
22 are much less serious than in this case. Let me give
23 you some examples. So, there's a Second Department case
24 from 2010 called *FLB v. Tycoon*.

25 If you need any spellings, I'll give them to

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1 you afterwards.

2 THE COURT: Cite?

3 MR. WALDEN: I was just getting to that, your

4 Honor. 73 -- and we can put this in our 5-pager, if

10:56:45 5 it's helpful, your Honor. 73 AD3d 719. It's a -- it

6 was a claim over ownership to real property. The court

7 allowed intervention after judgment in that case. After

8 judgment. After the case was over. Courts have allowed

9 intervention after settlement agreements have been

10:57:05 10 reached by parties after the litigation has already

11 concluded. One of the controlling cases is *Romeo v.*

12 *Department of Education*. It was a dispute over a

13 district where children were going to be eligible to go

14 to school in two different districts, and the DOE didn't

10:57:23 15 want them to go to one of the districts.

16 DOE, by the way -- I'm sorry; the district was

17 not a party. So, the argument that's been put to you

18 that in order to be bound under CPLR 1012(a)(2) that the

19 test is *res judicata*, it's not. That's not true. In

10:57:48 20 that case, in the *Romeo* case, the court allowed the

21 districting, even though the district wasn't a party,

22 and even though in the opinion it says it won't be bound

23 by *res judicata*, the reason it let the district in after

24 a settlement was because the district, as a result of

10:58:04 25 the order, was going to have to issue an order with

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1 respect to the kids even though it had a right to sue
2 separately. It could have initiated, as you know, it's
3 own Article 78. It could have filed its own suit, and
4 the court still let the district in after the
10:58:19 5 settlement.

6 After an appeal. *Triangle v. National Bank of*
7 *New York*, 62 AD2d 1017, Second Department 1978 after
8 appeal.

9 After multiple appeals. *Jones v. Town of*
10:58:36 10 *Carroll*, 158 AD3d 1325, Fourth Department 2018. That
11 case concerned the validity of a permit law, and even
12 though there had been litigation that had been going on
13 for four years, the petitioner -- or the intervenor in
14 that case had notice of, for various reasons that are
10:58:56 15 explained in this relatively short opinion, the court
16 approved intervention.

17 So, the timeliness issue, your Honor, when you
18 actually look at the case law, is not a terribly
19 compelling argument. They -- what they do is they cite
10:59:11 20 two cases that are completely distinguishable, both of
21 which -- one of which was a chemical company that had
22 notice of a four-year litigation during the litigation,
23 at the tail end of the litigation, there was a
24 settlement. A year after the settlement, there was -- I
10:59:31 25 can't remember what the next step was, but there was

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1 something else, and three weeks after that third thing,
2 then the chemical company finally intervened. And the
3 court said no, we're not letting you do that, that's
4 ridiculous. They essentially found that it was
10:59:44 5 manipulative.

6 THE COURT: But I'm looking at timeliness in
7 this case in the sense of whether we're going to be able
8 to hold an election on the state senate and the
9 congressional. If your client is allowed to intervene,
11:00:00 10 we may end up with an election at large is what I'm
11 worried about.

12 MR. WALDEN: And what I'd ask your Honor to
13 consider, and obviously, your Honor, I -- unfortunately,
14 I'm wrong as often as I'm right, right? But I own it.
11:00:13 15 But on this point, your Honor, I don't think I'm wrong.
16 I think this burden issue in the context of our
17 intervention motion is a red herring, because -- we'll
18 get to the burden issue, and when we have a chance to
19 actually, in a very expeditious way -- and I have some
11:00:33 20 suggested innovations for the court that will force the
21 parties to make it easy on the court, because everyone,
22 especially the parties to this litigation -- and when I
23 say the parties, I mean mostly the respondents -- are
24 putting too much weight on your shoulders, your Honor.
11:00:48 25 They should be able to give the court a schedule that

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1 gets us here even if that schedule moves all of the
2 primaries to September. All of them.

3 THE COURT: To what; September?

4 MR. WALDEN: I'm sorry, your Honor?

11:01:05 5 THE COURT: To what; September, did you say?

6 MR. WALDEN: The first Tuesday in September.

7 I'm sorry, your Honor, I don't have the date. But there
8 is enough time. They'll say oh, there's burden, it's
9 really hard, it's going to -- it's not going to be hard
11:01:18 10 as running two primaries on the voters. It's not going
11 to be more -- it's going to be less expensive for the
12 tax dollars, which it's not like the board of elections
13 has an unlimited fisc.

14 THE COURT: Are you saying I have the power to
11:01:36 15 move the governor's election to September?

16 MR. WALDEN: I think the Court of Appeals is
17 clear that whatever needs to be moved in terms of
18 statutory deadlines or constitutional deadlines that are
19 inconsistent with the constitutional violation that has
11:01:54 20 occurred in this case, your Honor has the power to do
21 it.

22 So, I'm not suggesting that that's the only
23 approach, your Honor. I'm suggesting to you that the
24 parties are making it too hard on the court. I mean,
11:02:04 25 honestly, your Honor, part of what I hope you will

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1 consider in light of the issues that I've raised on the
2 integrity of the election and confidence in the election
3 and a desire from everyone at least to what they say
4 publicly when they're not in smoke-filled rooms, right,
11:02:24 5 to have elections that aren't rigged by political
6 influence is to deter these people from ever doing it
7 again.

8 If you give them the assembly maps, they are
9 going -- there is going to be celebrations across Albany
11:02:40 10 by Democrats and Republicans because they knew they
11 weren't going to win everything, they just wanted to win
12 one thing: the assembly maps. That's why they didn't
13 file. That's why they didn't contest them. That's why
14 they went to the Fourth Department and said we're good
11:02:56 15 with the assembly maps, right? That's the real
16 machination here, your Honor. That's the real fraud in
17 a sense.

18 And now I want to get to why my client decided
19 to file when he did. So, obviously, when you had the
11:03:14 20 case, your Honor, he had great confidence that you were
21 going to get to the right decision. And he thought, you
22 know, there must be some reason that the assembly maps
23 are different. There wasn't that much information.
24 There wasn't briefing out there.

11:03:26 25 The trial happened very quickly. Then your

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1 Honor in time -- I can't even understand, your Honor,
2 honestly, how you did it so quickly. But in very short
3 order, you issued a very comprehensive opinion that the
4 assembly maps were just as rigged as the other maps.

11:03:41 5 And you not only said they were unconstitutional, you
6 said they were void and you said they were not useable.
7 And that language, your Honor, I think, reverberated and
8 my client felt confidence.

9 And then the appeal came and the respondents
11:03:57 10 didn't defend your decision. And moreover, as
11 Mr. Foldenauer held up that brief, that's the brief that
12 did it, I think, they revealed something important, your
13 Honor. They revealed that there was a political deal
14 worked out, that there was a political deal that
11:04:16 15 involved a quid pro quo. That's what Mr. Greenberg
16 started hearing when that brief was filed. He started
17 hearing these rumors that there was a deal worked out
18 between the Democrats and the Republicans to give the
19 Republicans something in return for leaving the assembly
11:04:31 20 districts alone. And then after the Court of Appeals
21 came out, in that footnote that essentially, from our
22 perspective, invited intervention, then Mr. Greenberg
23 finally heard it from someone who had a direct
24 conversation, someone he trusted, and someone that he
11:04:47 25 believed.

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1 And my client is not a popular guy, your
2 Honor. I don't understand that, because he literally
3 invested hundreds of thousands of his own money to pass
4 a bill to protect the survivors of sexual violence
11:05:03 5 against kids. Like, I can't imagine someone, as a
6 survivor himself, that decided he was going to do that
7 for the children of this state. And why is he a rogue,
8 why is he called a crackpot by the *New York Post*?
9 Because he won't play the game, because he won't go
11:05:24 10 along with the political establishment.

11 And when he heard confirmation -- and, your
12 Honor, I invite you to ask the question directly of
13 counsel in this case whether or not there was any sort
14 of benefit given from the Democrats to the Republicans
11:05:39 15 to cause the petitioners to not pursue the assembly and
16 to not defend a decision that your Honor reached in good
17 conscience, because you care about more -- it's
18 exponentially more about the rule of law than you do
19 about this -- what has become political blood sport with
11:06:04 20 zero integrity.

21 And if this court ultimately -- and now I'm
22 getting to the merits, because everybody wants to get to
23 the merits. We talked about the deadlines and the
24 difficulties and the burdens, but if the ending of this
11:06:16 25 story is that these people won the thing that they

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1 mattered -- that mattered most to them because they
2 succeeded in delay by design, how could anyone have
3 confidence in the integrity of New York's electoral
4 system?

11:06:33 5 And so, your Honor, sometimes People like to
6 make things complicated when they're really very simple.
7 And I read the *Daily News* op ed from today, and they
8 read something that I think just makes this magically
9 simple, and I'd like to read it to your Honor: The
11:06:48 10 people passed a constitutional amendment. It was
11 violated. The maps must go.

12 I'm telling you very clearly where we want the
13 merits to go, but now I'm going to get back to what
14 we're supposed to be arguing about here, your Honor,
11:07:02 15 which is just whether or not we're going to have a seat
16 at the table. And the timeliness issue, while it is the
17 most credible issue that they raised in a lot of
18 incredible issues, a lot of issues that have zero merit
19 and are simply misdirection, the timeliness issue does
11:07:17 20 not -- the law does not support their position for the
21 reasons that I've described.

22 And so, your Honor, in closing, I'm sorry that
23 I took longer than I expected. Please, please, your
24 Honor, use your discretion to let my client be heard
11:07:32 25 before this honorable court. That's all we're asking in

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1 this application. But I promise, I'm making a promise
2 to your Honor, and I do not do this lightly, that no
3 matter what my other caseload, this is going to be my
4 first priority. I'm going to make sure everything
11:07:48 5 happens on time, and I'm going to do as much as I can to
6 relieve the burden on the court so that you can have a
7 quicker resolution, because I believe, Judge, that if
8 you force all of these people to get in a room and
9 produce a schedule for you that is achievable and abides
11:08:03 10 as many of the deadlines as possible and moves the
11 deadlines that need to be moved, that we can get to a
12 free and fair election, which is not only the bedrock of
13 our democracy, but without it, we're lost. Thank you.

14 THE COURT: Thank you, Mr. Walden.

11:08:25 15 Mr. Winner, on behalf of the petitioners?

16 MR. WINNER: Thank you, your Honor. I'll be
17 very brief. Your Honor, the issue is pretty simple.
18 We're dealing about this particular case, and this
19 particular case, the petitioners would clearly be
11:08:46 20 prejudiced in the event that the timeliness is violated
21 with respect to the provisions of CPLR 1012 (a)(2) and
22 1013.

23 THE COURT: How prejudiced?

24 MR. WINNER: Well, we're prejudiced because
11:08:59 25 there may be some impediment to moving forward with an

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1 orderly election on constitutional maps that are now in
2 the process of being drawn by a special master in such
3 that we don't know what the output would be. And
4 listening to the board of elections, and as you have
11:09:19 5 indicated, they're showing some significant difficulties
6 with the potential of complying with a new intervention
7 and potential delay, appeals, and whatever that would be
8 caused by the intervention at this point by the assembly
9 challenges.

11:09:40 10 So, to that extent, your Honor, we don't think
11 the Court of Appeals set forth in their footnote that
12 we -- that they do not invalidate the maps of the
13 assembly, and that they weren't challenged, and that the
14 original petition was brought by us on February 3rd
11:10:03 15 without a challenge to the assembly maps. The Appellate
16 Division reversed your decision, invalidated your
17 determination, which we believe was accurate, that the
18 procedure was violated, but then again, the timeliness
19 on any of those periods of time, the proposed
11:10:23 20 interventions could have occurred.

21 THE COURT: You don't argue that the assembly
22 maps are procedurally defective?

23 MR. WINNER: Oh, of course, we do. We agree
24 with your original decision that that was the case, but
11:10:34 25 any citizen at this point is free to bring a challenge

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1 to those maps. But we do not believe in this particular
2 proceeding that any challenge to the assembly maps is
3 timely.

4 THE COURT: Was there a deal worked out
11:10:50 5 between the Democrats and Republicans, to your
6 knowledge, on the assembly maps?

7 MR. WINNER: Well, there may have been a deal
8 worked out in the passage of the maps by the assembly --
9 by the Democrats and the Republicans. I'm not aware of
11:11:02 10 that. But it was, of course, our determination not to
11 challenge the assembly maps because they were adopted of
12 bipartisan map.

13 THE COURT: You're not aware of any agreement
14 after the fact, after the maps were --

11:11:14 15 MR. WINNER: Certainly not.

16 THE COURT: -- adopted?

17 MR. WINNER: Certainly not, your Honor.

18 THE COURT: Anything further, Mr. Winner?

19 MR. WINNER: No, your Honor, thank you.

11:11:19 20 THE COURT: Thank you. Who would like to go
21 first, Governor or Senate Majority Leader?

22 Ms. McKay, would you like to go first?

23 MS. McKAY: Sure; I'm happy to.

24 THE COURT: Very good; go ahead.

11:11:39 25 MS. McKAY: Heather McKay of the New York

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1 State Attorney General's Office on behalf of the
2 Governor. As all the parties in this months-ongoing
3 special proceeding agree, the three intervening motions
4 should be denied. We've articulated the reasons in our
11:11:58 5 briefing. The legislative respondents articulated some
6 of the same, as well as others, in which we would join.

7 Very briefly, because I know that your Honor
8 carefully reads our submissions, I can address some of
9 the points in particular that were raised today. The
11:12:19 10 main reason why these should be denied is that the
11 motions are untimely. With respect to the arguments for
12 invalidating the assembly maps at this late stage, I
13 would first say that it's ironic that Mr. Foldenauer
14 claims it is the legislature or some combination of
11:12:43 15 respondents that are somehow responsible for the delay,
16 for claiming that because we exercised our right to
17 appeal, which is hardly surprising. Your Honor
18 acknowledged that the ultimate determination as to the
19 validity of the maps would obviously be done by the
11:13:04 20 highest-up court in this state. The delays, despite
21 what Mr. Foldenauer and Mr. Walden want to say, is their
22 own. It has nothing to do with any of the respondents
23 in this case.

24 Essentially, at this point, the analysis is
11:13:25 25 extremely simple. Petitioners' amended petition could

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1 not have been clearer that they were not challenging the
2 assembly map. It's -- that's exactly where it was
3 spelled out. There's two footnotes in particular that
4 we cite in our papers where they specifically spelled
11:13:48 5 out any one of the readers that the attorneys are
6 describing in this case, members of the public who might
7 have wanted to challenge those maps, and the proposed
8 intervenors decided to sit and rest on their morals and
9 did not do it. So, they really can't claim that the
11:14:10 10 appeal process is where that was borne out. It was
11 expressly spelled out in a publicly filed document
12 months ago. It is also very telling that all of the
13 parties that have actually been litigating this case for
14 months now agree that the intervenors are too late.
11:14:33 15 This includes petitioners, this includes the state board
16 of elections, which has declined to weigh in previously
17 in this case given their bipartisan nature.

18 There were so many inflammatory claims that
19 were made during Mr. Foldenauer's speaking that I'm not
11:14:53 20 sure I can address them all. But one of the main ones
21 is that it seems necessary to set the record straight,
22 even though I'm sure that your Honor is well aware that
23 there is no substantive gerrymandering of the assembly
24 maps. Everyone knows that.

11:15:13 25 We do know why Republican members voted for

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1 the assembly maps. They told us in their sworn
2 affidavits they believed the maps were fair. So, I
3 believe there was a reference to we don't know why they
4 signed it. We do. We have sworn statements about that.

11:15:35 5 And I want to correct one other factual
6 inaccuracy. New York City has sent certification to the
7 state board on May 4th. I believe the SBOE can confirm
8 that they certified the New York State races.

9 THE COURT: Anything -- I'm sorry, McKay.

11:15:56 10 MS. McKAY: Go ahead, your Honor.

11 THE COURT: No, that's okay. Go ahead.

12 MS. McKAY: Okay; thank you. With respect to
13 the case law that was just cited by -- on behalf of on
14 Greenberg, those cases are completely in opposite. The
11:16:10 15 reality is this case is very -- it's hard to find
16 particularly analogous case law, because none of those
17 are special proceedings with constitutional time limits
18 that we've all been familiar with since the beginning of
19 this case in terms of 60 days for a decision. We have
11:16:31 20 an extremely limited time period. A day in this case is
21 mainly -- is basically equivalent to a month or more in
22 a regular case.

23 Your Honor asked him how he -- you would
24 possibly have the ability to change other state-wide
11:16:48 25 races, and he completely ducked that question. Making

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1 it too hard for you, he didn't want to give you any
2 legal basis upon which for you to do what he's
3 suggesting, which would be to utterly upset the election
4 process without any legal basis and change every single
11:17:08 5 election so that there's one election -- or one date,
6 that that's not going to be possible. And he's not
7 provided you with any effective legal analysis for why
8 or how you would be able to do that as a member of the
9 judiciary.

11:17:27 10 Our papers also talk about standing. I don't
11 want to belabor that point, but it is really important,
12 especially as to motion number 13, because Greenberg is
13 not an aggrieved candidate or a chairman of any party or
14 a person who has filed timely objections. We do stand
11:17:52 15 by the fact that any challenge to any independent
16 nominating petitions is not right. I believe there's
17 petitions that say -- make us use that argument against
18 us. That's a very reasonable argument with respect to
19 that particular claim for relief as to independent
11:18:12 20 nominating petitions as your Honor's advisory opinion on
21 it acknowledge those are not yet due, and they won't be
22 due until after the maps have been -- the new maps have
23 been put into place. That has nothing to do with Wax's
24 challenge to the assembly maps whatsoever. Those are
11:18:31 25 completely different claims for completely different

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1 relief.

2 And then the proposed intervenors have not
3 satisfied any of the mandatory intervenor requirements.

4 And I am privy of the petition, and the discretionary

11:18:48 5 determination should be denied regardless. I mean,

6 they've made so much of the prejudice point, but your

7 Honor can decide to exercise in his discretion not to

8 allow the intervenor even because of undue delay. I

9 don't think that there is a way to argue with a straight

11:19:09 10 face here that the intervenors would not cause undue

11 delay in this case.

12 And the state board's affidavit from Todd

13 Valentine is very telling. Proposed intervenors haven't

14 been here through this whole process like we have, and

11:19:26 15 it's really clear because they don't seem to understand

16 the significance of that affidavit. To date, there was

17 never a united position taken by the state board. When

18 we presented Connolly's affidavit, the petitioners

19 provided a higher affidavit from Mr. Valentine. They

11:19:46 20 were speaking for themselves based on their expertise in

21 the field. This affidavit is the first time that the

22 state board is speaking as a united bipartisan whole.

23 And we've reached the point now where everyone agrees it

24 would be absurd to risk the election to redo a map that

11:20:06 25 has absolutely no problem in substance.

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1 And regarding motion number 12 argued by
2 Attorney Ostrowski, I would ask how their interests are
3 not already represented by the existing parties. The
4 executive respondents have argued unfairness and
11:20:29 5 concerns on behalf of voters and candidates regarding
6 upsetting the ongoing election all along. And more
7 recently, the state board has been communicating with
8 the court about what is needed given the decisions
9 issued in order to ensure the candidates have sufficient
11:20:49 10 time and the local boards have sufficient time to ensure
11 that these elections move forward and effectively.

12 Our final points are just that the statute of
13 limitations has run on challenging designating
14 petitions, and then Latches applies for many of those
11:21:09 15 same reasons regarding timing. And finally, the
16 proposed intervenors' request would have an absolute
17 ripple effect. The assembly races will hold up multiple
18 other races including those for judicial offices. There
19 are just abundant reasons why the delay here would be
11:21:32 20 absolutely undue and carry risks that everyone now
21 agrees are not worth it. Thank you.

22 THE COURT: Thank you, Ms. McKay.

23 Senate Majority Leader, Mr. Hecker?

24 MR. HECKER: Thank you, your Honor. As we
11:21:51 25 indicated in a letter I submitted yesterday, we are

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1 joining in the arguments that Ms. McKay Mr. Bucki made
2 on behalf of the executive respondents and the assembly,
3 and I will defer to them.

4 THE COURT: All right. Thank you. Speaker of
11:22:07 5 the assembly, Mr. Bucki.

6 MR. BUCKI: May it please the court, Craig
7 Bucki on behalf of Assembly Speaker Heastie. I
8 appreciate the civics lecture that we had today from
9 Mr. Walden and Mr. Foldenauer. The problem is this
11:22:50 10 isn't a social studies class. This is a court of law.
11 And under the law, there are certain standards that need
12 to be satisfied in order for folks like Mr. Wax and
13 Mr. Greenberg to be able to intervene.

14 And so what I'd like to do is cut through all
11:23:11 15 of the proselytizing from Mr. Walden and Mr. Foldenauer
16 about how they and their clients are such vanguards of
17 democracy. Spare me. I want to cut through all of the
18 really irresponsible statements made, particularly by
19 Mr. Walden, for which he offers no proof and no evidence
11:23:34 20 making up out of whole cloth some kind of assertion that
21 there was some kind of backroom deal. If you're going
22 to say that there was some kind of quid pro quo between
23 Republicans and Democrats and the State Assembly, you
24 better have some evidence. And Mr. Walden doesn't offer
11:23:52 25 any. And so to make that kind of assertion about

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1 elected officials who take an oath to uphold the
2 Constitution of the United States and the Constitution
3 of the State of New York, that is particularly
4 irresponsible and unbecoming of an officer of the court.

11:24:12 5 Where I'd like to start is with the standard
6 for intervention. And the standard for intervention is
7 clear. Started with both CPLR 1012 and CPLR 1013. Both
8 those provisions begin with the same three words: upon
9 timely motion. And it's funny that Mr. Walden comes up
11:24:41 10 here and starts citing cases to this court about what it
11 means for a motion to intervene to be timely. Funny
12 thing is, he didn't cite any of those cases in his
13 papers because his papers cited no law. He just thought
14 he was going to march in here and say the assembly map
11:25:01 15 is unconstitutional, therefore, my client,
16 Mr. Greenberg, should be able to intervene.

17 What we actually did is we did our research.
18 And we offered a very detailed memorandum of law
19 explaining why these motions are not timely. And now,
11:25:17 20 belatedly, Mr. Walden, realizing his error, comes up
21 here and offers all kinds of law to the court that he
22 never had -- he never briefed even though he had the
23 opportunity. And we would submit that that's too little
24 too late.

11:25:30 25 But let's focus on the standard of upon timely

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1 motion. And really, our argument about timeliness boils
2 down to a simple question: Where have they been? Where
3 was Mr. Greenberg in February and in March and in April?
4 Where was Mr. Wax in February and March and April when
11:25:59 5 petitioners' counsel, the senate's counsel, the
6 Governor's counsel, us as counsel for the assembly and
7 for the speaker, we were doing all these motions, all
8 these briefing. This is my seventh day in Bath since
9 February for proceedings in this matter. And I've been
11:26:17 10 happy to be here, and Bath has been a great place to
11 come to, and it's been very good to me. But this has
12 taken up a lot of time, and all of the counsel have been
13 working very hard to assert their clients' position.

14 We had argument on motions, we had a trial.
11:26:36 15 We had an appeal that was fast-tracked by the Fourth
16 Department. We had to file papers with the New York
17 Court of Appeals on a Saturday at noon and then a Sunday
18 at noon. I've never had that kind of schedule before.
19 And we went from a decision at the Fourth Department on
11:26:51 20 a Thursday to arguing at the Court of Appeals on a
21 Tuesday. I assure you, your Honor, all the counsel for
22 all the parties have been working very hard on this
23 matter, and we have been giving it our full attention.
24 While all this has been going on, where have been --
11:27:10 25 where was Mr. Greenberg and where was Mr. Wax? I can

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1 tell you what they've been doing. They've been tweeting
2 prolifically about this case. And that's why we've
3 provided, as Exhibits A and B to my affirmation, copies
4 of some of those tweets.

11:27:28 5 THE COURT: I saw it.

6 MR. BUCKI: And your Honor is well aware about
7 Mr. Wax's fighting words calling Republican legislators
8 weak and pathetic, cowards, all these guys care about is
9 keeping their pension. And that applies to Assemblyman
11:27:45 10 Barclay, the minority leader, Assemblyman Palmesano, the
11 representative from LATFOR, and all 14 individuals from
12 the Republican conference in the assembly who voted in
13 favor of these maps because they are fair, as they have
14 said in the affidavits provided to this court.

11:28:03 15 And meanwhile, Mr. Greenberg likewise started
16 tweeting on February 3rd. And what's particularly
17 notable about Mr. Greenberg's tweets is it's clear from
18 the tweets he was watching the proceedings before your
19 Honor. He was tweeting about your Honor. He was
11:28:20 20 tweeting about the attorneys. He posted a copy of the
21 pleadings in this case on Twitter. So, if he posted a
22 copy of the pleadings, and if the pleadings made clear
23 in a footnote that there was no challenge to the
24 assembly map, how could he say that he did not know that
11:28:40 25 there was no challenge to the assembly map?

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1 He and Mr. Wax had ample opportunity to seek
2 to intervene in this case. They had access to NYSCEF,
3 they knew what was going on. They could read the
4 pleadings and see what was being challenged and what
11:28:59 5 wasn't. And instead, your Honor, what they did is they
6 sat on their rights. And there's a maxim in the law
7 that says those who seek equity must do equity. And
8 that's what the Fourth Department has said, and the
9 Court of Appeals has said. So, if they want the
11:29:17 10 equitable relief of invalidating the proposed assembly
11 maps that have been enacted, then it was incumbent upon
12 them to do equity themselves and to come before this
13 court, if not in February, then certainly in March
14 before this court entered a final judgment.

11:29:35 15 And, in fact, Mr. Wax said in a Twitter
16 mention on March 31st: Someone tried to tell me there
17 was no lawsuit as it pertained to the assembly lines.
18 So Mr. Wax knew that that, in fact, was the case, and
19 yet they were nowhere to be seen, nowhere to be heard.
11:29:55 20 And so, really, for them to come in and claim that
21 somehow they're fighting for democracy, well, if they
22 really were fighting for democracy they would have
23 intervened in February. They would have intervened in
24 March. They would have intervened in April.

11:30:09 25 Why are they here in May? Because they sensed

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1 an opportunity for publicity. Mr. Greenberg gave his
2 exclusive last week to the *New York Daily News* saying
3 I'm going to challenge the assembly maps. And Mr.
4 Walden, giving an interview to the *New York Law Journal*
11:30:28 5 back on May 4th: We're going to invalidate the assembly
6 maps. He was so busy giving media spots and trying to
7 build his brand that he forgot to serve the order to
8 show cause in the manner that was required by this court
9 right in the order. And so for that reason alone, the
11:30:46 10 motion to intervene is defective and needs to be denied.
11 So we would submit that with respect to timeliness,
12 there was ample opportunity, and Mr. Wax and
13 Mr. Greenberg squandered it, and they did not take
14 advantage. And that is the first reason why the motion
11:31:03 15 to intervene should be denied.

16 THE COURT: What do you suggest the court do,
17 though? I mean, yes, you've got 13 that -- 13 assembly
18 members that you attached affidavits for that say they
19 think it's fair, but procedurally, I don't think you
11:31:18 20 disagree that, you know, the ruling is that the assembly
21 maps are defective procedurally. So, what's the answer
22 here? Do you just let those go for the next ten years?

23 MR. BUCKI: Yes. And here's the reason why.
24 Because the New York Court of Appeals had an opportunity
11:31:36 25 when we were there about two weeks ago to invalidate the

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1 assembly maps if they wanted. So what happened is your
2 Honor invalidated the assembly maps. At the Fourth
3 Department, we argued that the assembly maps should not
4 have been invalidated because they were not challenged.
11:31:53 5 And, in fact, the Fourth Department agreed with us and,
6 in fact, all five justices on the panel agreed with us.
7 So, it was before the Court of Appeals when we undertook
8 that appeal about two weeks ago. If the Court of
9 Appeals was of the view that the assembly maps should be
11:32:09 10 invalidated, the Court of Appeals could have done that
11 at that time, and it pointedly chose not to. And I
12 commend the court to footnote number 15, which --

13 THE COURT: But they said because it hadn't
14 been challenged.

11:32:23 15 MR. BUCKI: Because it hadn't been challenged.

16 THE COURT: Now it is, or they want to get it
17 to challenge.

18 MR. BUCKI: And the thing is, constitutional
19 violations go by the wayside all the time because they
11:32:33 20 are not timely challenged. And a good example is the
21 *Scaringe* case that is cited by the New York State Board
22 of Elections in the companion affidavits of Kristin
23 Stavisky and Todd Valentine. And that was a case about
24 a person who did not satisfy the requirements with
11:32:52 25 respect to residency under the constitution for running

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1 for state legislature. And it was clear that that
2 person did not satisfy the requirements. But what did
3 the Third Department decide? Notwithstanding that there
4 was a constitutional violation, that it was too late to
11:33:11 5 remedy. Because if that's not going to be the result,
6 then statutes of limitation have no meaning, then the
7 doctrine of Laches has no meaning, then any kind of
8 cause of action can never be stale at any time.

9 So, another good example from the land use
11:33:30 10 context. There's a reason why Article 78 proceedings
11 have a four-month or sometimes even shorter statute of
12 limitations: because government action needs to be
13 challenged promptly. Litigants need to get the benefit
14 of certainty as to what their rights are going to be
11:33:48 15 vis-a-vis actions that are taken by the government. And
16 so that's why, on a land use application, a zoning
17 variance, a rezoning, if there's a challenge made a few
18 years down the line or even well past 30 days or four
19 months, depending upon the statute of limitations, even
11:34:07 20 if there's a substantive infirmity, the case goes out
21 the window because of untimeliness. And this is no
22 different a circumstance here.

23 And so what I also think is worth noting on
24 the issue of timeliness concerning the election is we've
11:34:26 25 had a lot of discussion about the affidavits that are

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1 offered by the State Board of Elections, and there has
2 been discussion by Mr. Walden in his presentation that
3 oh, the state board of elections talked about all kinds
4 of a parade of horrors that would happen if the
11:34:42 5 congressional map were invalidated, if the senate map
6 were invalidated, and yet those were invalidated anyway.

7 The key difference is that when that parade of
8 horrors was talked about by Tom Connolly, the Director
9 of Operations at the State Board of Elections, there
11:35:03 10 was, on several occasions, a responding affidavit from
11 Todd Valentine, the Republican Co-Executive Director at
12 the State Board of Elections, that, frankly, disputed
13 those characterizations and said not true; we can
14 satisfy new time frames. We can have a congressional
11:35:25 15 map and a state senate map that are invalidated, and we
16 can still run an election in time for this particular
17 year.

18 So, up until now, there has been, concededly,
19 a difference of opinion between the Democrats and the
11:35:40 20 Republicans with respect to timing. But here, your
21 Honor, the Democrats and the Republicans are speaking
22 with one voice and one accord. Mr. Valentine and his
23 counterpart, Ms. Stavisky, basically offered the same
24 affidavit talking about all of the unprecedented strain,
11:36:04 25 the unbearable burdens if the assembly maps were

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1 invalidated, the fact that assembly races have already
2 been certified, ballots are being printed, voting
3 machines are being tested for compatibility, new ballots
4 would be needed for a deadline that's only three days
11:36:20 5 away, supply chain issues with respect to getting paper.

6 And what I think really cannot be lost in all
7 of this, the issue of being able to conduct the
8 conventions to nominate candidates for New York State
9 Supreme Court. Because, under the law, those are
11:36:37 10 supposed to take place in a time period from August 4th
11 through August 10th. And so, if you have a primary on
12 August 23rd, you are past the time for holding those
13 conventions. How are you going to have candidates for
14 state supreme court?

11:36:54 15 And Mr. Walden says well, it used to be that
16 we had primaries in assembly districts and primaries for
17 judicial delegates in September. And that's true, but
18 that goes back to the times before there were strict
19 federal requirements with respect to shipping out
11:37:12 20 ballots to people overseas and people in the military.
21 That's the entire reason why we don't have primaries in
22 September anymore. And so, given that that deadline is
23 September 23rd for doing that for the November 8th
24 election, how is it possible to have a primary in
11:37:30 25 September and then to wait to certify those elections

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1 and then have a judicial delegate convention and then
2 have to print the ballots with the candidates for state
3 supreme court on it? There really isn't going to be
4 enough time. And that's why the Democrats the
11:37:46 5 Republicans at the state board of elections are unified
6 in saying to this court there simply is not enough time.
7 And I think that cannot be overestimated, the importance
8 of the fact that there is unanimity on both sides of the
9 political aisles, which, in these polarized times, it
11:38:06 10 isn't often that you get agreement from Democrats and
11 Republicans on much of anything, and here we do have
12 agreement from them on that point.

13 Setting aside the issue of timeliness, I also
14 think it cannot be underestimated the fact that the
11:38:24 15 proposed intervenor pleadings are simply deficient for a
16 whole host of reasons. First of all, the issue that the
17 order to show causes were not served in compliance with
18 this court's order. And we've briefed that, and we
19 stand on our papers on that point.

11:38:42 20 But then, in addition, as we see from the *New*
21 *York Law Journal* article, the interview with Mr. Walden
22 last week, he said that his goal in this lawsuit is,
23 quote, full and complete relief that New Yorkers
24 deserve. Well, first of all, if there's a need for full
11:39:03 25 and complete relief, where were they in February, March

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1 and April to give full and complete relief; but we'll
2 set that aside. But further, he said that he wants to,
3 quote, invalidate petitions submitted by existing
4 candidates for any office, for any petition containing
11:39:22 5 signatories who fall outside the newly drawn districts.
6 And he says he wants to, quote, reopen a petitioning
7 period for every race.

8 And so the question I ask, since Mr. Walden
9 claims to be such a vanguard of civil rights, is what
11:39:41 10 about the rights of the candidates who already filed
11 their petitions from April 4th through April 7th? We're
12 talking about candidates for a whole host of offices
13 statewide. So, this would be candidates for state
14 assembly, candidates for judicial delegate, candidates
11:39:58 15 for alternate delegate, candidates for New York State
16 Democratic Committee, candidates for party district
17 leader in New York City, and candidates for all of these
18 precinct level county committee positions whereby you
19 need to live in the assembly district in order to be
11:40:16 20 able to run, because the assembly districts really are
21 the building blocks upon which elections are run in New
22 York State. Once the assembly districts are set, then
23 if there need to be any alterations to the precincts,
24 then those alterations can be made and the voters are
11:40:37 25 sorted out based upon the precincts where they live and

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1 ultimately based upon the assembly districts where they
2 live. And so, allowing them to intervene at this late
3 date, all of that sorting process that's been going on
4 since February would have to be done all over again.

11:40:57 5 And furthermore, you have a whole host,
6 thousands, of candidates throughout the state, some
7 unopposed, many unopposed, and some not, who think that
8 they're all set, that they want to run for district
9 leader, they're set, their petitions are valid. They
11:41:13 10 want to run for -- be a judicial delegate, their
11 petitions are valid. They want to run for a position on
12 the county committee, petitions are filed, those
13 petitions are valid.

14 And so now what Mr. Greenberg and Mr. Wax
11:41:27 15 propose is to be able to intervene without any of these
16 candidates having a place at the table. They want to
17 talk about having a place at the table, Mr. Greenberg
18 and Mr. Wax, what about the thousands of candidates
19 whose candidacies they want to invalidate? They don't
11:41:43 20 have a place at the table, because they're not named in
21 the proposed petitions. And I would submit to try to
22 name all of those people at this late date is virtually
23 impossible. What they would have to do is go to the
24 state board of elections and get a list of all the
11:41:57 25 candidacies that are certified out of the state board

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1 and then go to each and every one of the 58 other local
2 boards of elections, one in New York City and 57 in the
3 other counties, and get a list of all the candidacies
4 that are validated by those particular boards of
11:42:13 5 elections. And all of those people have a right to be
6 heard and are necessary parties to this proceeding,
7 because if the assembly lines go down, then all of those
8 people and their candidacies would be inequitably
9 affected by the judgment.

11:42:29 10 And this is the case -- Mr. Walden wants to
11 talk about doing research, we did our research. Matter
12 of *Masich v. Ward*, from the Fourth Department. And, in
13 fact, that case was cited with approval in the *Minew*
14 case, M-i-n-e-w, from Onondaga County Supreme Court last
11:42:46 15 year. And that was a case that involved certificates of
16 authorization for the Working Families party. And what
17 happened there was there were objectants who wanted to
18 invalidate selected candidacies, but not the candidacies
19 of everybody whose names appeared on the certificate.

11:43:08 20 The courts said well, the problem is if there's
21 invalidity as to one candidate or some subset of the
22 candidates, there's invalidity as to the authorizations
23 for all of the candidates, and that's why they are all
24 necessary parties. And likewise, all those candidates
11:43:26 25 for assembly, judicial delegate, alternate delegate, New

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1 York City district leader, New York State Democratic
2 Committee, party positions in the county committees, all
3 of those individuals are necessary parties and they're
4 not here. Who's concerned about their rights? Clearly,
11:43:42 5 Mr. Walden and Mr. Foldenauer particularly aren't. And
6 we would submit that for that reason alone these
7 intervention motions should be given no countenance.
8 Notwithstanding the fact that also Mr. Wax and
9 Mr. Greenberg don't have standing to bring these
11:44:02 10 proceedings.

11 What differentiated the challenge that was
12 made by Petitioners back in February is that at that
13 time there were no candidates for congress. There were
14 no candidates for state senate. And, in fact, those
11:44:18 15 proceedings were brought on February 3rd, and so anyone
16 who then was collecting petitions for congress and
17 senate starting on March 1st, they had to know based
18 upon record notice from the lawsuit being on the books
19 that they were getting signatures but there was a chance
11:44:38 20 that the congressional lines and the senate lines were
21 going to be invalidated, and that's exactly what
22 happened. But with respect to the candidates for
23 assembly and all of these other offices for which the
24 units of election are based upon assembly districts,
11:44:53 25 there was no challenge to the assembly maps and so that

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1 was not something they had to worry about because no
2 challenge was brought.

3 And if Mr. Wax and Mr. Greenberg had, in fact,
4 brought a challenge, then we would have been talking
11:45:05 5 about a very different story. And so, when they filed
6 their petitions on April 7th, there was a two-week
7 window in which proceedings challenging their
8 designations could have been brought. And so that
9 two-week window ended April 21st, and we are well past
11:45:25 10 that and the statute of limitations has been blown. And
11 that also goes to the issue not only of the merits, but
12 also the timeliness and why the intervention should be
13 denied.

14 And why do Mr. Wax and Mr. Greenberg lack
11:45:37 15 standing? Election Law Section 16-102 says who has
16 standing: aggrieved candidates, party political chairs,
17 and objectors. We haven't seen any evidence at all that
18 Mr. Wax or Mr. Greenberg made any objection at any board
19 of elections to any candidacy on the basis of a claimed
11:45:59 20 unconstitutionality of the assembly district lines.

21 And so for all of these reasons, we would
22 submit that the proper thing to do would be to deny
23 intervention and to validate the assembly district map
24 because notwithstanding the civics lecture we got, which
11:46:18 25 I appreciate, there are standards that need to be

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1 satisfied on a motion to intervene, and in the eyes of
2 the law, certain procedural requirements need to be met
3 in any election case. There is no timeliness, the
4 procedural requirements have not been met, and for all
11:46:35 5 those reasons, intervention should be denied.

6 THE COURT: Thank you, Mr. Bucki.

7 Mr. Quail, can you hear me?

8 MR. QUAIL: Yes, your Honor, I can hear you.
9 Can you hear me?

11:46:46 10 THE COURT: Soft. I'm going to ask you to
11 maybe get up a little closer to the microphone because
12 it is hard to hear you. Would you like to be heard?

13 MR. QUAIL: Very, very briefly, your Honor. I
14 just would like to say that the situation that we find
11:47:01 15 ourselves in is that time keeps slipping into the
16 future. The other parties have made the arguments in
17 association with what the timing issues are. The board
18 of elections as a united bipartisan body stands behind
19 the affidavits that have been filed in this matter, and
11:47:24 20 as your Honor is also well aware, the state board of
21 elections has an application pending in the northern
22 district of New York before Justice Sharpe on the issue
23 of the August 23rd primary. We're waiting determination
24 on that application.

11:47:42 25 And, your Honor, the other factual point I

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1 would just like to make is that New York City did send
2 its candidates for assembly and other candidates to the
3 New York State Board of Elections. And while there may
4 be a smattering of ballot access litigation cases still
11:48:02 5 pending, the ballot access processes administratively at
6 boards of elections have concluded.

7 THE COURT: Thank you, Mr. Quail.

8 Are you asking for more time, Mr. Walden?

9 MR. WALDEN: I was not going to strain the
11:48:18 10 court's patience. I was going to ask for three minutes.

11 THE COURT: I'm going to take -- I assume
12 that's going -- I'll do it, but I'm going to take a
13 break first. We'll come back. Everybody will have two
14 minutes to wind up, and I'll give everybody a chance.
11:48:32 15 Two minutes, okay?

16 MR. WALDEN: Thank you.

17 THE COURT: We're adjourned for ten.

18 THE COURT DEPUTY: Court is in recess.

19 *(The Court recessed; reconvened.)*

11:58:55 20 THE COURT: We're going to give two minutes
21 apiece and fairly strict on that two minutes. My clerk
22 is going to keep time. Let's start with Gavin Wax,
23 Mr. Foldenauer.

24 MR. FOLDENAUER: Thank you, your Honor.

11:59:11 25 Again, Aaron Foldenauer for Gavin Wax. I did hear

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1 Petitioners' counsel kind of admit a few minutes ago
2 that, quote, there may have been a deal worked out
3 between the Republicans and the Democrats. And again,
4 Mr. Wax's position is that it's appalling that both
11:59:27 5 Republicans and Democrats are failing to stand up for --
6 to have constitutional lines.

7 And I would note that for some odd reason the
8 Republican affidavits were not attached to Petitioners'
9 brief, but rather were attached to Carl Heastie's brief,
11:59:46 10 thus lending some credence that Democrats and
11 Republicans were working together against these --
12 against having constitutional lines.

13 I also heard petitioners' counsel being unable
14 to identify prejudice here if the map is redrawn. In
12:00:01 15 fact, if the assembly map is redrawn, then all
16 candidates will be in the same boat. All candidates
17 running will be on equal footing. There is indeed no
18 prejudice.

19 I also heard Mr. Quail from the board of
12:00:14 20 elections admit that there still is valid access
21 litigation that will effect who appears on the ballot.
22 The ballot has not been finalized. In fact, a client of
23 mine was in touch with the board of elections yesterday
24 in New York City about how his name will appear on the
12:00:33 25 ballot.

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1 I was also shocked to hear counsel for the
2 Speaker say that the unconstitutional assembly map
3 should stand for the next ten years, which, again,
4 reiterates my point that the court should act now.

12:00:49 5 As I may have mentioned earlier, Nelson
6 Mandela said it always seems impossible until it's done.
7 The BOE affidavits in none of the submissions say that
8 it's impossible or not possible. And this action is not
9 about the BOE's convenience. As an election attorney, I
12:01:06 10 thought I was going to get the summer off. But very few
11 people in politics now are going to get the summer off.
12 The lines should be fixed, and we're respectfully asking
13 the court to act. Thank you for your consideration,
14 your Honor.

12:01:19 15 THE COURT: Thank you, Mr. Foldenauer.

16 Mr. Ostrowski on behalf of the candidate
17 petitioners.

18 MR. OSTROWSKI: Thank you, your Honor. Your
19 Honor, we were timely. We got into court three business
12:01:32 20 days after the final decision on the merits, which we
21 had no problem with the merits whatsoever. We're only
22 on the remedy phase, and only because, at that point,
23 reading all three decisions, it wasn't clear what the
24 remedies were going to be, so we got in in three
12:01:48 25 business days.

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1 There's no prejudice because the issues that
2 we addressed in our petition or proposed pleading have
3 been not -- were not addressed in the petition or by the
4 petitioners and have not been addressed by the
12:02:00 5 respondents. So there's absolutely no prejudice.

6 Cleaning up the record a bit, I don't believe
7 the state board has opposed our motions. And there may
8 be another party that did not either. I just want to
9 make that clear.

12:02:13 10 So, finally, the question why won't the
11 existing parties adequately represent us. I've already
12 answered it. The petition is silent on this, and I
13 don't think we -- the respondents, the ones who have
14 been found guilty of violating the constitution, have
12:02:32 15 stated no interest at all in any of the issues we
16 raised, so that's really an absurd question. Thank you,
17 your Honor.

18 THE COURT: Thank you, Mr. Ostrowski.

19 Mr. Walden.

12:02:42 20 MR. WALDEN: Thank you, your Honor. I can't
21 see your signs; my eyes are terrible, so I'm going to
22 keep track on my own if you don't mind. Double check
23 me.

24 Your Honor, I'm going to first talk about a
12:02:52 25 liability for all of them. None of them even engaged on

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1 the difference between prejudice and burden; just left
2 it all alone. So you can assume that we're right on
3 that.

4 With respect to Ms. McKay's arguments, she
12:03:04 5 said we were not being good stewards to you because we
6 didn't offer a schedule. We'll do it. We think we
7 should do it with all the parties and force them to the
8 table, but if they won't do it, we will.

9 She said there's no authority for changing
12:03:17 10 deadlines. She should read the Court of Appeals
11 decision. Inherent in every one of those election law
12 cases where there's a constitutional infirmity, there's
13 a corresponding ability for the court to change any and
14 all deadlines including rendering decisions about things
12:03:29 15 that are now inconsistent constitutionally.

16 Third, she talks about the board of elections
17 and talks a lot, as others did, about a unified
18 affidavit. No specifics in any of those affidavits as
19 to why it's impossible. It's not. But more important,
12:03:45 20 no understanding of why that matters here when we're
21 talking about prejudices as opposed to burden.

22 Mr. Bucki, he's right. We can leave here, if
23 you deny us access to this proceeding, and file
24 elsewhere. Is that really what they want? They want a
12:03:58 25 TRO in Green County or in Staten Island or any of the

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1 places I've gotten calls from people; that's going to
2 make the election happen sooner and more reliable?
3 That's why we came here, your Honor. We could have done
4 that. That would have been great gamesmanship. We
12:04:12 5 didn't do that. We came to you because we knew that you
6 had the expertise and could do it the most quickly. We
7 put more burden on you, and I'm sorry, your Honor, but
8 we did that in service to election integrity.

9 Secondly, Speaker Heastie, his position is
12:04:28 10 incredible. Not only will there be an unconstitutional
11 election for the assembly and all the corresponding
12 elections now, it's going to be generational
13 unconstitutionality. That's what they're inviting the
14 court to do. That shows you the depth of the cynicism.
12:04:46 15 The fact that not once did he talk -- did Mr. Heastie
16 talk -- his counsel talk about election integrity, I
17 think, speaks volumes, your Honor. If you don't let us
18 in, they win. That's what they wanted from day one.
19 Thank you.

12:04:59 20 THE COURT: Thank you, Mr. Walden.

21 Ms. McKay? I'm sorry; petitioners first.

22 Mr. Winner.

23 MR. WINNER: Thank you, your Honor. Briefly,
24 I just want to reiterate that the possibility of a deal
12:05:16 25 is not only silly, but it's absolutely outrageous. I

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1 would imagine that Mr. Bucki and Mr. Hecker and the
2 counsel for the Governor would be rather offended by any
3 kind of thought that somehow we were colluding with them
4 with regard to the results that we've been able to
12:05:36 5 achieve here in this case. So, to that extent, I just
6 find that contention to be offensive. There's certainly
7 no deal between us and the respondents with regard to
8 this -- operation of this case.

9 As far as the bipartisan -- not challenging
12:05:52 10 the assembly maps, we did not challenge the assembly
11 maps because we did not believe that we could meet our
12 constitutional burden that they were a violation of the
13 2014 amendments by virtue of the fact that they have
14 now, the affidavits have been submitted, be constituted
12:06:10 15 to be fair by a number of assembly Republicans that
16 voted for them. So, we did not want to prejudice our
17 case with regard to what we determined to be clearly
18 unconstitutional maps in the senate and the congress.
19 And although your Honor did not hold for us with regard
12:06:24 20 to the senate violation, we certainly were successful
21 with regard to the congressional, and your Honor's
22 decision was ultimately upheld by the Court of Appeals
23 to your credit. So, to that extent, your Honor, we
24 believe that the -- these intervention motions are
12:06:44 25 clearly untimely and certainly ought to be not agreed to

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1 by the court.

2 THE COURT: Thank you, Mr. Winner.

3 Ms. McKay, on behalf of the Governor?

4 MS. MCKAY: Other than imploring with your

12:06:56 5 Honor that you not entertain any of the conspiracy
6 theories that have been presented to you today, we have
7 nothing further.

8 THE COURT: Thank you. Mr. Hecker, on behalf
9 of the Senate Majority Leader?

12:07:08 10 MR. HECKER: Nothing additional to add, your
11 Honor.

12 THE COURT: Thank you, Mr. Hecker. On behalf
13 of the Speaker of the Assembly, Mr. Bucki?

14 MR. BUCKI: A few points in response, your
12:07:25 15 Honor. First of all, Mr. Foldenauer, I believe the word
16 he used was appalling that it was the Speaker who
17 offered the affidavits from a variety of Republican
18 members of the state assembly in which they stated that
19 the maps are fair. I would submit there's nothing
12:07:43 20 appalling about that at all because these are the
21 Speaker's colleagues, and he strives to have a good
22 professional relationship with them. And one of the
23 concerns that your Honor addressed in the March 31st
24 decision and order was about the importance of
12:07:57 25 bipartisanship. I can't think of anything more that

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1 would signify bipartisanship better than the fact that
2 you have Democrats and Republicans working together
3 whereby the Speaker was pleased to offer these
4 affidavits from his Republican colleagues in which they
12:08:12 5 state their views that the assembly map was fair.

6 And for Mr. Foldenauer to say it's so
7 astounding that we would say the assembly maps should
8 remain in place for the next ten years, it's no more
9 astounding than the circumstance that happens when a
12:08:28 10 variety of other government actions for whatever reason
11 happened to go unchallenged and the statute of
12 limitations happens to expire. This happens all the
13 time. And that's why we have statutes of limitations
14 under the law.

12:08:41 15 And I would submit that the real reason why
16 Mr. Wax and Mr. Greenberg decided to come to this court
17 was that they were concerned about the statute of
18 limitations issue because if they were to try to
19 commence a brand-new case in another county, then that
12:08:59 20 was going to be the first argument we were going to make
21 on a motion to dismiss. And personally, I think they
22 were trying to circumvent that and that's why they came
23 to Steuben County for strategic reasons rather than out
24 of any fealty for good government.

12:09:13 25 And with respect to election integrity, I

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1 agree that election integrity is important. Election
2 integrity means following the rules of the road that
3 have been set up for elections, and that includes
4 statute of limitations, naming necessary parties, making
12:09:28 5 sure that anybody who brings a challenge has standing,
6 and the whole host of reasons why intervention should be
7 denied.

8 THE COURT: Thank you, Mr. Bucki. Mr. Quail?

9 MR. QUAIL: Nothing further, your Honor.

12:09:40 10 THE COURT: All right; thank you. I'm going
11 to reserve decision. I'll get a decision out as soon as
12 possible. Thank you. Thank you all.

13 *(The proceedings concluded.)*

14 Certified to be a true and accurate transcript.

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16 _____
17 Elizabeth M. Davis, RPR

18 Official Court Reporter
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