

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF STEUBEN

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

Petitioner,

-against-

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

Respondents.

AFFIRMATION

Index No. E2022-0116CV

McAllister, J.S.C.

Return Date:
March 3, 2022

HEATHER MCKAY, an attorney duly licensed to practice law in the courts of the State of New York, affirms as follows under penalty of perjury:

1. I am an Assistant Attorney General in the Office of LETITIA JAMES, Attorney General of the State of New York, and am fully familiar with this case based upon personal knowledge and review of the file. I make this affirmation in opposition to the Petition and in support of the Motion to Dismiss by the respondents, Kathy Hochul, in her official capacity as Governor of the State of New York, and Brian A. Benjamin, in his official capacity as Lieutenant Governor and President of the Senate (collectively, “Executive Respondents”).

2. On February 3, 2022, the Petition, proposed Order to Show Cause, and other supporting papers were uploaded to NYSCEF as Document Nos. 1-10.

3. On February 7, 2022, the Court signed the Order to Show Cause (“First OTSC”).

NYSCEF 11.

4. On February 8, 2022, Petitioners purported to serve the Petition and First OTSC on the Governor and Lt. Governor. NYSCEF 56 & 57.

5. On February 10, 2022, Petitioners purported to complete service on the Governor and Lt. Governor by serving the Petition and First OTSC on the Office of the New York State Attorney General located at 28 Liberty Street, 16th Fl., New York, NY10005. NYSCEF 62.

6. CPLR §2214(d) requires service be made at the office of the Attorney General nearest to where the action is venued.

7. There is no Office of the Attorney General located in Steuben County, the venue chosen by Petitioners for this special proceeding. Upon information and belief, the New York City Office is approximately 289.4 miles away, whereas the Rochester Regional Office is the closest OAG Office to the Court, located approximately 81.1 miles away.

8. Petitioners have thus failed to serve the papers in the venue county or at the nearest reasonably close Attorney General's Office.

9. By email from Misha Tsyetlin, Esq., counsel for Petitioners, to various parties, including Executive Respondents' counsel, dated February 10, 2022, it was proposed that “[a]ll parties agree to accept email service of all documents not filed through NYSCEF, including the two Orders to Show Cause already entered and supporting papers.” A copy of the email correspondent is attached hereto as **Exhibit 1**.

10. It is unclear what is meant by “service of all documents **not** filed through NYSCEF, including the two Orders to Show Cause already entered” (emphasis added).

11. On February 11, 2022, Eric Hecker, Esq., counsel for the respondent Senate Majority Leader, responded via email that “[r]egarding email service, we consent.” Attorneys for

the Governor and Lt. Governor did not respond to this email exchange.

12. Regardless, a copy of the Petition and First OTSC were not thereafter served via email on counsel for the Governor or Lt. Governor.

13. Thus, even if the email exchange between Mr. Hecker and Mr. Tsyetlin could be interpreted as the Executive Respondents agreeing to service of the Petition and First OTSC by email, such service was never completed because the First OTSC was not served via email, or any other means, upon them.

14. Attached hereto and made a part hereof as **Exhibit 2** is a copy of the 2021 Legislation, signed into law on November 24, 2021.

15. Attached hereto and made a part hereof as **Exhibit 3** is a copy of the Board of Elections' publication describing the New York State Ballot proposals from November 2021.

16. Attached hereto and made a part hereof as **Exhibit 4** is the New York Times article regarding an interview of Governor Kathy Hochul, published on August 24, 2021, referenced in Petitioners' Petition.

17. Attached hereto and made a part hereof as **Exhibit 5** is the Governor's Approval Memoranda accompanying her approval of the 2022 Congressional maps.

18. As explained in the accompanying Memorandum of Law, the Executive Respondents should be dismissed from this special proceeding.

WHEREFORE, it is respectfully requested that the Executive Respondents' Motion to Dismiss be granted in its entirety, the Executive Respondents be dismissed from this case, and/or the Petition dismissed in its entirety and a declaration issued confirming that the 2021 Legislation and 2022 Congressional maps are constitutional, and for such other and further relief as this Court deems just and proper.

DATED: Rochester, New York
February 24, 2022

LETITIA JAMES
Attorney General
State of New York
Attorney for Executive Respondents

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Via NYSCEF

CERTIFICATION

In accordance with Rule 202.8-b of the Uniform Rules of Supreme and County Courts, the undersigned certifies that the word count in this Affirmation of Heather McKay (excluding the caption, table of contents, table of authorities, signature block, and this certification), as established using the word count on the word-processing system used to prepare it, is 717 words of the 7,000 word limit.

Dated: February 24, 2022
Rochester, NY

/s **Heather L. McKay**
By: Heather L. McKay
Assistant Attorney General