

**SUPREME COURT OF THE STATE OF NEW YORK  
APPELLATE DIVISION: FOURTH DEPARTMENT**

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

**AFFIRMATION**

Steuben County  
Index No. E2022-  
0116CV

*Petitioners,*

v.

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

*Respondents.*

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Jeffrey W. Lang, an attorney licensed to practice in New York,  
affirms the following subject to the penalties of perjury:

1. I am a Deputy Solicitor General in the office of Attorney  
General Letitia James, attorney for respondents Governor Kathy Hochul

and Lieutenant Governor Brian A. Benjamin. I am familiar with the facts and circumstances of the proceedings in this matter.

2. I submit this affirmation in support of the motion of the Governor and the Lt. Governor (“executive respondents”) for an order declaring that all proceedings to enforce the judgment (denominated “decision and order”) of Supreme Court, Steuben County (McAllister, J.), entered on March 31, 2022 (attached hereto as Exhibit A), are automatically stayed under C.P.L.R. 5519(a)(1). Alternatively, the Court should issue a discretionary stay (C.P.L.R. 5519(c)) or preliminary injunction (C.P.L.R. 5518) pending appeal staying enforcement of the judgment and permitting respondents to continue to administer the congressional and state legislative elections under the 2022 maps.

3. The subject judgment entered by Supreme Court struck as unconstitutional the 2022 Congressional District, Senate District, and Assembly District electoral maps, and orders the Legislature to submit “bipartisanly-supported” maps by April 11, 2022 for review by the Court. Ex. A at 18. In the event the Legislature fails to submit maps by that date, “the court will retain a neutral expert at State expense to prepare said maps.” Ex. A at 18. The judgment also declared unconstitutional a

duly-enacted statute giving the Legislature the ability to step in to draw electoral maps if the independent redistricting commission cannot reach an agreement. Executive respondents, as well as co-respondents Senate Majority Leader Andrea Stewart-Cousins and Speaker of the Assembly Carl Heastie (“legislative respondents”) have appealed.<sup>1</sup>

4. There is merit to the appeal. Supreme Court’s order is mistaken, the statute and maps before the court are constitutional, and this Court should overturn the decision.

5. Further, the remedy ordered by Supreme Court will produce chaos in the middle of an ongoing election, where the preparations for the June 2022 primary are already well underway: information has already been sent to newly registered voters and transferred voters about their election district and polling locations; and the deadline for filing designating petitions to appear on the primary ballot is this coming Thursday, April 7. Supreme Court’s order seemingly invalidates these petitions, because the electoral maps must be changed. Moreover, the

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<sup>1</sup> Although also named as respondents, the New York State Board of Elections (“State Board”) took no position on the outcome of the special proceeding before the trial court, and the New York State Legislative Task Force on Demographic Research and Reapportionment (“LATFOR”) has not entered an appearance in the litigation.

June primary encompasses multiple offices, including federal House members and state Senators and Assembly members. And redrawing the 2022 electoral maps in such short order, as Supreme Court ordered, would affect not just the electoral districts challenged in this litigation, but would require reworking the entire state map as a whole. Lastly, in early March, Supreme Court had initially determined that there would not be sufficient time to draw new lines in this year's election in declining petitioners' request to halt designating petitions. Now belatedly reversing course would cause chaos and confusion.

6. The automatic stay is designed to prevent a trial court from effectuating just this kind of wholesale, statewide change through an injunction against a state entity or officer until there can be appellate review. This Court should find that the stay applies here. Alternatively, the Court should grant a discretionary stay or preliminary injunction providing the same relief, so as to safeguard fair and accurate elections and avoid voter confusion.

## FACTUAL AND PROCEDURAL BACKGROUND

### A. Statutory and Factual Background

7. The State Constitution has long permitted challenges to the redistricting of congressional or state legislative districts. The Constitution specifies, however, that in the event that a court finds a violation and declares invalid any redistricting plan, “the legislature shall have a full and reasonable opportunity to correct the law’s legal infirmities.” N.Y. Const. art. III, § 5.

8. In 2014, the State passed a set of constitutional amendments aimed at eliminating partisan gerrymandering. In particular, “[d]istricts shall not be drawn to discourage competition or for the purpose of favoring or disfavoring incumbents or other particular candidates or political parties.” N.Y. Const. art. III, § 4(c)(5).

9. The 2014 amendments also created an independent redistricting commission (“IRC”). N.Y. Const. art. III, §§ 4 and 5-b. The IRC consists of ten members, appointed by the majority and minority party leaders of the Legislature. *Id.* § 5-b.

10. The Constitution requires the IRC to prepare and submit a redistricting plan for senate, assembly, and congressional districts and

the necessary implementing legislation to the Legislature by January 15 of the second year following the census. *Id.* § 4(b). If the speaker of the assembly and temporary president of the senate are members of the same party, seven votes are required to approve a redistricting plan and implementing legislation. *Id.* § 5-b(f). If the IRC cannot obtain seven votes, it is directed to submit the plan or plans which receive the most votes. *Id.* The Legislature must then vote on the plans and implementing legislation without amendment. *Id.* § 4(b); N.Y. Legis. Law § 93(1).

11. If the Legislature fails to adopt the first set of plans and implementing legislation, or if the Governor vetoes them, the IRC is directed to submit a second set of plans and implementing legislation to the Legislature, subject to the requirements outlined above, within 15 days of being notified of the first rejection, and no later than February 28. N.Y. Const. art. III, § 4. The Legislature must then vote on the second set of proposed plans and implementing legislation without amendment. *Id.* If the Legislature fails to adopt the IRC's second set of plans and implementing legislation, or the Governor vetoes them, the Legislature can create its own maps and implementing legislation. *Id.*

12. In 2021, in the lead-up to the 2022 electoral season, the IRC submitted two sets of draft redistricting plans to the Legislature, because its members split and two competing plans tied for the most votes. The Legislature rejected both plans.

13. In accordance with the 2014 amendments, the process then reverted to the IRC to prepare a second plan. The IRC, however, reached an impasse and was unable to agree on any further revised plans, and on January 24, 2022, the IRC announced that it would *not* submit another set of legislative and congressional plans to the State Legislature.

14. The 2014 constitutional amendments did not specify how to proceed in the event of a stalemate within the IRC over redistricting plans that results in its failure to submit any plans. In anticipation of this eventuality, in 2021, both houses of the Legislature approved a bill amending the Redistricting Reform Act of 2012 to specify what should occur in this circumstance. In November 2021, before that bill was signed into law by the Governor, the provision addressing an IRC impasse was incorporated into a more overarching proposal to amend multiple provisions in the State Constitution. The proposal appeared on the ballot

and failed to pass. After the failure of the proposal, the Governor signed the bill into law. L. 2021, c. 633, § 1 (the “2021 legislation”).

15. The 2021 legislation provides that, in the event the IRC does not vote on any plan, for any reason, by the date provided for submission of such plan, the Legislature must be provided with all of the plans and data before the IRC. Under such circumstances, the Legislature retains authority to devise its own redistricting plan and implementing legislation, and pass them to the Governor for signature.

16. Specifically, the subject legislation provides, in relevant part: “If the commission does not vote on any redistricting plan or plans, for any reason, by the date required for submission of such plan, the commission shall submit to the legislature all plans in its possession, both completed and in draft form, and the data upon which such plans are based.” *Id.*

17. On January 24, 2022, the IRC declared that it had reached an impasse and would not be submitting any further redistricting plans and implementing legislation to the Legislature. In response, the Legislature, on January 30 and 31, 2022, released its own draft Congressional maps, as well as maps for the Assembly and Senate districts. On February 2,



2022, the Senate approved them by a vote of 43-20, and the Assembly approved them by a vote of 103-45.

18. The next day, February 3, 2022, Governor Hochul signed the proposed redistricting plan and implementing legislation into law. The Governor's Approval Memoranda provide, in relevant part:

These bills are necessary to reapportion districts and to provide certainty and clarity regarding such districts in a timely manner, allowing for efficient administration of the electoral process. . . .

Signing these bills will allow the boards of elections to begin the process of administering elections with these new district maps, and ensure that New Yorkers and candidates for elected office have the information they need with as much notice as possible to exercise their right to vote and participate in our democracy.

This bill is approved.

**B. This Proceeding and Decision Below**

19. On February 3, 2022, petitioners, voters in various districts, filed the current petition challenging the 2022 redistricting plan, as well as the 2021 legislation, as unconstitutional.

20. Executive respondents submitted a motion to dismiss. Supreme Court denied the motion and set the matter down for a trial. On March 3, 2022, Supreme Court declined to grant petitioner's request to

halt the period for collecting designating petitions, which had just opened. Among other reasons, the court stated that, even if it were to find the maps invalid, “it is highly unlikely that a new viable map could be drawn and be in place within a few weeks or even a couple of months, therefore striking these maps would more likely than not leave New York State without any duly elected Congressional delegates.” (March 3, 2022 Transcript at 70:1; 70:6-12; attached hereto as Exhibit B.) In the court’s view, “the more prudent course would appear to be to permit the current election process to proceed and then if necessary to require new elections next year if the new maps need to be drawn.” *Id.* at 70: 12-15.

21. A trial took place over four days: March 14, 15, 16 and 31, 2022. Seven expert witnesses testified.

22. On March 31, 2022, Supreme Court issued a judgment. The court struck down the 2021 legislation because, in the court’s view, it “substantially altered” the 2014 constitutional provision setting out the IRC process. Because Supreme Court determined that the 2021 legislation was unconstitutional, it also struck down as void “*ab initio*” the State Senate and Assembly maps, as well as the Congressional map, passed by the Legislature pursuant to the 2021 legislation. And Supreme

Court further held that the Congressional map was unconstitutional for the additional reason that it constituted a partisan gerrymander in violation of the 2014 amendments.

23. Supreme Court ordered that the Legislature have until April 11, 2022, to submit “bipartisanly supported” maps to the court for review. Regarding this requirement, the court stated that the “maps do not have to be unanimously approved, but they must enjoy a reasonable amount of bipartisan support to insure the constitutional process is protected. This they will need to do quickly.” Ex. A at 16. The court further ordered that if the Legislature fails to submit these maps, the court will appoint a “neutral expert” at State expense to draw maps. Ex. A at 18.

24. Supreme Court recognized that its decision would require executive and legislative action to amend the election calendar and other procedures. Striking the 2022 maps, the court stated, “of course will require revision of the election schedule since candidates would not even know what district he/she would run in before most of the current deadlines would have expired.” Ex. A at 15. The court, however, would “leave it to the legislature and governor to develop new time frames for gathering signatures, how many signatures will be required to be on the

ballot, whether signatures already gathered can be counted toward meeting the quota to appear o[n] the ballot, etc.” Ex. A at 16.

25. At the same time, the court issued “a permanent injunction refraining and enjoining the Respondents, their agents, officers, and employees or others from using, applying, administering, enforcing or implementing any of the recently enacted 2022 maps for this or any other election in New York, including but not limited to the 2022 primary and general election for Congress, State Senate and State Assembly.” Ex. A at 18.

26. Executive respondents filed their notice of appeal on April 1, 2022.

**THIS COURT SHOULD DECLARE THAT THE AUTOMATIC STAY APPLIES**

27. This Court should declare that all proceedings to enforce Supreme Court’s judgment are stayed pending appeal, so that respondents may continue to administer congressional and state legislative elections under the 2022 electoral maps.

28. This case falls squarely within the text of C.P.L.R. 5519(a)(1), under which “all proceedings to enforce the judgment or order appealed from” are automatically stayed, without further court order, when two

elements are met: (i) an appeal is taken by “the state or any political subdivision of the state or any officer or agency of the state or of any political subdivision of the state,” and (ii) service of the notice of appeal is made on the adverse party.

29. Those two elements are satisfied here. The executive respondents are state officers. And the notice of appeal was served on petitioners on April 1, 2022. (NYSCEF Doc. 247.) Thus, all proceedings to enforce Supreme Court’s judgment are automatically stayed pending the appeal.

30. Moreover, even accepting the distinction some courts have drawn between “prohibitory orders” and “executory directions that command a person to do an act beyond what is required under the CPLR,” *Tax Equity Now NY LLC v. City of New York*, 173 A.D.3d 464, 465 (1st Dep’t 2019), the relief contained in the judgment is properly viewed as executory. The decision directs the Legislature to undertake a wholesale revision of its electoral maps by April 11, in default of which the court will retain an expert at the State’s expense and impose its own maps. In the words of the judgment, the Legislature “shall have” until April 11, at which point, in the absence of any submission, the court “will retain” an

to prepare its own maps. Ex. A at 18. The conditional nature of this direction does not make it any less executory.

31. And even aside from that directive, the Court's judgment necessitates executive and legislative action, because its suspension of the on-going electoral process means that elections cannot be conducted under the current schedule. The court recognized the need for the political branches to act as a result of its ruling, instructing the Legislature and Governor to "develop new time frames for gathering signatures" and make other revisions to the electoral rules. Ex. A at 16. It should make no difference that this aspect of the decision was not embodied in a decretal paragraph. And a revision to the State's electoral calendar is nothing like the ordinary "sequelae" of an order granting or denying relief that are contemplated by the C.P.L.R., such as "litigation obligations under the CPLR." *Tax Equity Now NY LLC*, 173 A.D.3d at 465. Here respondents are not seeking to stay further court proceedings that are the natural sequelae of litigation, but an order that requires co-equal branches of State Government to effectuate drastic changes to the State's electoral calendar and procedures.

32. Additionally, Supreme Court's decision disrupts the status quo of an election already underway, and the order to create new maps affects the entire State. As courts have recognized, the purpose of C.P.L.R. 5519(a)(1) is to maintain the status quo pending the resolution of an appeal. *See Ulster Home Care Inc. v. Vacco*, 255 A.D.2d 73, 78-79 (3d Dep't 1999); *State v. Town of Haverstraw*, 219 A.D.2d 64, 65 (2d Dep't 1996); *see also Matter of Serth v. New York State Dept. of Transp.*, 77 A.D.2d 957, 957 (3d Dep't 1980) (“[I]t is clear that the statutory stay... expresses a public policy designed to protect the State during the pendency of an appeal.”).

33. Administration of the election under the 2022 maps should be considered the status quo. The 2022 maps were signed into law on February 3, 2022, the ballot access stage of the 2022 election cycle commenced on March 1, 2022, with the opening of the period for gathering signatures on designating petitions, and that period will close this Thursday, April 7. Most of the signatures have been collected, and candidates are preparing to file them with local boards of elections. Moreover, there is no possibility of reverting to the prior 2012 maps, as population shifts have resulted in the malapportionment of those maps,

and New York lost one congressional district. Accordingly, if the 2022 congressional and state legislative elections are to proceed, the 2022 maps are the only current option.

34. For this reason, even the prohibitory aspect of the judgment that prevents the State from operating under the 2022 maps upsets the status quo of an election in course. In this respect, the judgment differs from an ordinary prohibitory injunction intended to preserve the status quo by preventing government action. The automatic stay should therefore stay any proceedings to enforce the prohibition, such as any contempt proceedings brought against respondents who continue to administer the election under the 2022 maps. Such proceedings would come within the plain meaning of the statutory text of a proceeding “to enforce the judgment” and should be stayed.

35. For these reasons, this Court should confirm that the automatic stay applies here, allowing the already-underway 2022 election to proceed under the maps approved by the Legislature and signed by the Governor, and relied on by candidates whose petitions are due to be filed this Thursday, April 7.



**ALTERNATIVELY, THE COURT SHOULD EXERCISE ITS DISCRETION TO  
STAY THE JUDGMENT PENDING APPEAL**

36. In the alternative, if the Court finds that the automatic stay does not apply, the Court should exercise its discretion to issue a stay (C.P.L.R. 5519(c)) or preliminary injunction (C.P.L.R. 5518) pending appeal, so as to permit respondents, their agents, officers, employees, and others, to continue to administer the congressional and legislative elections under the 2022 redistricting plans.

37. To obtain a stay or preliminary injunction pending appeal, the moving party must show “(1) a likelihood of success on the merits, (2) irreparable injury in the absence of injunctive relief, and (3) a balance of the equities in its favor.” *Eastview Mall, LLC v. Grace Holmes, Inc.*, 182 A.D.3d 1057, 1058 (4th Dep’t 2020) (internal quotation marks omitted). This standard is met here.

**A. Respondents are likely to succeed on the merits of their appeals.**

38. Supreme Court’s ruling that the 2021 legislation and the 2022 maps are unconstitutional is erroneous. These provisions must be considered in light of the admonition of the Court of Appeals that a “strong presumption of constitutionality attaches” to redistricting plans,

and that a court may declare a plan to be unconstitutional “only when it can be shown beyond reasonable doubt that it conflicts with the fundamental law, and that until every reasonable mode of reconciliation of the statute with the Constitution has been resorted to, and reconciliation has been found impossible.” *Matter of Wolpoff v. Cuomo*, 80 N.Y.2d 70, 78-79 (1992).

39. Executive respondents agree with the arguments of legislative respondents that the 2021 legislation is constitutional. The 2021 legislation can be readily reconciled with the Constitution: it fills a gap contained in the constitutional procedures, and addresses what occurs when the IRC reaches an impasse and declines to submit any maps to the Legislature. Accordingly, the 2021 legislation did not modify the constitutional provision, as Supreme Court incorrectly determined, but rather legislated in the silence left by the 2014 constitutional amendments.

40. And contrary to petitioner’s arguments, the 2014 constitutional amendments establishing the IRC and its related processes do not evince an intent to displace the Legislature and the Governor from their constitutional role in the redistricting process. Just

the opposite: the 2014 amendments require that the Legislature pass and the Governor sign any redistricting plans and implementing legislation before it becomes law. Moreover, it remains the case that, if any electoral map is declared invalid, the Legislature must be given a “full and reasonable opportunity” to correct the infirmity. N.Y. Const. art. III, § 5. The procedure put forth by the 2021 legislation, and followed in this instance to create the maps at issue, comports with the constitutional requirements for redistricting.

41. As to Supreme Court’s ruling that the congressional map is a partisan gerrymander in violation of the State Constitution, executive respondents agree with the arguments put forth by legislative respondents in their submissions to this Court that petitioners have not met their heavy burden of proving an improper partisan purpose beyond a reasonable doubt.

42. Accordingly, respondents have demonstrated an ultimate likelihood of success on the merits, particularly given the high bar petitioners must clear to demonstrate the unconstitutionality of a duly enacted statute, which is presumed constitutional. *See Matter of Moran*

*Towing Corp. v. Urbach*, 99 N.Y.2d 443 (2003); *People v. Davidson*, 27 N.Y.3d 1083 (2016).

**B. Respondents, voters, and candidates in New York will suffer irreparable harm absent a stay.**

43. Absent an order staying enforcement of Supreme Court’s judgment, the 2022 electoral cycle will be thrown into chaos. While Supreme Court’s decision pays lip service to the problems caused by the condensed timeframe, the remedy ordered ultimately ignores the confusion that it will cause—which has already begun.<sup>2</sup> A forced halt of the election process currently underway so that entirely new redistricting plans can be drawn up and adopted, all while respondents’ appeals are pending, will cause irreparable harm to respondents, candidates for office, and the voting public.

44. The relief ordered by Supreme Court will necessarily require drastic changes to the electoral calendar, at risk to the integrity of the elections. As an initial matter, there is no telling when redistricting plans

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<sup>2</sup> In an attempt to address the ongoing confusion, on April 1, 2022, the State Board issued a statement to designating petition filers for Congress, Senate and Assembly, stating that the court’s judgment is stayed pending appeal, and that the filing period for designating petitions will remain in effect. In response, petitioners emailed a letter addressed to the State Board and counsel for all respondents demanding that the State Board “issue a corrective tweet immediately, explaining that no portion of Justice McAllister’s March 31, 2022 Decision And Order is currently stayed.”

will be finalized, whether in the improbable event of bipartisan maps drawn by the Legislature and submitted to the court for review, or court-imposed maps. But election law deadlines for this year's election cycle, set by statute, are looming. Thus, the 2022 primary election is scheduled to occur on June 28, 2022, and the 2022 general election on November 8, 2022. Elec. Law §8-100(1)(a) & (c). And these dates trigger a host of earlier deadlines for events that must precede an election.

45. Most immediately, the window for designating petition signature-gathering (the process by which political party candidates obtain primary ballot access) opened on March 1 and is set to close this Thursday, April 7, at which time putative candidates must file their petitions. The time period for such signature-gathering is governed by New York Election Law. Elec. Law § 6-134(4). The number of signatures required to appear on the ballot for any given office in any given race is also governed by New York Election Law. Elec. Law § 6-136.

46. As Thomas Connolly, Director of Operations for the New York State Board of Elections, explains, halting the designating process now, while it is largely concluded, would produce confusion for voters, candidates, political parties, and local boards of election. (March 21 and

April 2, 2022 affidavits attached hereto as Exhibits C and D.) As of March 1, parties had already endorsed candidates, candidates had printed designating petitions, and campaigns had mobilized volunteers and paid workers to solicit for signatures. (Ex. D at 4.) By the March 31 date of the judgment, candidates for the 150 Assembly seats, 63 Senate seats, and 26 congressional seats have likely collected the vast bulk, if not all, of their ballot access signatures, and are in the process of preparing to file them. (Ex. D at 4.) Preventing them from doing so will irreparably disrupt the statutory ballot access process, regardless of the ultimate disposition of an appeal. (Ex. D at 4-5.)

47. Indeed, Supreme Court permitted the petitioning process to advance this far by declining petitioner's request to halt the process at an early stage, when it correctly perceived that striking the 2022 maps "would more likely than not leave New York State without any duly elected Congressional delegates." Ex. B.

48. With an order for new maps to be drawn at an unknown future date, which may or may not be upheld on appeal, candidates for the federal and state offices at issue in this litigation would not know whether signatures they had already gathered were from voters properly

within their district. Voters would not know whether the designating petition they had already signed was in fact valid, or even whether that candidate would still be running in their district.

49. Supreme Court's suggestion that it be "[left] to the legislature and governor to develop new time frames for gathering signatures, how many signatures will be required to be on the ballot, whether signatures already gathered can be counted toward meeting the quota to appear [on] the ballot, etc." (Ex. A at 16) sidesteps the fact that these requirements are already dictated by New York Election Law, and therefore not easily changed. It also ignores the confusion that would be sown by changes to a process that has already neared completion, while the ultimate merits of the underlying challenges remain on appeal.

50. Supreme Court's decision contemplates that the elections for offices not at issue in this litigation would proceed at the June 2022 primary, while the primary elections for offices at issue in this litigation would occur in August 2022, and a redistricting would occur in between those two primary elections. Holding two primaries within the span of two months, while conducting a redistricting in between, would be an unprecedented event in New York electoral history, and would bring with

it massive confusion for voters and election officials, rife with the potential for error and disenfranchisement. (Ex. C at 5-6.) There has been no planning for an additional or alternative primary date. (Ex. C at 5.)

51. Supreme Court's decision also throws into question the ability of local boards of elections to ensure that their voter registration rolls properly reflect whatever newly revised maps would be adopted. When the current maps became law in February 2022, the county boards of elections devoted their full attention to updating their voter registration systems so that the new district boundaries would be properly reflected in the rolls. This time-intensive work was necessary to ensure that New York's approximately twelve million active voters would be assigned to the proper election districts sufficiently in advance of the primary. (Ex. C at pp. 7-8.)

52. County boards of elections worked nearly exclusively on these updates for a month, and it is not clear how local officials would be able to accurately update these files while also undertaking the task of preparing for the upcoming elections for the offices that are not affected by the court's judgment. The timeframe increases the possibility that



inaccurate information could exist on Election Day, causing confusion for voters and poll workers. (Ex. C at 8.)

53. Moreover, new voters and voters who were transferred to a new district under the 2022 maps have received and are currently receiving informational notifications required by law, informing them of their updated district designations and polling locations. If new maps are implemented at some unknown date this spring, this information will have been inaccurate for some voters, and some voters will receive multiple mailings and lack clarity as to what instructions to follow. (Ex. C at 10-11.) This confusion could lead to disenfranchisement and decreased voter participation.

54. Todd D. Valentine, a Co-Executive Director of the State Board of Elections, whose affidavit was submitted below by petitioners, opined that any new maps could theoretically be accommodated if the Legislature moved the primary to the last possible day, August 23, 2022. (Attached hereto as Exhibit E.) His conclusory opinion is entitled to little weight. Mr. Valentine does not say when he believes new maps will be forthcoming so as to permit the State to hold an election on his compressed schedule; nor did he address the court's wholesale vacatur of

all state legislative maps, as well as the congressional map; nor does he discuss the risks of candidate and voter confusion and disenfranchisement entailed by new districts and changes to the electoral calendar in mid-stream.

55. At a minimum, Mr. Connolly's opposing view demonstrates the existence of serious doubt by an expert in New York election administration concerning the risks to the integrity of any elections conducted under the conditions imposed by Supreme Court.

56. Finally, respondents, candidates, and voters will suffer irreparable harm in the absence of an injunction because, if the decision of Supreme Court is ultimately reversed and the 2022 maps found to be valid, that reversal will have nevertheless come too late. Whenever such a decision is issued, it would almost certainly be impossible to hold the current election cycle under the maps, and the harm from attempting to hastily implement newly-devised maps will have already occurred.

57. Indeed, the 2021 legislation itself incorporates the idea that changes to district lines inevitably disrupt the electoral process, and dictates that "[i]n any proceeding for judicial review of the provisions of this act, the determination of the court shall be embodied in a tentative

order which shall become final 30 days after service of copies[.]” McKinney’s Consolidated Laws of New York, Ch. 57, Art. 7, § 110. Supreme Court did not follow that provision here, and instead made its judgment immediately effective.

58. In sum, Supreme Court’s decision fails to give due weight to the high risk of public confusion and disenfranchisement entailed by its remedy, and orders relief which is virtually guaranteed to disrupt the orderly administration of the 2022 election cycle and sow voter confusion.

**C. The balance of the equities favors a discretionary stay.**

59. The public interest in avoiding the disruption of an orderly election process already underway outweighs petitioners’ interests.

60. As discussed at length above, failure to stay Supreme Court’s decision would throw the 2022 electoral process into chaos. It is to avoid this chaos that the United States Supreme Court has established the *Purcell* principle, under which courts should not change election rules during the run-up to an election, to avoid voter confusion and electoral disorganization. See *Purcell v. Gonzalez*, 549 U.S. 1 (2006). And the Supreme Court has long recognized that elections may proceed under

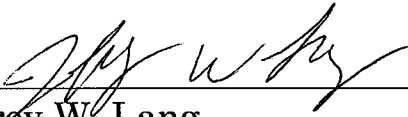
defective lines. *See, e.g., Merrill v. Milligan*, 142 S. Ct. 879 (2022); *Abbott v. Perez*, 138 S. Ct. 2305 (2018); *Wells v. Rockefeller*, 394 U.S. 542 (1969).

61. For the reasons discussed above, the equities favor granting respondents a stay or preliminary injunction enjoining enforcement of Supreme Court's judgment pending resolution of the appeal.

### CONCLUSION

62. Accordingly, this Court should enter an order declaring that all proceedings to enforce the judgment are stayed pursuant to C.P.L.R. 5519(a)(1); or alternatively, granting a discretionary stay (C.P.L.R. 5519(c)) or preliminary injunction (C.P.L.R. 5518) staying the judgment and permitting respondents to continue to administer congressional and state legislative elections under the 2022 electoral maps.

Dated: April 3, 2022  
Albany, New York

By:   
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Jeffrey W. Lang  
Deputy Solicitor General