EXHIBIT 2

EXHIBIT B

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, and MARIANNE VOLANTE,

Petitioners,

-against-

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

Respondents.

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Index No. E2022-0116CV

AMENDED PETITION

Petitioners Tim Harkenrider, Guy C. Brought, Lawrence Canning, Patricia Clarino, George Dooher, Jr., Stephen Evans, Linda Fanton, Jerry Fishman, Jay Frantz, Lawrence Garvey, Alan Nephew, Susan Rowley, Josephine Thomas, and Marianne Volante, by their counsel, Keyser Maloney & Winner LLP, and Troutman Pepper Hamilton Sanders LLP, for their Petition against Respondents Governor Kathy Hochul, Lieutenant Governor and President of the Senate Brian A. Benjamin, Senate Majority Leader and President *Pro Tempore* of the Senate Andrea Stewart-Cousins, Speaker of the Assembly Carl E. Heastie, the New York State Board of Elections, and the New York State Legislative Task Force on Demographic Research and Reapportionment, allege as follows:

PRELIMINARY STATEMENT

1. The People of New York in 2014 enshrined in the New York Constitution an exclusive process for enacting replacement congressional and state legislative districts, while also prohibiting partisan and incumbent-protection gerrymandering. Yet, in the very first redistricting cycle after these landmark constitutional amendments, the Democratic Party politicians who control the New York Legislature and Governor's office violated these constitutional provisions.

2. These politicians brazenly enacted a congressional map ("2022 congressional map") that is undeniably politically gerrymandered in their party's favor. Dave Wasserman, a nonpartisan national elections expert, correctly noted that these politicians' congressional map is "an effective gerrymander," designed so that Democrats will "gain three seats and eliminate four Republican seats," creating "probably the biggest shift in the country."[1] The non-partisan election analysis website FiveThirtyEight similarly explained that the map is so "skewed toward Democrats" and "egregious" as to "represent[ ] a failure for [New York's] new redistricting process."[2] And even a top attorney for the famously left-leaning Brennan Center for Justice opined that the congressional map "isn't good for democracy," because it is "a master class in gerrymandering, . . . tak[ing] out a number of Republican incumbents very strategically."[3] Indeed,

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[1] Grace Ashford & Nicholas Fandos, *N.Y. Democrats Could Gain 3 House Seats Under Proposed District Lines*, N.Y. Times (Jan. 30, 2022), available at https://www.nytimes.com/2022/01/30/nyregion/new-york-redistricting-congressional-map.html (all websites last visited on Feb. 8, 2022).

[2] Nathanial Rakich, *New York's Proposed Congressional Map Is Heavily Biased Toward Democrats. Will It Pass?*, FiveThirtyEight (Jan. 31, 2022), available at https://fivethirtyeight.com/features/new-yorks-proposed-congressional-map-is-heavily-biased-toward-democrats-will-it-pass/.

[3] Nick Reisman, *How the Proposed Congressional Lines Could Alter New York's Politics*, Spectrum News 1 (Feb. 1 2022), available at https://spectrumlocalnews.com/nys/central-ny/ny-state-of-politics/2022/02/01/how-the-proposed-congressional-lines-could-alter-ny-s-politics.

the congressional map is so obviously biased that it favors Democratic partisan interests more than *any* of 5,000 computer-generated maps drawn without partisan considerations.

3. While the 2022 congressional map received the great bulk of media attention, the Legislature's new state Senate map ("2022 state Senate map") is likewise politically gerrymandered to favor the Democratic Party and Democratic Party incumbent politicians. Yet again, when the Legislature's state Senate map was compared to any of 5,000 computer-generated maps designed to create state Senate districts consistent with New York law but without partisan considerations, it is the most favorable to the Democratic Party.

4. In 2014, the People of New York amended Sections 4 and 5 of Article III of the New York Constitution, establishing an *exclusive* process for redistricting that, both as a matter of procedure and substance, prohibits partisan and incumbent-protection gerrymandering. Through the creation of the New York Independent Redistricting Commission ("IRC" or "the Commission"), the requirements for multiple public hearings to receive public comment on proposed maps, and limiting the New York State Legislature's ("Legislature") authority to an up-or-down vote on IRC-proposed maps, these amendments designed a process to preclude gerrymandering. Indeed, these amendments explicitly prohibit drawing maps "for the purpose of favoring or disfavoring incumbents or other particular candidates or political parties." N.Y. Const. art. III, § 4(c)(5). Thus, the amendments bar the sorts of gamesmanship and self-interested gerrymandering that have plagued the redistricting process in this State for years.

5. The State of New York even bragged about these reforms to its redistricting process before the U.S. Supreme Court, claiming that Article III, Section 4(c)(5) was powerful evidence

that States could fight partisan gerrymandering by barring the drawing of district lines for the purpose of favoring or disfavoring a political party.[4]

6. The Democrat-controlled Legislature attempted, but failed, to gut these reforms in 2021 through a proposed constitutional amendment. That amendment would have allowed the Legislature to assume vast redistricting authority if the Commission failed to vote on redistricting plans for the Legislature's consideration.

7. But the People decisively voted this measure down in 2021, reconfirming the IRC's exclusive redistricting process under New York law.

8. Undeterred, the Democrats who control the Legislature and Governor Kathy Hochul have egregiously violated both the procedural and substantive protections in the New York Constitution to seek precisely the type of advantage for their party that the People outlawed in 2014 and reaffirmed in 2021. Governor Hochul thus lived up to her promise to "use [her] influence to help Democrats expand the House majority through the redistricting process," and help the Democratic Party "regain its position that it once had when [she] was growing up."[5]

9. This Court should invalidate both the unconstitutional 2022 congressional map and unconstitutional 2022 state Senate map on two separate and independent bases.

10. First, the Legislature had no authority to enact the new maps because the Legislature did not follow the *exclusive* process for enacting replacement maps that the People enshrined through the 2014 amendments, meaning that the Senate map and congressional map are

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[4] Amicus Br. for States of N.Y., et al. at 18, *Rucho v. Common Cause*, 558 U.S. ___ (2019) (No. 18-422).

[5] Katie Glueck & Luis Ferré-Sadurní, *Interview with Kathy Hochul: "I Feel a Heavy Weight of Responsibility"*, N.Y. Times (Aug. 25, 2021), available at https://www.nytimes.com/2021/08/25/nyregion/kathy-hochul-interview.html.

entirely void.[6] Accordingly, the only validly enacted or adopted maps are those that the Legislature and courts adopted for New York after the 2010 decennial census. But the prior congressional map ("2012 congressional map") is now unconstitutionally malapportioned after the 2020 census and does not have the correct number of seats. And the prior state Senate map ("2012 state Senate map") is similarly malapportioned, given changes in New York's population. This Court should expeditiously adopt new maps—prior to the impending deadlines for candidates to access the ballot—to cure the malapportionment now affecting the 2012 congressional and state Senate maps.[7]

11. Second, if this Court holds that the Legislature somehow had the authority to adopt replacement maps notwithstanding these procedural failures, this Court should reject the new 2022 congressional map and 2022 state Senate map as a matter of substance, as those maps are obviously unconstitutional partisan and incumbent-protection gerrymanders. If this Court takes this approach, it should invalidate the 2022 congressional map and 2022 state Senate map and then send them back to the Legislature to create new maps that comply with the law.

THE PARTIES

12. Petitioner Tim Harkenrider is an elector of the state of New York, residing at 22 Spruce Street, Canisteo, NY 14823, in Steuben County, within Congressional District 23 and state Senate District 59.

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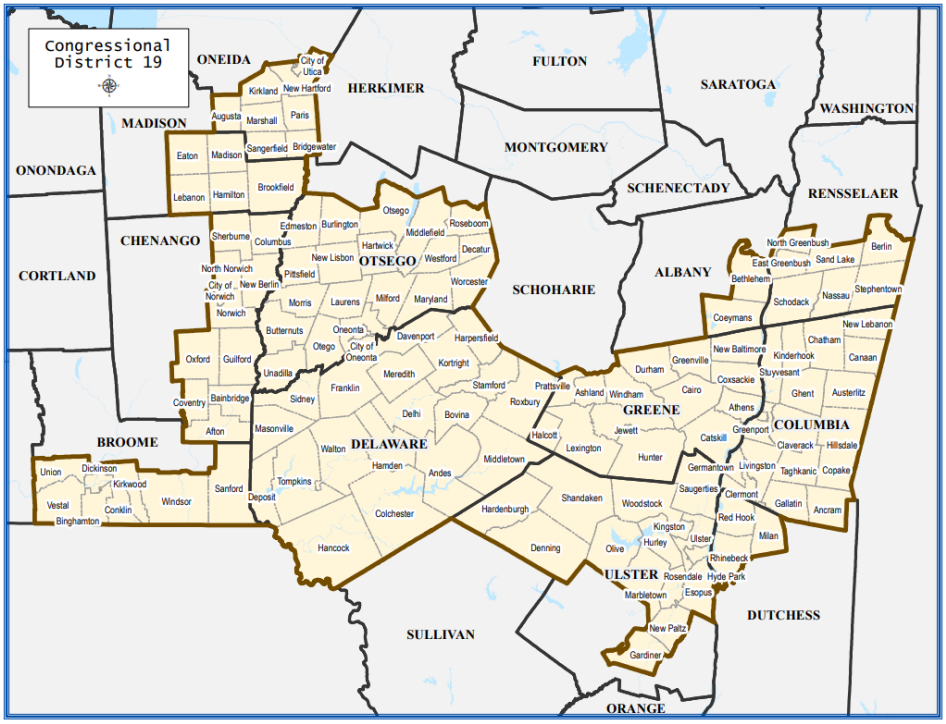
[6] To be sure, this same procedural basis for invalidation applies equally to the state Assembly map. However, the Petitioners do not challenge that map in this lawsuit. Of course, any other elector, N.Y. Const. art. III, § 5; Unconsolidated Laws § 4221, can challenge the Assembly map if that elector chooses.

[7] Although this failure applies equally to the state Assembly map enacted by the Legislature, Petitioners do not challenge that map or ask for its invalidation. Therefore, the Court need not consider any procedural failures related to enactment of the 2022 state Assembly map.

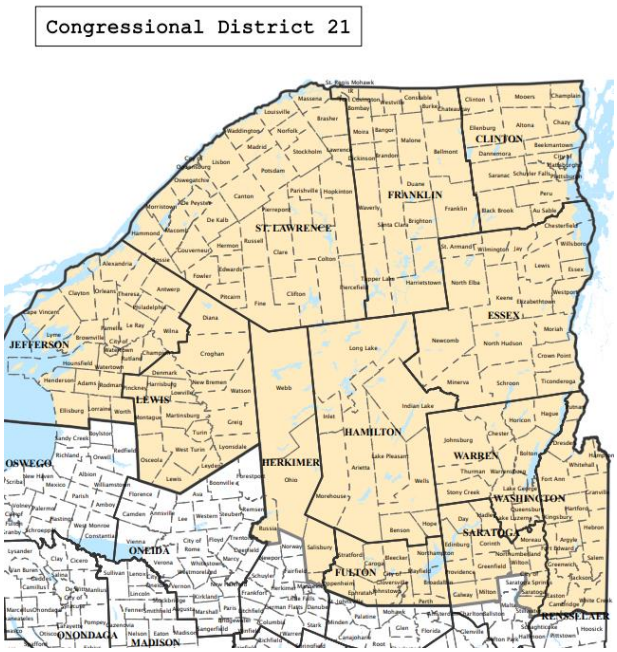
Map of New Congressional District 19



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

165. The new Congressional District 21 now extracts Saratoga and Schenectady counties, in addition to splitting off a portion of Warren County, from the surrounding areas, replacing those regions with much of Oneida County and Herkimer County, half of Montgomery County, and all of Schoharie County, thereby packing additional Republican voters into this single district and eliminating their ability to make surrounding districts more competitive for Democratic candidates.

Map of Old Congressional District 21

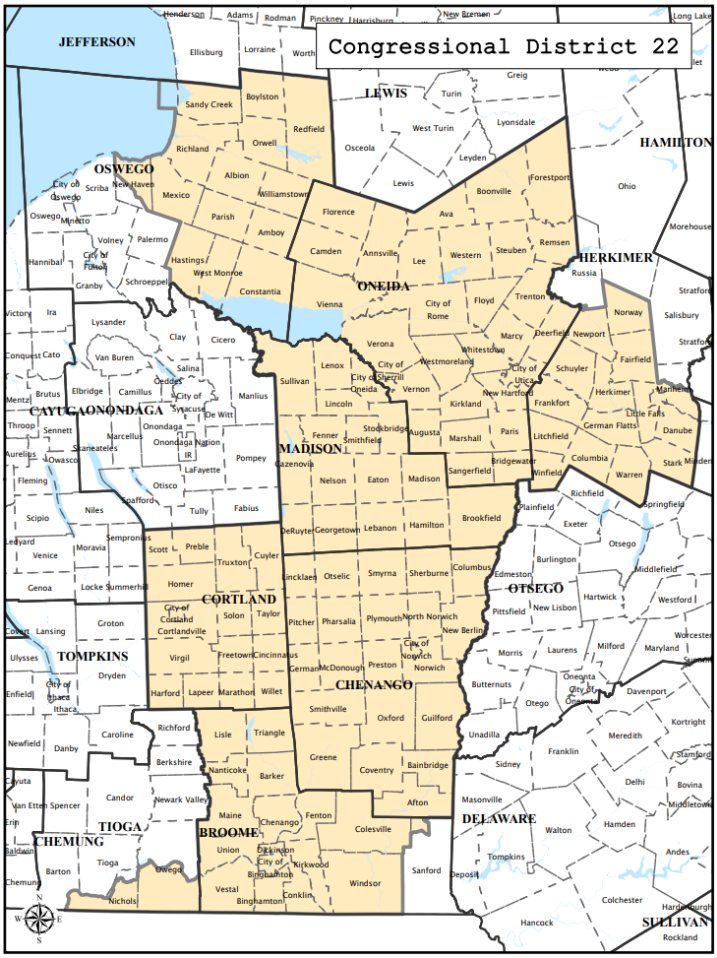


Map of New Congressional District 21

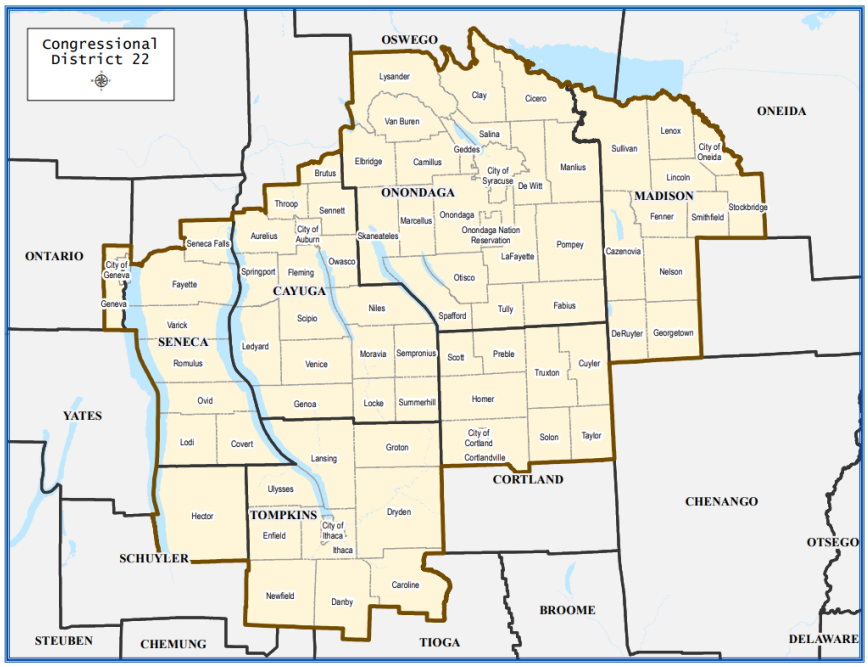
166. In Congressional District 22, the Legislature removed Republican areas and replaced them with Tompkins County, including the city of Ithaca, to flip the district from a competitive Republican district to a strong Democratic one.

167. As a result, Congressional District 22 underwent a massive political swing, changing from a very competitive Republican district to a strong Democratic district.

Map of Old Congressional District 22



Map of New Congressional District 22



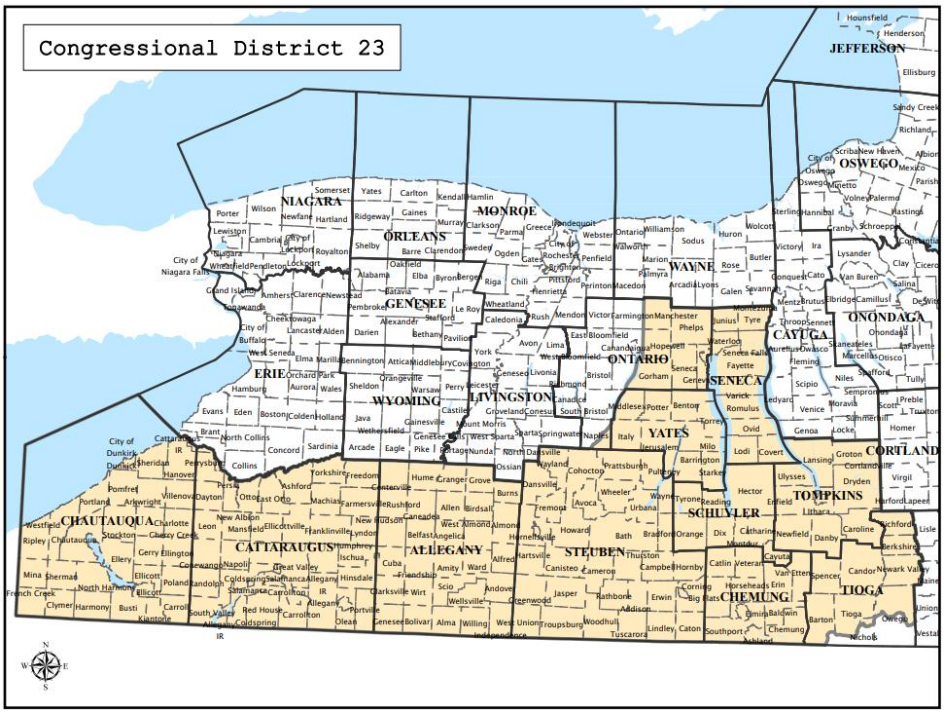
168. The Legislature gerrymandered Congressional District 23 by "packing" as many Republican votes into this district as it could, again for partisan gain.

169. The new district now includes southern Erie County towns—first-ring suburbs to the city of Buffalo—connecting them with far away and rural areas around Binghamton.

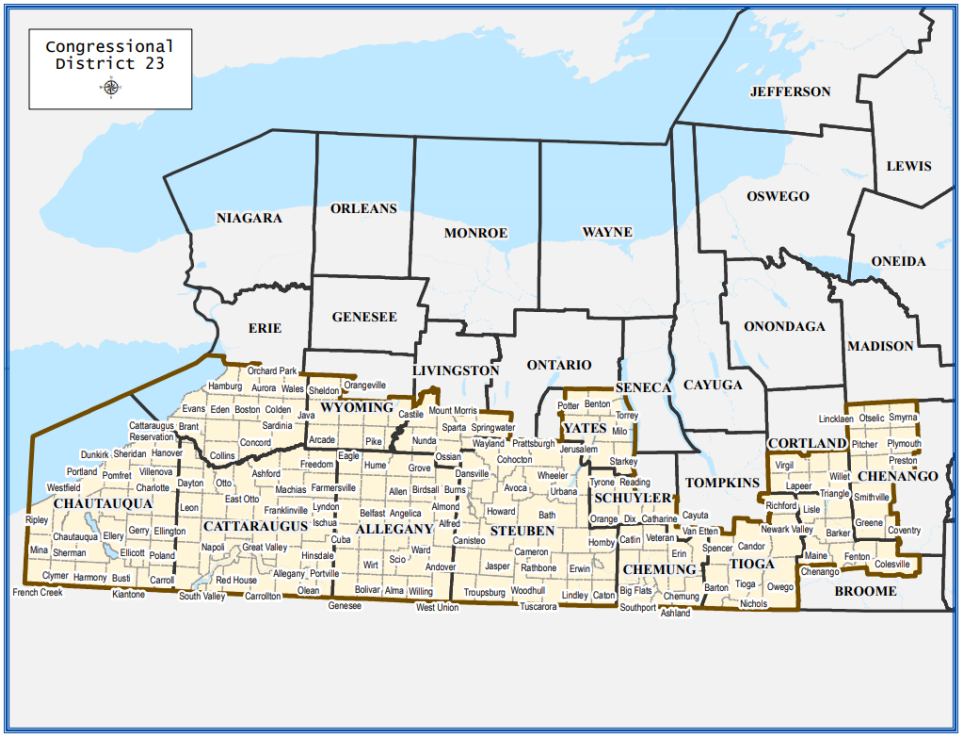
170. The old district also included some heavily Democratic areas in Tompkins County, but the Legislature removed those areas, as noted above, placing them in Congressional District 22 to flip that district.

171. As a result, Congressional District 23 became less competitive and shifted from a very strong Republican district to an uncontestable Republican district.

Map of Old Congressional District 23



Map of New Congressional District 23



172. Previously, District 24 compactly encompassed the bordering counties of Wayne, Cayuga, and Onondaga, as well as part of Oswego County.

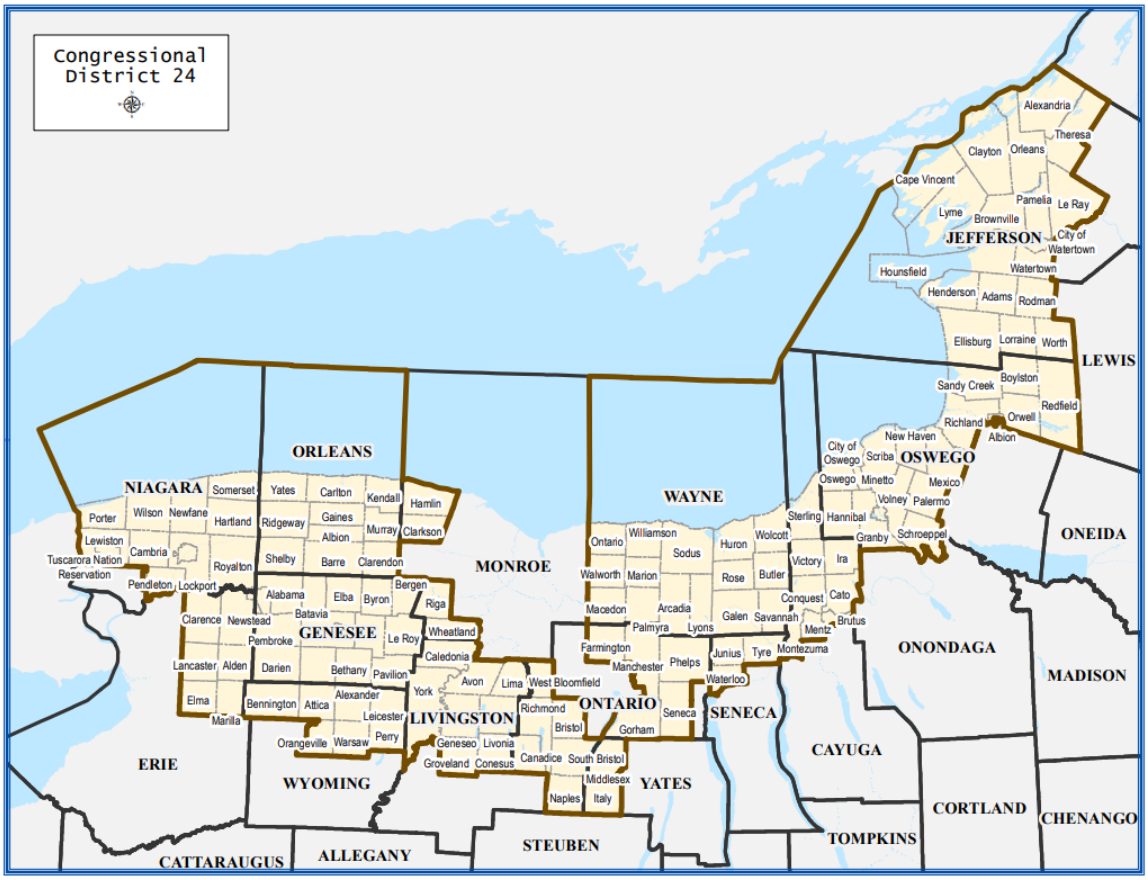
173. Now, this District extends from Lewiston, in Niagara County, and various similarly Republican areas in northeast Erie County, all the way eastward and northward to Jefferson County (all the way to the St. Lawrence County line), while notably avoiding certain portions of Monroe and Ontario counties.

174. Indeed, this District now stretches across four media markets, connecting numerous areas over more than 250 miles with little or nothing in common.

175. As a result, the Legislature shifted Congressional District 24 from a highly competitive Democratic district into a very strong Republican district, designed to protect numerous surrounding districts from any serious Republican challenge.

Map of Old Congressional District 24

Map of New Congressional District 24



176. Each of these blatantly gerrymandered districts, both individually and collectively, has no reasonable explanation except the Legislative Democrats' specific goal of increasing their political power. These examples are only illustrative of the map's partisan design as a whole.

177. On February 2, 2022, notwithstanding the egregious gerrymander within the Legislature's map, the Democrats in the Assembly and State Senate adopted the congressional map (with only slight modifications unrelated to their gerrymandering efforts), despite every Republican in the Assembly and State Senate voting against the map. *See* 2021–2022 N.Y. Reg. Sess. Leg. Bills S.8196 and A.9039 (as technically amended by A.9167).

178. In addition to the Republican legislators, all of whom voted against this egregious gerrymander, Democratic Assemblymembers Simcha Eichenstein and Marcela Mitaynes voted against the congressional maps.

b. Gerrymandered State Senate Districts

179. The 2022 state Senate map is no better. Just as the Legislature gerrymandered the congressional districts, it concocted numerous state Senate districts with no viable explanation but impermissible partisan and incumbent-favoring plotting. *See* Mahoney, *supra.*

180. On Long Island, the Legislature sought to pack Republican voters into two strongly Republican districts and make each of the other seven districts more favorable for Democratic candidates.

181. For example, in state Senate District 2, the new map packs Republican voters who had been in Senate District 1 in the 2012 state Senate map, thereby making new Senate District 1 more favorable for a Democratic candidate.

182. The Legislature similarly packed Long Island's state Senate District 4 with Republican voters. The already somewhat-reliable Republican Senate District 4 now encompasses Bayport, Oakdale, and east Islip, areas that previously made state Senate District 3 competitive.

183. And the Legislature combined the Republican incumbents who currently represent state Senate Districts 3 and 4 into new Senate District 4, while creating an open seat in new Senate District 3.

184. In short, the Legislature connected and consolidated some of the most Republican areas of Suffolk and Nassau counties in state Senate District 4, ensuring that Republican voters

who previously resided in multiple districts that had been represented by Republican state Senators for the majority of the last decade would now be represented by only one Republican state Senator.

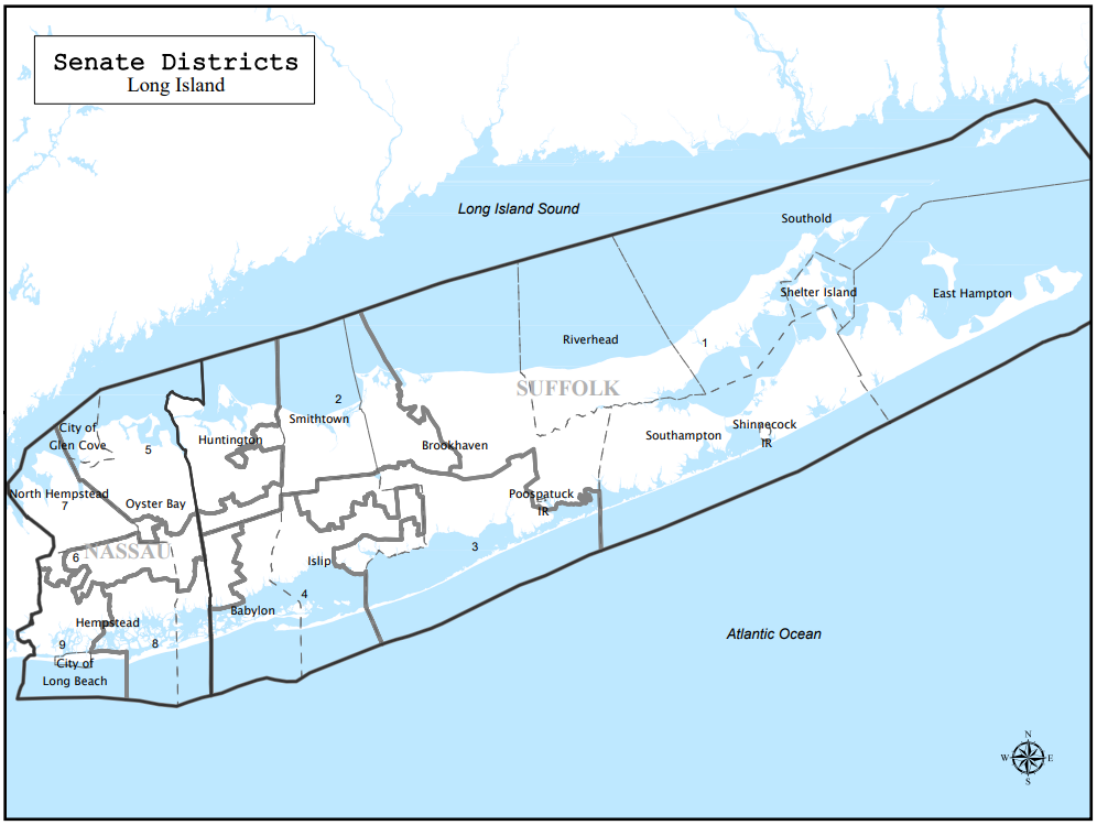
185. In new state Senate Districts 5 and 6, the Legislature combined areas that had been in different state Senate districts for decades, and which are not communities of interest, to turn previously swing districts into strongly Democrat-favoring districts.

186. In state Senate District 5, the Legislature removed the half of the district that had been in the Town of Oyster Bay and ran the district southward into the Town of Babylon, picking up very Democratic regions to make the district more favorable for Democratic candidates.

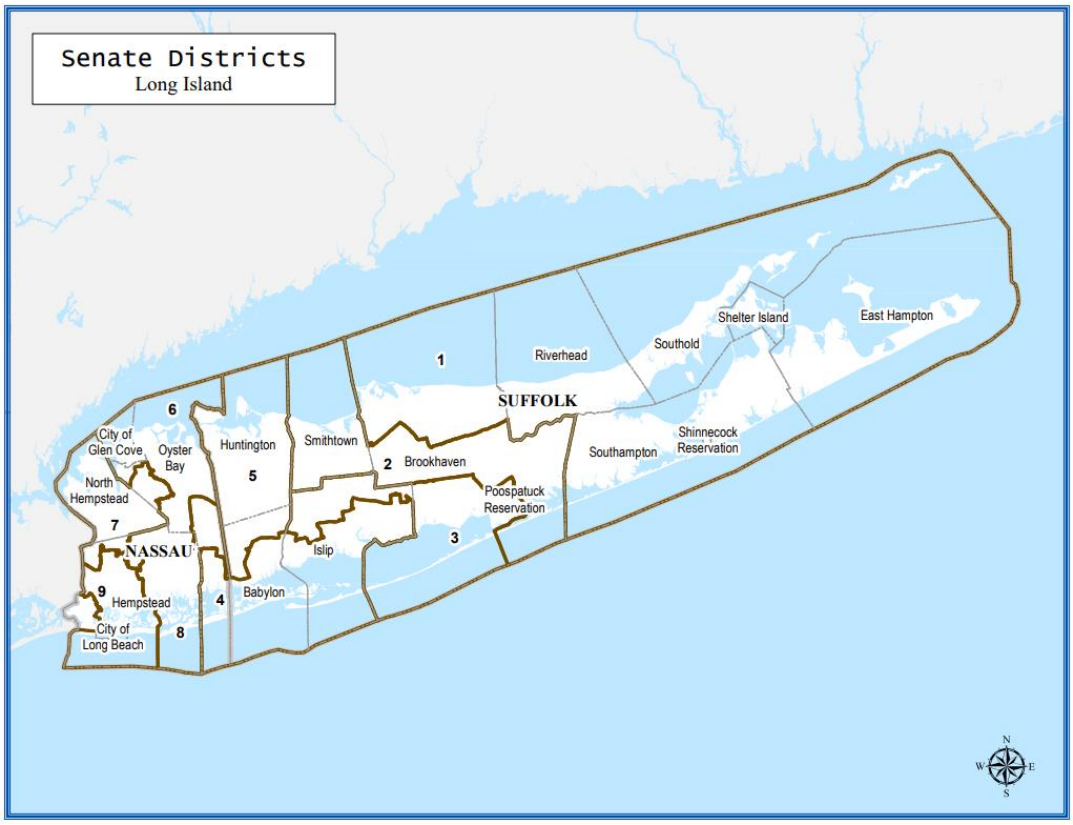
187. The Legislature then took Oyster Bay from old Senate District 5 and placed it in new Senate District 6, running that district southward to add strong Democrat areas from Uniondale and the Village of Hempstead to make that district much more favorable for Democratic candidates.

188. The Legislature also increased the Democratic Party's advantage in state Senate District 7, and in state Senate District 9, the Legislature removed the heavily Orthodox Jewish communities known as the Five Towns, which have a history of voting strongly Republican, from the district and then moved them to a heavily Democratic district in Queens, thus making Senate District 9 more favorable for a Democratic candidate. Unlike the 2012 state Senate map, the 2022 state Senate map now breaks the Nassau-Queens border.

Map of Old State Senate Districts on Long Island



Map of New State Senate Districts on Long Island



189. The Legislature's partisan gerrymander of Senate District 9 also impacts Senate District 10. The Legislature removed heavily Orthodox Jewish and Republican leaning areas known as the Five Towns from state Senate District 9 in Nassau County and placed them into Senate District 10, an already heavily Democratic district in Queens, combining two unrelated communities, and thereby diluting the voting power of Republicans in the new district without at all risking that seat for Democrats.

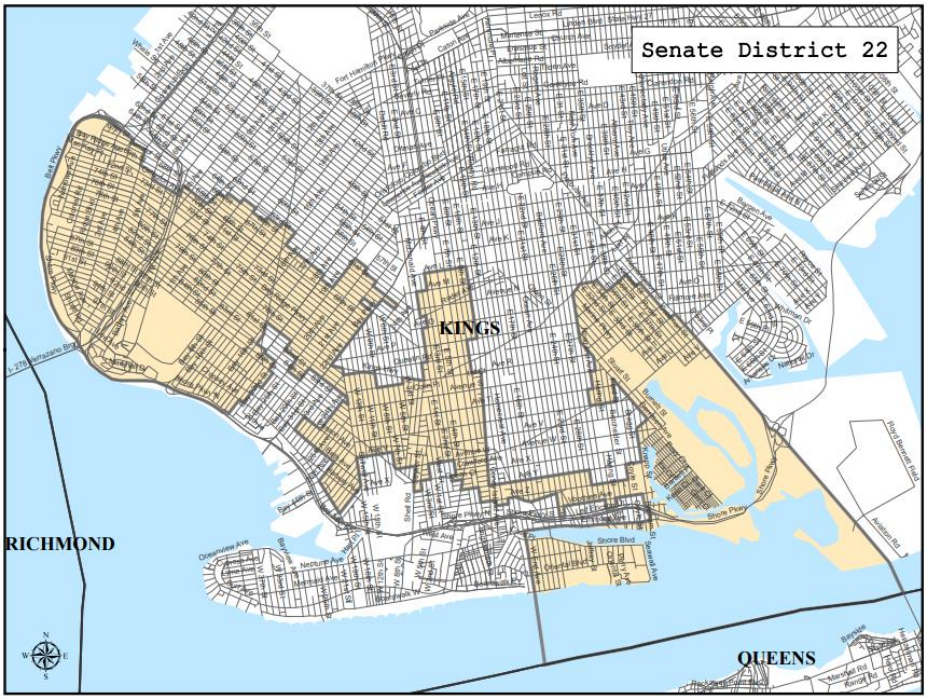
190. Moreover, the Legislature failed to respect the longstanding division of Nassau County from New York City by breaking the Nassau County-Queens County border, where there had been no prior cross-border state Senate districts breaching that line. By moving the Five Towns to a Queens-based Senate district,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

and separates it from other suburban areas with similar government, school district, and community institutions to join it with New York City.

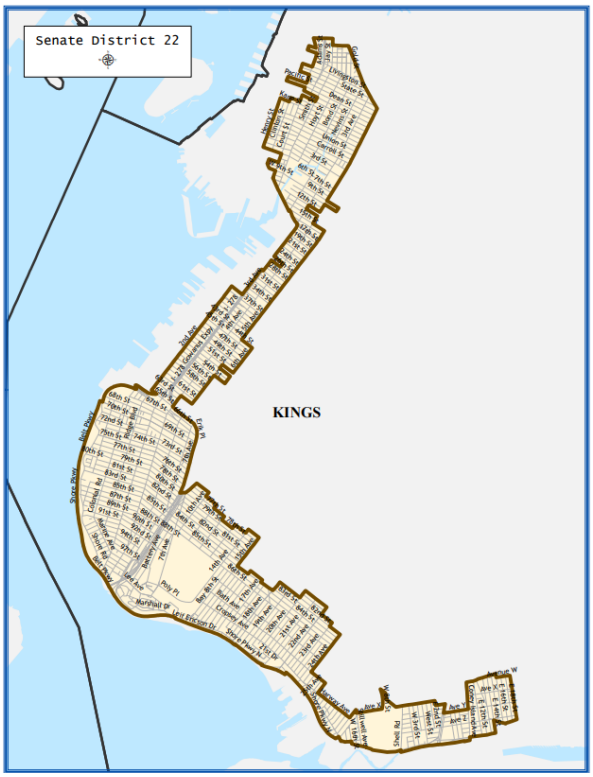
191. In state Senate District 22, the Legislature specifically drew the boundaries to remove Republican votes in southern Brooklyn by awkwardly extending a long arm northeastward into communities in northern Brooklyn that share little in common, using those heavily Democratic voting areas to negate the Republicans at the southwestern ends of the District.

192. By doing so, the Legislature divided Brooklyn's Russian and Orthodox Jewish community of interest between multiple state Senate districts.

Map of Old State Senate District 22



Map of New State Senate District 22



193. North of New York City, the Legislature continued its gerrymander. Republican leaning towns in Dutchess County and swing northern Westchester towns were removed from what had been Senate District 40, and in the new Senate District 42, a thin finger stretches southward to include the city of White Plains—which has nothing in common with the more rural/suburban towns in Putnam and norther Westchester counties. This converted a swing district that had been represented by Republicans for most of the last decade into a strong Democratic district.

Map of New State Senate District 42

194. Putnam County is now split between state Senate District 42 and state Senate District 41 and is now connected with Orange County, instead of Dutchess County, with which it shares a natural community of interest.

195. The Legislature moved the Putnam County Town of Philipstown and the Dutchess County communities of Beacon and Fishkill from what had been Senate District 41 (Dutchess and Putnam counties) to the new, Orange County-based Senate District 41. The Legislature did so because these three communities are Democrat-leaning and, by moving them to the new state

Senate District 41, they shifted the district from Republican to Democratic, making it a safe seat for the Democratic incumbent. The Legislature accomplished this shift by removing the Republican-performing Orange County towns of Montgomery, Crawford, Chester, and Monroe from the previous Senate District 39 in its new incarnation as Senate District 41, and placed them in new Senate District 44.

196. The Legislature likewise gerrymandered state Senate District 44, by packing it with Republican voters, removing parts of Ulster County that generally vote Democrat from the district, and adding parts of Orange County that generally vote Republican, as well as similar areas in Delaware and Broome counties.

197. New state Senate District 48 (which most closely approximates state Senate District 46 in the 2012 state Senate map), is now a somewhat strong Democratic district, flipping from a lean Republican district. The Legislature accomplished this gerrymandered flip by lopping off Republican-performing areas in the northern reaches of the previous district—Montgomery County and portions of Schenectady County—and replacing them with more Democratic areas in Ulster, Dutchess, and Columbia counties.

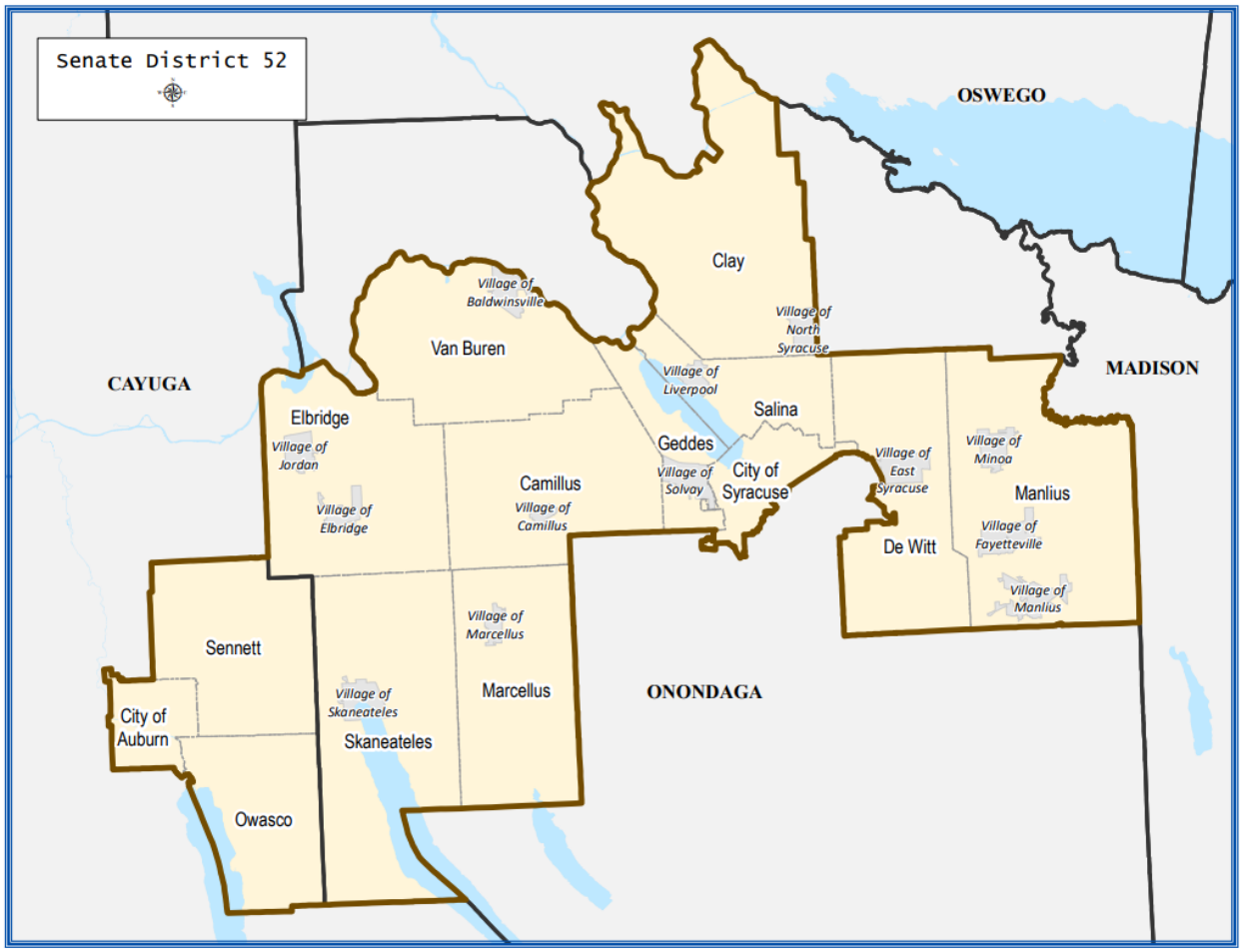
198. In state Senate District 46, the Legislature disconnected the City of Albany and the Albany County river cities that face it across the Hudson River and combined it with Republican areas in Saratoga County with which it has little in common, to create a safe Democratic district.

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

200. The Legislature flipped new state Senate District 52 (which somewhat approximates state Senate District 50 in the 2012 state Senate map) from a district that had elected a Republican for the majority of the last decade into a district favoring Democratic candidates by adding a larger portion of the City of Syracuse into a district based in Onondaga County suburbs.

Map of Old State Senate District 50

Map of New State Senate District 52



201. In new state Senate District 53, the Legislature cynically disconnected Tompkins County, a portion of Cortland County, and portions of Tioga and Broome counties from surrounding areas with which they had been historically connected to create a new district that strongly favors a Democrat candidate.

202. In new state Senate District 54, the Legislature packed Republicans by adding Wayne County to other strongly Republican-performing areas in Genesee, Livingston, Ontario, and Cayuga counties.

203. The Legislature's specific choices here made this district noticeably less competitive, creating a very strong Republican district, and also extracted these strong Republican areas from their previous districts, which also included swing areas, thereby decreasing protection in neighboring districts.

204. In new state Senate District 56 (which most closely resembles District 55 in the 2012 state Senate map), the Legislature added a large portion of the City of Rochester, and its heavily Democratic voting citizens to flip this district from one that had been represented by a Republican state senator until his recent retirement into a strong Democratic district. The situation is virtually identical in new state Senate District 57.

205. In new state Senate District 58, the Legislature packed a large number of Republicans to remove them from surrounding districts and decrease competitiveness, enabling the Legislature to create the new Democratic district in Tompkins and Broome counties.

206. In creating new state Senate District 60, the Legislature broke the Erie-Niagara County border and added the City of Niagara Falls to what had been state Senate District 60 under the 2012 state Senate map and removed the towns of Orchard Park, Evans, and Brant. Previously, State Senate District 60 had been a competitive swing district represented by both Republicans and Democrats over the last decade. By adding the heavily Democratic City of Niagara Falls, which is in a different county than the rest of the district, the district changed from one that leaned Democratic to one that is now solidly Democratic, reducing realistic competition there.

207. Relatedly, the Legislature gerrymandered new state Senate District 62 by packing it with Republicans. The Legislature removed from this district the City of Niagara Falls, while

adding the reliably Republican towns to the east, to make this a heavily Republican district with little to no competitiveness.

208. The Legislature also gerrymandered state Senate District 63 by cobbling together from several disparate areas: the suburban swing Town of Amherst, the east side of Buffalo, and part of Lackawanna County. The Town of Amherst is much more closely aligned with the other suburban towns to the north of the City of Buffalo and these three areas are not communities of interest by any reasonable metric and lack commonalities with one another.

209. As a result, new state Senate District 63 is overwhelmingly Democratic, with no real risk of the Democrats losing that Senate seat.

210. All in all, the 2022 state Senate map largely guarantees the Democratic Party in New York an outsized number of state Senate seats compared to their political support in this State.

211. In fact, the Legislature's state Senate gerrymander was so successful and so biased in favor of Democrats, that the enacted state Senate map is more favorable to Democrats than *any* of the 5,000 computer simulated maps designed specifically to follow New York's redistricting requirements without partisan considerations.

212. Despite these and other gerrymandered districts within the new 2022 state Senate map, the Legislature enacted that map on a vote of 118–29 in the Assembly and 43–20 (a straight party line) in the Senate on February 3, 2022. *See* 2021–2022 N.Y. Reg. Sess. Leg. Bills A.9040-A and A.9168.

iv. The Governor Signs The Legislature's Unfair Congressional And State Senate Maps Into Law Despite Widespread Objection From New Yorkers

213. After the Legislature released its proposed maps, there was extensive public outcry over both the process and substance.

214. Members of the public took to the IRC's public comment page to decry the Legislature's opaque approach to redrawing the maps. Submissions, New York Independent Redistricting Committee ("IRC Public Submissions").[32] As one comment said, "[t]his is clearly gerrymandering at its worst." IRC Public Submissions, *supra* (submitted by Anthony on Jan. 31, 2022). Betsy Gotbaum, the executive director of good-government group Citizens Union, described the Legislature's lack of process succinctly: "There was no public input." Jacob Kaye, *State Legislature Shares Version of Congressional Redistricting Map,* Queens Daily Eagle (Feb. 1, 2022).[33] She also noted that the Legislature's actions completely deprived the process of an accurate understanding of the public's desires in new maps: "We don't really know what groups of people really wanted once the commission couldn't come to any kind of a conclusion and then the legislators took it over. We don't know." *Id.*

215. New Yorkers across the state quickly flagged the new maps as highly partisan gerrymanders. "If it looks like gerrymandering and sounds like gerrymandering—it's most likely gerrymandering," said Brian Browne, a political science professor at St. John's University in New York City. Kaye, *supra*. "This is why people don't trust politicians," observed Pat Kiernan, a local morning news anchor on NY1, "[a]nd the Democrats have given up any high ground they had over Republicans on gerrymandering." Nicholas Fandos, *How N.Y. Democrats Came Up With Gerrymandered Districts on Their New Map,* N.Y. Times (Jan. 31, 2022).[34]

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[32] Available at https://nyirc.gov/submissions.

[33] Available at https://queenseagle.com/all/state-legislature-shares-version-of-congressional-redistricting-map.

[34] Available at https://www.nytimes.com/2022/01/31/nyregion/nyc-congressional-district-nadler.html.

216. Even Democratic politicians condemned the maps. Cynthia Appleton, the Democratic chair for Wyoming County, described the congressional map as "an absolute travesty." Jerry Zremski, *New Congressional Map Sparks Gerrymandering Outcry*, Buffalo News (Jan. 31, 2022).[35] Nate McMurray, a former Democratic congressional candidate, offered a similar view on the new map, calling it "nuts." *Id.* Melanie D'Arrigo, a Democratic candidate running in Congressional District 3, harshly criticized the new map as well: "We cannot stay silent as we watch the state legislature publish a map that extreme gerrymanders our district." Kaye, *supra*. Describing the redrawn Congressional District 3, which now spans five counties, D'Arrigo despaired, "How is this fair to the people who live in any of these counties?" *Id.* She further noted that "[c]onstituent services will be more difficult, more expensive and less efficient: the needs of someone living on the border of Connecticut being wildly different from someone in Huntington," and "[a]ll of the voters at stake deserve real representation, not to be used as political pawns." *Id.*

217. On February 3, 2022, Governor Hochul signed the Legislature's congressional and state Senate maps, 2021–2022 N.Y. Reg. Sess. Leg. Bills S.8196, A.9039-A, A.9040-A, and A.9168, into law, thereby blessing her fellow Democrats' blatant gerrymandering efforts. Patrick Ryan, *Gov. Hochul Signs New State and Congressional Redistricting Maps into Law* WIVB.com (Feb. 3, 2022) (providing signed bills).[36]

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[35] Available at https://buffalonews.com/news/new-congressional-map-sparks-gerrymandering-outcry/article_0ab6b528-82e6-11ec-8d7b-07d7c0c217b8.html.

[36] Available at https://www.wivb.com/news/new-york/gov-hochul-signs-new-state-and-congressional-redistricting-maps-into-law/.

D. The 2022 Maps' Impact On Petitioners

218. The Legislature's blatant gerrymandering has caused grave harm to Petitioners, all of whom want a fair, representative government at both the state and national level, unhindered by partisan interests and egregious gerrymandering.

219. Broadly, this kind of partisan gerrymandering is profoundly undemocratic and cuts deeply into the public's confidence in their representative government. The Legislature's egregious attempt to entrench the majority party's incumbents and political power harms the franchise of all New York voters, Petitioners included.

220. For example, the adopted 2022 congressional and state Senate maps treat Petitioners unequally and dilutes their voting power based on their political beliefs. Through this map, Democrats have essentially guaranteed that they will win more congressional and state Senate districts—and thus more power—than is warranted by the party's popular support. As a result, political representatives will subject Petitioners to laws and policies that do not fairly reflect the public will.

221. Moreover, when incumbents choose their voters—rather than voters electing their chosen representatives—the public's faith in the franchise is diminished.

222. Participation in the democratic process will decrease, as voting holds little appeal to those in gerrymandered districts because their votes cannot change the preordained outcomes of elections. New Yorkers made their will clear when they voted to ban partisan gerrymandering.

223. Enacting these maps deals a crushing blow to the State's representative democracy and the faith of the People in those governing them.

224. More specifically, each of Petitioners suffers directly from these maps, including because they lose the opportunity to vote for their preferred congressional and state Senate candidates, rather than ones selected for them by the Legislature's cynical line-drawing.

225. For example, the new Congressional District 16, a strong Democratic district where Petitioner Marianne Volante lives, moved Republican voters from Congressional District 18, where Petitioner Patricia Clarino lives, decreasing competition and turning District 18 into a safe Democratic district, without jeopardizing the Democratic Party's interests in District 16. As a result, Petitioner Clarino's vote is diluted, while Petitioner Volante and other Congressional District 16 Republicans' votes will never outweigh the Democratic vote that has been gerrymandered around them.

226. In the new Congressional District 23, where Petitioners Tim Harkenrider, Linda Fanton, Jay Frantz, Alan Nephew, and Susan Rowley reside, the Legislature "packed" as many Republican votes into the district as it could. As a result, the Republican votes of Petitioners and similar voters in the District far exceed the amount their candidates need to win in elections. Rather than fairly spreading Republicans through logically constructed districts, the Legislature has ensured that many of their votes are wasted in Congressional District 23.

227. Conversely, in the new Congressional District 10, where Petitioner Stephen Evans resides, and Congressional District 11, where Petitioner Jerry Fishman resides, the Legislature broke up conservative communities of interest, "cracking" and effectively neutralizing Republican voters in these districts. As a result, these Petitioners' votes are diluted, and they are subjected to political policies that do not align with their own views or the will of their communities.

228. Similarly, new Congressional District 17, where Petitioner Lawrence Garvey resides, new Congressional District 19, where Petitioners Guy C. Brought and Lawrence Canning reside, and new Congressional District 22, where Petitioners George Dooher, Jr. and Josephine Thomas reside, each "crack" and neutralize Republican votes by breaking up communities of interest and unnaturally reaching across the state to add Democratic voters to each of these districts. These Petitioners will be forced to endure representatives who do not reflect the communities they represent, enforcing their unwelcome policies.

229. Petitioners face similar harms from the gerrymandered 2022 state Senate map. In state Senate District 41—where Petitioner Patricia Clarino resides—the Legislature gerrymandered the district to lean Democratic, depriving Petitioner Clarino of the representation of her choice.

230. Similarly, in state Senate District 42—where Petitioner Marianne Volante resides—the Legislature drew the boundaries to stretch down into White Plains and create a safely Democratic district, depriving Petitioner Volante of the representation of her choice.

231. In state Senate District 48—where Petitioner Guy C. Brought resides—the Legislature removed more-conservative-voting areas in Montgomery County and Schenectady County, replacing them with more liberal areas in Dutchess and Columbia counties, thereby flipping this district into a somewhat strong Democratic district, thereby forcing upon Petitioner Brought a likely Democratic state Senator whose political policies will not align with his own.

232. In state Senate District 58—where Petitioners Linda Fanton, Jay Frantz, Alan Nephew, and Susan Rowley all reside—and state Senate District 59—where Petitioner Tim Harkenrider resides—the Legislature "packed" Republican voters into these districts, so the

Republican votes of Petitioners and similar voters in the District far exceed the amount their candidates need to win in elections. By doing so, the Legislature has ensured that Petitioners' votes will be wasted in these state Senate Districts.

233. Petitioners regularly vote for Republicans running for Congress and state legislative office and engage in campaign activity for Republicans running for Congress and state legislative office. Thus, the gerrymandering of the 2022 state Senate and congressional maps dilutes the power of their votes and political action efforts.

FIRST CAUSE OF ACTION

(N.Y. Const. art. III, § 4(b); N.Y. Legis. Law § 93(1) – Failure To Follow Constitutional And Statutory Procedures For Redistricting)

234. Petitioners hereby incorporate each of the foregoing paragraphs as if fully set forth herein.

235. Article III, Section 4(e) of the New York Constitution provides that "*[t]he process* for redistricting congressional and state legislative districts established by this section and sections five and five-b of this article *shall govern* redistricting in this state," with limited exceptions not relevant here. N.Y. Const. art. III, § 4(e) (emphases added); *see* N.Y. Legis. Law § 93(3) (same).

236. Section 4(b) of Article III requires that, should the Legislature "fail to approve the legislation implementing the first redistricting plan" prepared by the IRC, the IRC then "*shall* prepare and submit to the legislature a second redistricting plan and the necessary implementing legislation for such plan," and that "[s]uch legislation *shall* be voted upon, without amendment." N.Y. Const. art. III, § 4(b) (emphases added); *see also* N.Y. Legis. Law § 93(1).

237. Only then, after having considered and rejected such a *second* redistricting plan, or, after the Governor vetoes any such second plan after the Legislature approved it, may the Legislature "introduce" its own "implementing legislation" along with "any amendments" that comply with Article III, Section 4. N.Y. Const. art. III, § 4(b); *see also* N.Y. Legis. Law § 93(1).

238. Because the Legislature never received, let alone considered and acted upon, a second redistricting plan from the Commission, it never obtained redistricting authority under the *exclusive* process established by the New York Constitution for introducing and adopting its own redistricting maps. *See* 2021–2022 N.Y. Reg. Sess. Leg. Bills S.8196, A.9039-A, A.9040-A, and A.9168.

239. After the Legislature rejected the first-round maps introduced by the IRC out of hand, the Commission did not adopt and introduce second-round maps to the Legislature within 15 days, leaving the Legislature with no maps to act on within the scope of its limited constitutional role.

240. As a result, the Legislature did not consider a second map or maps from the IRC, which mandatory consideration was required before the Legislature was constitutionally permitted to adopt its own congressional map. N.Y. Const. art. III, § 4(b).

241. The 2021 legislation enacted by the Legislature and Governor purporting to give the Legislature authority to circumvent the Constitution, to adopt its own maps if the Commission failed to vote on second-round maps, L.2021, c. 633, § 1, is unconstitutional. There is no provision of law that allows the Legislature to sidestep the Constitution's exclusive process for redistricting in New York via legislative enactment.

242. The Legislature enacted L.2021, c. 633, § 7150 in an effort to avoid the effect of the People voting down a constitutional amendment to provide for what L.2021, c. 633, § 7150(1) purports to do. But, of course, a constitutional amendment is necessary to make the changes to New York's exclusive, constitutionally enshrined redistricting process

243. The Legislature cannot act contrary to the Constitution's restrictions on the respective duties and responsibilities allocated to it and other entities responsible for redistricting. Because the Legislature acted contrary to the Constitution when it enacted L.2021, c. 633, § 7150, the 2022 congressional and state Senate maps are invalid.

244. Since the Legislature had and has no constitutional authority to draw congressional or state Senate districts given the IRC's failure to follow the exclusive, constitutionally mandated procedures, this Court cannot give the Legislature another opportunity to draw curative districts.

245. Thus, this Court should draw its own maps for Congress and state Senate prior to the upcoming deadlines for candidates to gain access to the ballot, just as happened regarding the 2012 congressional map.

SECOND CAUSE OF ACTION

(N.Y. Const. art. III, § 4(c)(2); N.Y. Legis. Law § 93(2)(b) – Unconstitutional Malapportionment)

246. Petitioners hereby incorporate each of the foregoing paragraphs as if fully set forth herein.

247. Article III, Section 4(c)(2) provides that "[t]o the extent practicable, districts shall contain as nearly as may be an equal number of inhabitants," and that "[f]or each district that

deviates from this requirement," the entity responsible for drawing the map "shall provide a specific public explanation as to why such deviation exists." N.Y. Const. art. III, § 4(c)(2).

248. This constitutional requirement establishes a population-equality standard for congressional and state Senate districts, absent a "specific" and "public" explanation from the mapdrawer as to why any deviation is necessary. N.Y. Const. art. III, § 4(c)(2).

249. Therefore, following any decennial census, all congressional and state Senate districts must abide by this equal-population requirement.

250. As explained above, the 2022 congressional and state Senate maps are ultra vires because the Legislature ignored entirely the mandatory, *exclusive* process established by the 2014 constitutional amendments for enacting any such redistricting, as well as applicable substantive requirements for any Legislature-created map. *See supra* First Cause Of Action.

251. That is, the Legislature enacted its congressional and state Senate maps without abiding by the constitutional and statutory requirement that the IRC present a second round of maps following the Legislature's decision not to approve the first round of maps. N.Y. Const. art. III, § 4(b). Indeed, the Constitution *requires* that the Legislature "vote[ ] upon" the "second redistricting plan and the necessary implementing legislation" before it may introduce its own plan, and yet the Legislature never complied with these rules. *Id.*; *see also supra* First Cause Of Action.

252. These violations render the 2022 congressional and state Senate maps invalid, leaving only the vestigial maps that the Legislature enacted or the court adopted after the 2010 decennial census. *See* 2011–2012 N.Y. Reg. Sess. Leg. Bills S.6696 and A.9525 (as technically amended by S.6755 and A.9584); *Favors v. Cuomo*, No. 11-CV-5632, 2012 WL 928223 (E.D.N.Y. Mar. 19, 2012).

253. But the 2012 congressional map and 2012 state Senate map, *see id.*, are plainly unconstitutional *today*, following the 2020 census, given New York's inarguable population shifts, because they do not meet the New York Constitution's equal-population requirement.

254. That is, following the 2022 Census, none of the previous congressional and state Senate districts "[t]o the extent practicable" "contain as nearly as may be an equal number of inhabitants." N.Y. Const. art. III, § 4(c)(2); N.Y. Legis. Law § 93(2)(b); *see supra* ¶¶ 61–79.

255. Thus, this Court must now also declare that the Legislature-enacted 2012 state Senate map, and court-adopted 2012 congressional map—the only validly-adopted map in existence, *supra* First Cause Of Action—are invalid, and adopt replacement, constitutional congressional and state Senate maps.

THIRD CAUSE OF ACTION

(N.Y. Const. art. III, § 4(c)(5); N.Y. Legis. Law § 93(2)(e) – Unlawful/Unconstitutional Partisan And Incumbent-Protection Gerrymandering)

256. Petitioners hereby incorporate each of the foregoing paragraphs as if fully set forth herein.

257. Article III, Section 4(c)(5) of the New York Constitution provides that "in the creation of state senate and . . . congressional districts . . . [d]istricts shall not be drawn to discourage competition or for the purpose of favoring or disfavoring incumbents or other particular candidates or political parties." N.Y. Const. art. III, § 4(c)(5).

258. New York Legislative Law § 93(2)(e) provides that, "in the creation of state senate and . . . congressional districts . . . [d]istricts shall not be drawn to discourage competition or for

the purpose of favoring or disfavoring incumbents or other particular candidates or political parties." N.Y. Legis. Law § 93(2)(e).

259. New York Legislative Law § 93(4) also provides that "any law establishing congressional or state legislative districts found to violate the provisions of this article shall be invalid in whole or in part." N.Y. Legis. Law § 93(4).

260. The 2022 congressional and state Senate maps, 2021–2022 N.Y. Reg. Sess. Leg. Bills S.8196, A.9039-A, A.9040-A, and A.9168, violate the clear prohibitions against partisan and incumbent-favoring/disfavoring gerrymandering found in Article II, Section 4(c)(5) of the New York Constitution and New York Legislative Law § 93(2)(e).

261. The Legislature drew the 2022 congressional and state Senate maps "to discourage competition or for the purpose of favoring or disfavoring incumbents or other particular candidates or political parties," N.Y. Const. art. III, § 4(c)(5), as discussed in detail above, *supra* ¶¶ 114–212.

262. Governor Hochul, who signed the maps into law, previously acknowledged that it was her intention "to use [her] influence to help Democrats" by way of "the redistricting process," and claimed that she fully "embrace[d] that" role as Governor. Glueck & Ferré-Sadurní, *supra*.

263. For that reason, the enacted congressional and state Senate maps violate both the New York Constitution and New York Legislative Law § 93, requiring this Court to strike them as "invalid." N.Y. Legis. Law § 93(4).

FOURTH CAUSE OF ACTION

(CPLR § 3001 – Declaratory Judgment)

264. Petitioners hereby incorporate each of the foregoing paragraphs as if fully set forth herein.

265. Petitioners seek a declaratory judgment from the Court "as to the rights and other legal relations of the parties," CPLR § 3001, regarding the substantive and procedural requirements for redistricting in this State.

266. It is imperative that the New York Courts properly construe the recent amendments to Article 3, Section 4 of the New York Constitution and New York Legislative Laws § 93.

267. The 2014 amendments to the New York Constitution prohibit the Legislature and Governor from reapportioning seats for Congress and state Senate in a manner that

a. disregards the exclusive procedures for redistricting, including the requirement that the IRC submit two rounds of maps for the Legislature's consideration before the Legislature may undertake the redistricting function itself;

b. creates districts that fail to contain as nearly as possible an equal number of inhabitants, requiring, as practicable, no deviation from perfect population equality;

c. creates a partisan gerrymander with the intent to favor of any political party; and

d. creates an incumbent-protection or incumbent-disfavoring gerrymander with the intent of aiding or hurting any incumbent or candidate.

Each of these violations, alone and in tandem, requires the Court to invalidate the congressional and state Senate maps.

268. Respondents' actions in violating each of these constitutional requirements come from a determined effort to advance the interests of the Democratic Party by entrenching incumbent Democrats and targeting incumbent Republicans, in direct contravention of the will of

the citizens of the State of New York, who voted in favor of ridding such partisan interests from the redistricting process.

269. Further, the 2021 legislation, L.2021, c. 633, § 7150, enacted by the Legislature and Governor in an attempt to give the Legislature authority to circumvent the Constitution and adopt these unlawful maps, is unconstitutional. The Legislature cannot contravene the Constitution's exclusive process for redistricting in New York through legislative enactment.

270. Each of these constitutional violations has harmed Petitioners, who are now subject to gerrymandered and highly partisan maps for their representatives in Congress and state Senate.

271. This issue is ripe for judicial review.

272. Absent resolution of these constitutional questions, neither Respondents nor the citizens of New York will have adequate guidance regarding the propriety of the enacted maps and the prior legislature-enacted and court-drawn maps, in preparation for impending elections.

273. If each of these fundamental issues regarding the redistricting processes in New York is not resolved in short order, it will be too late to do so without threatening the integrity of upcoming elections.

274. Therefore, this Court should enter judgment declaring that the 2022 congressional and state Senate maps, *see* 2021–2022 N.Y. Reg. Sess. Leg. Bills S.8196, A.9039-A, A.9040-A, and A.9168, violate the New York Constitution, declare that the 2012 congressional and state Senate maps, *see* 2011–2012 N.Y. Reg. Sess. Leg. Bills S.6696 and A.9525 (as technically amended by S.6755 and A.9584); *Favors v. Cuomo*, No. 11-CV-5632, 2012 WL 928223 (E.D.N.Y. Mar. 19, 2012), now violate the New York Constitution in light of the population shifts

identified in the 2020 Census, strike down the 2021 legislation, L.2021, c. 633, § 7150, as unconstitutional, and itself draw a new congressional map cured of all legal infirmities.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully demand that this Court review the constitutionality of the congressional apportionment and enter judgment and order against Respondents as follows:

A. Declaring pursuant to CPLR § 3001 that:

i) the 2022 congressional map and 2022 state Senate map, *see* 2021–2022 N.Y. Reg. Sess. Leg. Bills S.8196, A.9039-A, A.9040-A, and A.9168, both constitute unconstitutional maps enacted without complying with the mandatory constitutional procedures for redistricting in Article III, Section 4(b) of the New York Constitution;

ii) the 2012 congressional map, court-adopted after the 2010 decennial census, *Favors v. Cuomo*, No. 11-CV-5632, 2012 WL 928223 (E.D.N.Y. Mar. 19, 2012), and the 2012 state Senate map, legislatively enacted after the 2010 decennial census, 2011–2012 N.Y. Reg. Sess. Leg. Bills S.6696 and A.9525 (as technically amended by S.6755 and A.9584), are the only validly enacted maps currently in existence, but are now unconstitutionally malapportioned, failing to comply with the mandatory constitutional requirements that each district contain an equal number of inhabitants, found in Article III, Section 4(c)(2) of the New York Constitution;

iii) the 2022 congressional map and 2022 state Senate map, apart and aside from procedural deficiencies, constitute unconstitutional partisan and incumbency-favoring/disfavoring gerrymanders, in violation of Article III, Section 4(c)(5) of the New York Constitution and New York Legislative Law § 93(2)(e);

iv) the 2012 congressional map and 2012 state Senate map are unconstitutional in light of the population shifts identified in the 2020 census; and

v) the 2021 legislation, L.2021, c. 633, § 7150, enacted by the Legislature and Governor in an attempt to give the Legislature authority to circumvent the Constitution and adopt these unlawful maps, is unconstitutional.

B. Enjoining Respondents from conducting any elections under the 2012 congressional map and 2012 state Senate map;

C. Enjoining Respondents from conducting any elections under the 2022 congressional map and 2022 state Senate map;

D. Adopting new, legally compliant congressional and state Senate maps;

E. Alternatively, and only if the Court does not agree with Petitioners' procedural claim, ordering the Legislature to attempt to cure the legal and constitutional infirmities in the 2022 congressional map and 2022 state Senate map and adopt lawful maps for each;

F. Suspending or enjoining the operation of any other state laws that would undermine this Court's ability to offer effective and complete relief to Petitioners for the November 2022 elections and related primaries, including, if this Court deems necessary, § 3(i) of 2021–2022 S.8172-A and A.9039-A, and § 2 of 2021–2022 S.8185-A and A.9040-A;

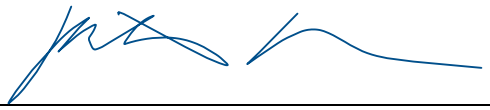
G. Awarding Petitioners all of their reasonable attorneys' fees and costs; and

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

Dated: New York, New York

February 8, 2022

TROUTMAN PEPPER HAMILTON SANDERS LLP

By: 

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