EXHIBIT 1

[Presidential elections; special voting procedures authorized]
§9. Notwithstanding the residence requirements imposed by section one of this article, the legislature may, by general law, provide special procedures whereby every person who shall have moved from another state to this state or from one county, city or village within this state to another county, city or village within this state and who shall have been an inhabitant of this state in any event for ninety days next preceding an election at which electors are to be chosen for the office of president and vice president of the United States shall be entitled to vote in this state solely for such electors, provided such person is otherwise qualified to vote in this state and is not able to qualify to vote for such electors in any other state. The legislature may also, by general law, prescribe special procedures whereby every person who is registered and would be qualified to vote in this state but for his or her removal from this state to another state within one year next preceding such election shall be entitled to vote in this state solely for such electors, provided such person is not able to qualify to vote for such electors in any other state. (New. Added by vote of the people November 5, 1963; amended by vote of the people November 6, 2001.)

ARTICLE III
LEGISLATURE

[Legislative power]
Section 1. The legislative power of this state shall be vested in the senate and assembly.

[Number and terms of senators and assemblymen]
§2. The senate shall consist of fifty members[4], except as hereinafter provided. The senators elected in the year one thousand eight hundred and ninety-five shall hold their offices for three years, and their successors shall be chosen for two years. The assembly shall consist of one hundred and fifty members. The assembly members elected in the year one thousand nine hundred and thirty-eight, and their successors, shall be chosen for two years. (Amended by vote of the people November 2, 1937; November 6, 2001.)

[Senate districts]
§3. The senate districts[5], described in section three of article three of this constitution as adopted by the people on November sixth, eighteen hundred ninety-four are hereby continued for all of the purposes of future reapportionments of senate districts pursuant to section four of this article. (Formerly §3. Repealed and replaced by new §3 amended by vote of the people November 6, 1962.)

[Readjustments and reapportionments; when federal census to control]
§4. (a) Except as herein otherwise provided, the federal census taken in the year nineteen hundred thirty and each federal census taken decennially thereafter shall be controlling as to the number of inhabitants in the state or any part thereof for the purposes of the apportionment of members of assembly and readjustment or alteration of senate and assembly districts next occurring, in so far as such census and the tabulation thereof purport to give the information necessary therefor. The legislature, by law, shall provide for the making and tabulation by state authorities of an enumeration of the inhabitants of the entire state to be used for such purposes, instead of a federal census, if the taking of a federal census in any tenth year from the year nineteen hundred thirty be omitted or if the federal census fails to show the number of aliens or Indians not taxed. If a federal census, though giving the requisite information as to the state at large, fails to give the information as to any civil or territorial divisions which is required to be known for such purposes, the legislature, by law, shall provide for such an enumeration of the inhabitants of such parts of the state only as may be necessary, which shall supersede in part the federal census and be used in connection therewith for such purposes. The legislature, by law, may provide in its discretion for an enumeration by state authorities of the inhabitants of the state, to be used for such purposes, in place of a federal census, when the return of a decennial federal census is delayed so that it is not available at the beginning of the regular session of the legislature in the second year after the year nineteen hundred thirty or after any tenth year therefrom, or if an apportionment of members of assembly and readjustment or alteration of senate districts is not made at or before such a session. At the regular session in the year nineteen hundred thirty-two, and at the first regular session after the year nineteen hundred forty and after each tenth year therefrom the senate districts shall be readjusted or altered, but if, in any decade, counting from and including that which begins with the year nineteen hundred thirty-one, such a readjustment or alteration is not made at the time above prescribed, it shall be made at a subsequent session occurring not later than the sixth year of such decade, meaning not later than nineteen hundred thirty-six, nineteen hundred forty-six, nineteen hundred fifty-six, and so on; provided, however, that if such districts shall have been readjusted or altered by law in either of the years nineteen hundred thirty or nineteen hundred thirty-one, they shall remain unaltered until the first regular session after the year nineteen hundred forty. No town, except a town having more than a full ratio of apportionment, and no block in a city inclosed by streets or public ways, shall be divided in the formation of senate districts. In the reapportionment of senate districts, no district shall contain a greater excess in population over an adjoining district in the same county, than the population of a town or block therein adjoining such district. Counties, towns or blocks which, from their location, may be included in either of two districts, shall be so placed as to make said districts most nearly equal in number of inhabitants, excluding aliens.

No county shall have four or more senators unless it shall have a full ratio for each senator. No county shall have more than one-third of all the senators; and no two counties or the territory thereof as now organized, which are adjoining counties, or which are separated only by public waters, shall have more than one-half of all the senators.

(b) The independent redistricting commission established pursuant to section five-b of this article shall prepare a redistricting plan to establish senate, assembly, and congressional districts every ten years commencing in two thousand twenty-one, and shall submit to the legislature such plan and the implementing legislation therefor on or before January first or as soon as practicable thereafter but no later than January fifteenth in the year ending in two beginning in two thousand twenty-two. The redistricting plans for the assembly and the senate shall be contained in and voted upon by the legislature in a single bill, and the congressional district plan may be included in the same bill if the legislature chooses to do so. The implementing legislation shall be voted upon, without amendment, by the senate or the assembly and if approved by the first house voting upon it, such legislation shall be delivered to the other house immediately to be voted upon without amendment. If approved by both houses, such legislation shall be presented to the governor for action.

If either house shall fail to approve the legislation implementing the first redistricting plan, or the governor shall veto such legislation and the legislature shall fail to override such veto, each house or the governor if he or she vetoes it, shall notify the commission that such legislation has been disapproved. Within fifteen days of such notification and in no case later than February twenty-eighth, the redistricting commission shall prepare and submit to the legislature a second redistricting plan and the necessary implementing legislation for such plan. Such legislation shall be voted upon, without amendment, by the senate or the assembly and, if approved by the first house voting upon it, such legislation shall be delivered to the other house immediately to be voted upon without amendment. If approved by both houses, such legislation shall be presented to the governor for action.

If either house shall fail to approve the legislation implementing the second redistricting plan, or the governor shall veto such legislation and the legislature shall fail to override such veto, each house shall introduce such implementing legislation with any amendments each house of the legislature deems necessary. All such amendments shall comply with the provisions of this article. If approved by both houses, such legislation shall be presented to the governor for action.

All votes by the senate or assembly on any redistricting plan legislation pursuant to this article shall be conducted in accordance with the following rules:

[4] State Law §123 sets forth current number of senators.

[5] State Law §124 currently sets forth 63 senate districts.

(1) In the event that the speaker of the assembly and the temporary president of the senate are members of two different political parties, approval of legislation submitted by the independent redistricting commission pursuant to subdivision (f) of section five-b of this article shall require the vote in support of its passage by at least a majority of the members elected to each house.

(2) In the event that the speaker of the assembly and the temporary president of the senate are members of two different political parties, approval of legislation submitted by the independent redistricting commission pursuant to subdivision (g) of section five-b of this article shall require the vote in support of its passage by at least sixty percent of the members elected to each house.

(3) In the event that the speaker of the assembly and the temporary president of the senate are members of the same political party, approval of legislation submitted by the independent redistricting commission pursuant to subdivision (f) or (g) of section five-b of this article shall require the vote in support of its passage by at least two-thirds of the members elected to each house.

(c) Subject to the requirements of the federal constitution and statutes and in compliance with state constitutional requirements, the following principles shall be used in the creation of state senate and state assembly districts and congressional districts:

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

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

(3) Each district shall consist of contiguous territory.

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

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

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

During the preparation of the redistricting plan, the independent redistricting commission shall conduct not less than one public hearing on proposals for the redistricting of congressional and state legislative districts in each of the following (i) cities: Albany, Buffalo, Syracuse, Rochester, and White Plains; and (ii) counties: Bronx, Kings, New York, Queens, Richmond, Nassau, and Suffolk. Notice of all such hearings shall be widely published using the best available means and media a reasonable time before every hearing. At least thirty days prior to the first public hearing and in any event no later than September fifteenth of the year ending in one or as soon as practicable thereafter, the independent redistricting commission shall make widely available to the public, in print form and using the best available technology, its draft redistricting plans, relevant data, and related information. Such plans, data, and information shall be in a form that allows and facilitates their use by the public to review, analyze, and comment upon such plans and to develop alternative redistricting plans for presentation to the commission at the public hearings. The independent redistricting commission shall report the findings of all such hearings to the legislature upon submission of a redistricting plan.

(d) The ratio for apportioning senators shall always be obtained by dividing the number of inhabitants, excluding aliens, by fifty, and the senate shall always be composed of fifty members, except that if any county having three or more senators at the time of any apportionment shall be entitled on such ratio to an additional senator or senators, such additional senator or senators shall be given to such county in addition to the fifty senators, and the whole number of senators shall be increased to that extent.

The senate districts, including the present ones, as existing immediately before the enactment of a law readjusting or altering the senate districts, shall continue to be the senate districts of the state until the expirations of the terms of the senators then in office, except for the purpose of an election of senators for full terms beginning at such expirations, and for the formation of assembly districts.

(e) The process for redistricting congressional and state legislative districts established by this section and sections five and five-b of this article shall govern redistricting in this state except to the extent that a court is required to order the adoption of, or changes to, a redistricting plan as a remedy for a violation of law.

A reapportionment plan and the districts contained in such plan shall be in force until the effective date of a plan based upon the subsequent federal decennial census taken in a year ending in zero unless modified pursuant to court order. (Amended by vote of the people November 6, 1945; further amended by vote of the people November 4, 2014.)

[Apportionment of assemblymen; creation of assembly districts]

§5. The members of the assembly shall be chosen by single districts and shall be apportioned pursuant to this section and sections four and five-b of this article at each regular session at which the senate districts are readjusted or altered, and by the same law, among the several counties of the state, as nearly as may be according to the number of their respective inhabitants, excluding aliens. Every county heretofore established and separately organized, except the county of Hamilton, shall always be entitled to one member of assembly, and no county shall hereafter be erected unless its population shall entitle it to a member. The county of Hamilton shall elect with the county of Fulton, until the population of the county of Hamilton shall, according to the ratio, entitle it to a member. But the legislature may abolish the said county of Hamilton and annex the territory thereof to some other county or counties.

The quotient obtained by dividing the whole number of inhabitants of the state, excluding aliens, by the number of members of assembly, shall be the ratio for apportionment, which shall be made as follows: One member of assembly shall be apportioned to every county, including Fulton and Hamilton as one county, containing less than the ratio and one-half over. Two members shall be apportioned to every other county. The remaining members of assembly shall be apportioned to the counties having more than two ratios according to the number of inhabitants, excluding aliens. Members apportioned on remainders shall be apportioned to the counties having the highest remainders in the order thereof respectively. No county shall have more members of assembly than a county having a greater number of inhabitants, excluding aliens.

The assembly districts[6], including the present ones, as existing immediately before the enactment of a law making an apportionment of members of assembly among the counties, shall continue to be the assembly districts of the state until the expiration of the terms of members then in office, except for the purpose of an election of members of assembly for full terms beginning at such expirations.

In any county entitled to more than one member, the board of supervisors, and in any city embracing an entire county and having no board of supervisors, the common council, or if there be none, the body exercising the powers of a common council, shall assemble at such times as the legislature making an apportionment shall prescribe, and divide such counties into assembly districts as nearly equal in number of inhabitants, excluding aliens, as may be, of convenient and contiguous territory in as compact form as practicable, each of which shall be wholly within a senate district formed under the same apportionment, equal to the number of members of assembly to which such county shall be entitled, and shall cause to be filed in the office of the secretary of state and of the clerk of such county, a description of such districts, specifying the number of each district and of the inhabitants thereof, excluding aliens, according to the census or enumeration used as the population basis for the formation of such districts; and such apportionment

[6] State Law §121 sets forth 150 assembly districts.

and districts shall remain unaltered until after the next reapportionment of members of assembly, except that the board of supervisors of any county containing a town having more than a ratio of apportionment and one-half over may alter the assembly districts in a senate district containing such town at any time on or before March first, nineteen hundred forty-six. In counties having more than one senate district, the same number of assembly districts shall be put in each senate district, unless the assembly districts cannot be evenly divided among the senate districts of any county, in which case one more assembly district shall be put in the senate district in such county having the largest, or one less assembly district shall be put in the senate district in such county having the smallest number of inhabitants, excluding aliens, as the case may require. Nothing in this section shall prevent the division, at any time, of counties and towns and the erection of new towns by the legislature.

An apportionment by the legislature, or other body, shall be subject to review by the supreme court, at the suit of any citizen, under such reasonable regulations as the legislature may prescribe; and any court before which a cause may be pending involving an apportionment, shall give precedence thereto over all other causes and proceedings, and if said court be not in session it shall convene promptly for the disposition of the same. The court shall render its decision within sixty days after a petition is filed. In any judicial proceeding relating to redistricting of congressional or state legislative districts, any law establishing congressional or state legislative districts found to violate the provisions of this article shall be invalid in whole or in part. In the event that a court finds such a violation, the legislature shall have a full and reasonable opportunity to correct the law's legal infirmities. (Amended by vote of the people November 6, 1945; further amended by vote of the people November 4, 2014.)

[Definition of inhabitants]

§5-a. For the purpose of apportioning senate and assembly districts pursuant to the foregoing provisions of this article, the term "inhabitants, excluding aliens" shall mean the whole number of persons. (New. Added by vote of the people November 4, 1969.)

[Independent redistricting commission]

§5-b. (a) On or before February first of each year ending with a zero and at any other time a court orders that congressional or state legislative districts be amended, an independent redistricting commission shall be established to determine the district lines for congressional and state legislative offices. The independent redistricting commission shall be composed of ten members, appointed as follows:

(1) two members shall be appointed by the temporary president of the senate;

(2) two members shall be appointed by the speaker of the assembly;

(3) two members shall be appointed by the minority leader of the senate;

(4) two members shall be appointed by the minority leader of the assembly;

(5) two members shall be appointed by the eight members appointed pursuant to paragraphs (1) through (4) of this subdivision by a vote of not less than five members in favor of such appointment, and these two members shall not have been enrolled in the preceding five years in either of the two political parties that contain the largest or second largest number of enrolled voters within the state;

(6) one member shall be designated chair of the commission by a majority of the members appointed pursuant to paragraphs (1) through (5) of this subdivision to convene and preside over each meeting of the commission.

(b) The members of the independent redistricting commission shall be registered voters in this state. No member shall within the last three years:

(1) be or have been a member of the New York state legislature or United States Congress or a statewide elected official;

(2) be or have been a state officer or employee or legislative employee as defined in section seventy-three of the public officers law;

(3) be or have been a registered lobbyist in New York state;

(4) be or have been a political party chairman, as defined in paragraph (k) of subdivision one of section seventy-three of the public officers law;

(5) be the spouse of a statewide elected official or of any member of the United States Congress, or of the state legislature.

(c) To the extent practicable, the members of the independent redistricting commission shall reflect the diversity of the residents of this state with regard to race, ethnicity, gender, language, and geographic residence and to the extent practicable the appointing authorities shall consult with organizations devoted to protecting the voting rights of minority and other voters concerning potential appointees to the commission.

(d) Vacancies in the membership of the commission shall be filled within thirty days in the manner provided for in the original appointments.

(e) The legislature shall provide by law for the compensation of the members of the independent redistricting commission, including compensation for actual and necessary expenses incurred in the performance of their duties.

(f) A minimum of five members of the independent redistricting commission shall constitute a quorum for the transaction of any business or the exercise of any power of such commission prior to the appointment of the two commission members appointed pursuant to paragraph (5) of subdivision (a) of this section, and a minimum of seven members shall constitute a quorum after such members have been appointed, and no exercise of any power of the independent redistricting commission shall occur without the affirmative vote of at least a majority of the members, provided that, in order to approve any redistricting plan and implementing legislation, the following rules shall apply:

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

(2) In the event that the speaker of the assembly and the temporary president of the senate are members of two different political parties, approval of a redistricting plan by the commission for submission to the legislature shall require the vote in support of its approval by at least seven members including at least one member appointed by the speaker of the assembly and one member appointed by the temporary president of the senate.

(g) In the event that the commission is unable to obtain seven votes to approve a redistricting plan on or before January first in the year ending in two or as soon as practicable thereafter, the commission shall submit to the legislature that redistricting plan and implementing legislation that garnered the highest number of votes in support of its approval by the commission with a record of the votes taken. In the event that more than one plan received the same number of votes for approval, and such number was higher than that for any other plan, then the commission shall submit all plans that obtained such number of votes. The legislature shall consider and vote upon such implementing legislation in accordance with the voting rules set forth in subdivision (b) of section four of this article.

(h) (1) The independent redistricting commission shall appoint two co-executive directors by a majority vote of the commission in accordance with the following procedure:

(i) In the event that the speaker of the assembly and the temporary president of the senate are members of two different political parties, the co-executive directors shall be approved by a majority of the commission that includes at least one appointee by the speaker of the assembly and at least one appointee by the temporary president of the senate.

(ii) In the event that the speaker of the assembly and the temporary president of the senate are members of the same political party, the co-executive directors shall be approved by a majority of the commission that includes at least one appointee by each of the legislative leaders.

(2) One of the co-executive directors shall be enrolled in the political party with the highest number of enrolled members in the state and one shall be enrolled in the political party with the second highest number of enrolled

members in the state. The co-executive directors shall appoint such staff as are necessary to perform the commission's duties, except that the commission shall review a staffing plan prepared and provided by the co-executive directors which shall contain a list of the various positions and the duties, qualifications, and salaries associated with each position.

(3) In the event that the commission is unable to appoint one or both of the co-executive directors within forty-five days of the establishment of a quorum of seven commissioners, the following procedure shall be followed:

(i) In the event that the speaker of the assembly and the temporary president of the senate are members of two different political parties, within ten days the speaker's appointees on the commission shall appoint one co-executive director, and the temporary president's appointees on the commission shall appoint the other co-executive director. Also within ten days the minority leader of the assembly shall select a co-deputy executive director, and the minority leader of the senate shall select the other co-deputy executive director.

(ii) In the event that the speaker of the assembly and the temporary president of the senate are members of the same political party, within ten days the speaker's and temporary president's appointees on the commission shall together appoint one co-executive director, and the two minority leaders' appointees on the commission shall together appoint the other co-executive director.

(4) In the event of a vacancy in the offices of co-executive director or co-deputy executive director, the position shall be filled within ten days of its occurrence by the same appointing authority or authorities that appointed his or her predecessor.

(i) The state budget shall include necessary appropriations for the expenses of the independent redistricting commission, provide for compensation and reimbursement of expenses for the members and staff of the commission, assign to the commission any additional duties that the legislature may deem necessary to the performance of the duties stipulated in this article, and require other agencies and officials of the state of New York and its political subdivisions to provide such information and assistance as the commission may require to perform its duties. (New. Added by vote of the people November 4, 2014.)

[Compensation, allowances and traveling expenses of members]

§6. Each member of the legislature shall receive for his or her services a like annual salary, to be fixed by law. He or she shall also be reimbursed for his or her actual traveling expenses in going to and returning from the place in which the legislature meets, not more than once each week while the legislature is in session. Senators, when the senate alone is convened in extraordinary session, or when serving as members of the court for the trial of impeachments, and such members of the assembly, not exceeding nine in number, as shall be appointed managers of an impeachment, shall receive an additional per diem allowance, to be fixed by law. Any member, while serving as an officer of his or her house or in any other special capacity therein or directly connected therewith not hereinbefore in this section specified, may also be paid and receive, in addition, any allowance which may be fixed by law for the particular and additional services appertaining to or entailed by such office or special capacity. Neither the salary of any member nor any other allowance so fixed may be increased or diminished during, and with respect to, the term for which he or she shall have been elected, nor shall he or she be paid or receive any other extra compensation. The provisions of this section and laws enacted in compliance therewith shall govern and be exclusively controlling, according to their terms. Members shall continue to receive such salary and additional allowance as heretofore fixed and provided in this section, until changed by law pursuant to this section. (Amended by Constitutional Convention of 1938 and approved by vote of the people November 8, 1938; further amended by vote of the people November 4, 1947; November 3, 1964; November 6, 2001.)

[Qualifications of members; prohibitions on certain civil appointments; acceptance to vacate seat]

§7. No person shall serve as a member of the legislature unless he or she is a citizen of the United States and has been a resident of the state of New York for five years, and, except as hereinafter otherwise prescribed, of the assembly or senate district for the twelve months immediately preceding his or her election; if elected a senator or member of assembly at the first election next ensuing after a readjustment or alteration of the senate or assembly districts becomes effective, a person, to be eligible to serve as such, must have been a resident of the county in which the senate or assembly district is contained for the twelve months immediately preceding his or her election. No member of the legislature shall, during the time for which he or she was elected, receive any civil appointment from the governor, the governor and the senate, the legislature or from any city government, to an office which shall have been created, or the emoluments whereof shall have been increased during such time. If a member of the legislature be elected to congress, or appointed to any office, civil or military, under the government of the United States, the state of New York, or under any city government except as a member of the national guard or naval militia of the state, or of the reserve forces of the United States, his or her acceptance thereof shall vacate his or her seat in the legislature, providing, however, that a member of the legislature may be appointed commissioner of deeds or to any office in which he or she shall receive no compensation. (New. Derived in part from former §§7 and 8. Adopted by Constitutional Convention of 1938 and approved by vote of the people November 8, 1938; amended by vote of the people November 2, 1943.)

[Time of elections of members]

§8. The elections of senators and members of assembly, pursuant to the provisions of this constitution, shall be held on the Tuesday succeeding the first Monday of November, unless otherwise directed by the legislature. (Formerly §9. Renumbered by Constitutional Convention of 1938 and approved by vote of the people November 8, 1938.)

[Powers of each house]

§9. A majority of each house shall constitute a quorum to do business. Each house shall determine the rules of its own proceedings, and be the judge of the elections, returns and qualifications of its own members; shall choose its own officers; and the senate shall choose a temporary president and the assembly shall choose a speaker. (Formerly §10. Renumbered by Constitutional Convention of 1938 and approved by vote of the people November 8, 1938. Amended by vote of the people November 5, 1963.)

[Journals; open sessions; adjournments]

§10. Each house of the legislature shall keep a journal of its proceedings, and publish the same, except such parts as may require secrecy. The doors of each house shall be kept open, except when the public welfare shall require secrecy. Neither house shall, without the consent of the other, adjourn for more than two days. (Formerly §11. Renumbered and amended by Constitutional Convention of 1938 and approved by vote of the people November 8, 1938.)

[Members not to be questioned for speeches]

§11. For any speech or debate in either house of the legislature, the members shall not be questioned in any other place. (Formerly §12. Renumbered by Constitutional Convention of 1938 and approved by vote of the people November 8, 1938.)

[Bills may originate in either house; may be amended by the other]

§12. Any bill may originate in either house of the legislature, and all bills passed by one house may be amended by the other. (Formerly §13. Renumbered by Constitutional Convention of 1938 and approved by vote of the people November 8, 1938.)

[Enacting clause of bills; no law to be enacted except by bill]

§13. The enacting clause of all bills shall be “The People of the State of New York, represented in Senate and Assembly, do enact as follows,” and no law shall be enacted except by bill. (Formerly §14. Renumbered by Constitutional Convention of 1938 and approved by vote of the people November 8, 1938.)

[Manner of passing bills; message of necessity for immediate vote]
§14. No bill shall be passed or become a law unless it shall have been printed and upon the desks of the members, in its final form, at least three calendar legislative days prior to its final passage, unless the governor, or the acting governor, shall have certified, under his or her hand and the seal of the state, the facts which in his or her opinion necessitate an immediate vote thereon, in which case it must nevertheless be upon the desks of the members in final form, not necessarily printed, before its final passage; nor shall any bill be passed or become a law, except by the assent of a majority of the members elected to each branch of the legislature; and upon the last reading of a bill, no amendment thereof shall be allowed, and the question upon its final passage shall be taken immediately thereafter, and the ayes and nays entered on the journal.

For purposes of this section, a bill shall be deemed to be printed and upon the desks of the members if: it is set forth in a legible electronic format by electronic means, and it is available for review in such format at the desks of the members. For purposes of this section "electronic means" means any method of transmission of information between computers or other machines designed for the purpose of sending and receiving such transmissions and which: allows the recipient to reproduce the information transmitted in a tangible medium of expression; and does not permit additions, deletions or other changes to be made without leaving an adequate record thereof. (Formerly §15. Renumbered and amended by Constitutional Convention of 1938 and approved by vote of the people November 8, 1938; further amended by vote of the people: November 6, 2001; November 4, 2014.)

[Private or local bills to embrace only one subject, expressed in title]
§15. No private or local bill, which may be passed by the legislature, shall embrace more than one subject, and that shall be expressed in the title. (Formerly §16. Renumbered by Constitutional Convention of 1938 and approved by vote of the people November 8, 1938.)

[Existing law not to be made applicable by reference]
§16. No act shall be passed which shall provide that any existing law, or any part thereof, shall be made or deemed a part of said act, or which shall enact that any existing law, or part thereof, shall be applicable, except by inserting it in such act. (Formerly §17. Renumbered by Constitutional Convention of 1938 and approved by vote of the people November 8, 1938.)

[Cases in which private or local bills shall not be passed]
§17. The legislature shall not pass a private or local bill in any of the following cases:

Changing the names of persons.

Laying out, opening, altering, working or discontinuing roads, highways or alleys, or for draining swamps or other low lands. Locating or changing county seats.

Providing for changes of venue in civil or criminal cases.

Incorporating villages.

Providing for election of members of boards of supervisors.

Selecting, drawing, summoning or empaneling grand or petit jurors.

Regulating the rate of interest on money.

The opening and conducting of elections or designating places of voting.

Creating, increasing or decreasing fees, percentages or allowances of public officers, during the term for which said officers are elected or appointed.

Granting to any corporation, association or individual the right to lay down railroad tracks.

Granting to any private corporation, association or individual any exclusive privilege, immunity or franchise whatever.

Granting to any person, association, firm or corporation, an exemption from taxation on real or personal property.

Providing for the building of bridges, except over the waters forming a part of the boundaries of the state, by other than a municipal or other public corporation or a public agency of the state. (Formerly §18. Renumbered and amended by Constitutional Convention of 1938 and approved by vote of the people November 8, 1938; further amended by vote of the people November 3, 1964.)

[Extraordinary sessions of the legislature; power to convene on legislative initiative]
§18. The members of the legislature shall be empowered, upon the presentation to the temporary president of the senate and the speaker of the assembly of a petition signed by two-thirds of the members elected to each house of the legislature, to convene the legislature on extraordinary occasions to act upon the subjects enumerated in such petition. (New. Added by vote of the people November 4, 1975.)

[Private claims not to be audited by legislature; claims barred by lapse of time]
§19. The legislature shall neither audit nor allow any private claim or account against the state, but may appropriate money to pay such claims as shall have been audited and allowed according to law.

No claim against the state shall be audited, allowed or paid which, as between citizens of the state, would be barred by lapse of time. But if the claimant shall be under legal disability, the claim may be presented within two years after such disability is removed. (Derived in part from former §6 of Art. 7. Amended by Constitutional Convention of 1938 and approved by vote of the people November 8, 1938; further amended by vote of the people November 3, 1964.)

[Two-thirds bills]
§20. The assent of two-thirds of the members elected to each branch of the legislature shall be requisite to every bill appropriating the public moneys or property for local or private purposes.

[Certain sections not to apply to bills recommended by certain commissioners or public agencies]
§21. Sections 15, 16 and 17 of this article shall not apply to any bill, or the amendments to any bill, which shall be recommended to the legislature by commissioners or any public agency appointed or directed pursuant to law to prepare revisions, consolidations or compilations of statutes. But a bill amending an existing law shall not be excepted from the provisions of sections 15, 16 and 17 of this article unless such amending bill shall itself be recommended to the legislature by such commissioners or public agency. (Formerly §23. Renumbered and amended by Constitutional Convention of 1938 and approved by vote of the people November 8, 1938.)

[Tax laws to state tax and object distinctly; definition of income for income tax purposes by reference to federal laws authorized]
§22. Every law which imposes, continues or revives a tax shall distinctly state the tax and the object to which it is to be applied, and it shall not be sufficient to refer to any other law to fix such tax or object.

Notwithstanding the foregoing or any other provision of this constitution, the legislature, in any law imposing a tax or taxes on, in respect to or measured by income, may define the income on, in respect to or by which such tax or taxes are imposed or measured, by reference to any provision of the laws of the United States as the same may be or become effective at any time or from time to time, and may prescribe exceptions or modifications to any such provision. (Formerly §24. Renumbered by Constitutional Convention of 1938 and approved by vote of the people November 8, 1938; amended by vote of the people November 3, 1959.)

[When yeas and nays necessary; three-fifths to constitute quorum]
§23. On the final passage, in either house of the legislature, of any act which imposes, continues or revives a tax, or creates a debt or charge, or makes, continues or revives any appropriation of public or trust money or property, or releases, discharges or commutes any claim or demand of the state, the question shall be taken by yeas and nays, which shall be duly entered upon the journals, and three-fifths of all the members elected to either house shall, in all such cases, be necessary to constitute a quorum therein. (Formerly §25. Renumbered by Constitutional Convention of 1938 and approved by vote of the people November 8, 1938.)

[Prison labor; contract system abolished]
§24. The legislature shall, by law, provide for the occupation and employment of prisoners sentenced to the several state prisons,

penitentiaries, jails and reformatories in the state; and no person in any such prison, penitentiary, jail or reformatory, shall be required or allowed to work, while under sentence thereto, at any trade, industry or occupation, wherein or whereby his or her work, or the product or profit of his or her work, shall be farmed out, contracted, given or sold to any person, firm, association or corporation, provided that the legislature may provide by law that such prisoners may voluntarily perform work for nonprofit organizations. As used in this section, the term "nonprofit organization" means an organization operated exclusively for religious, charitable, or educational purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual. This section shall not be construed to prevent the legislature from providing that convicts may work for, and that the products of their labor may be disposed of to, the state or any political division thereof, or for or to any public institution owned or managed and controlled by the state, or any political division thereof. (Formerly §29. Renumbered and amended by Constitutional Convention of 1938 and approved by vote of the people November 8, 1938; further amended by vote of the people November 6, 2001; November 3, 2009.)

[Emergency governmental operations; legislature to provide for]
§25. Notwithstanding any other provision of this constitution, the legislature, in order to insure continuity of state and local governmental operations in periods of emergency caused by enemy attack or by disasters (natural or otherwise), shall have the power and the immediate duty (1) to provide for prompt and temporary succession to the powers and duties of public offices, of whatever nature and whether filled by election or appointment, the incumbents of which may become unavailable for carrying on the powers and duties of such offices, and (2) to adopt such other measures as may be necessary and proper for insuring the continuity of governmental operations.

Nothing in this article shall be construed to limit in any way the power of the state to deal with emergencies arising from any cause. (New. Added by vote of the people November 5, 1963.)

ARTICLE IV
EXECUTIVE

[Executive power; election and terms of governor and lieutenant-governor]
Section 1. The executive power shall be vested in the governor, who shall hold office for four years; the lieutenant-governor shall be chosen at the same time, and for the same term. The governor and lieutenant-governor shall be chosen at the general election held in the year nineteen hundred thirty-eight, and each fourth year thereafter. They shall be chosen jointly, by the casting by each voter of a single vote applicable to both offices, and the legislature by law shall provide for making such choice in such manner. The respective persons having the highest number of votes cast jointly for them for governor and lieutenant-governor respectively shall be elected. (Amended by Constitutional Convention of 1938 and approved by vote of the people November 8, 1938; further amended by vote of the people November 3, 1953; November 6, 2001.)

[Qualifications of governor and lieutenant-governor]
§2. No person shall be eligible to the office of governor or lieutenant-governor, except a citizen of the United States, of the age of not less than thirty years, and who shall have been five years next preceding the election a resident of this state. (Amended by vote of the people November 6, 2001.)

[Powers and duties of governor; compensation]
§3. The governor shall be commander-in-chief of the military and naval forces of the state. The governor shall have power to convene the legislature, or the senate only, on extraordinary occasions. At extraordinary sessions convened pursuant to the provisions of this section no subject shall be acted upon, except such as the governor may recommend for consideration. The governor shall communicate by message to the legislature at every session the condition of the state, and recommend such matters to it as he or she shall judge expedient. The governor shall expedite all such measures as may be resolved upon by the legislature, and shall take care that the laws are faithfully executed. The governor shall receive for his or her services an annual salary to be fixed by joint resolution of the senate and assembly, and there shall be provided for his or her use a suitable and furnished executive residence. (Formerly §4. Renumbered and amended by Constitutional Convention of 1938 and approved by vote of the people November 8, 1938; further amended by vote of the people November 3, 1953; November 5, 1963; November 6, 2001.)

[Reprieves, commutations and pardons; powers and duties of governor relating to grants of]
§4. The governor shall have the power to grant reprieves, commutations and pardons after conviction, for all offenses except treason and cases of impeachment, upon such conditions and with such restrictions and limitations, as he or she may think proper, subject to such regulations as may be provided by law relative to the manner of applying for pardons. Upon conviction for treason, the governor shall have power to suspend the execution of the sentence, until the case shall be reported to the legislature at its next meeting, when the legislature shall either pardon, or commute the sentence, direct the execution of the sentence, or grant a further reprieve. The governor shall annually communicate to the legislature each case of reprieve, commutation or pardon granted, stating the name of the convict, the crime of which the convict was convicted, the sentence and its date, and the date of the commutation, pardon or reprieve. (Formerly §5. Renumbered by Constitutional Convention of 1938 and approved by vote of the people November 8, 1938; further amended by vote of the people November 6, 2001.)

[When lieutenant-governor to act as governor]
§5. In case of the removal of the governor from office or of his or her death or resignation, the lieutenant-governor shall become governor for the remainder of the term.

In case the governor-elect shall decline to serve or shall die, the lieutenant-governor-elect shall become governor for the full term.

In case the governor is impeached, is absent from the state or is otherwise unable to discharge the powers and duties of the office of governor, the lieutenant-governor shall act as governor until the inability shall cease or until the term of the governor shall expire.

In case of the failure of the governor-elect to take the oath of office at the commencement of his or her term, the lieutenant-governor-elect shall act as governor until the governor shall take the oath. (Formerly §6. Renumbered and amended by Constitutional Convention of 1938 and approved by vote of the people November 8, 1938; further amended by vote of the people November 8, 1949; November 5, 1963; November 6, 2001.)

[Duties and compensation of lieutenant-governor; succession to the governorship]
§6. The lieutenant-governor shall possess the same qualifications of eligibility for office as the governor. The lieutenant-governor shall be the president of the senate but shall have only a casting vote therein.
The lieutenant-governor shall receive for his or her services an annual salary to be fixed by joint resolution of the senate and assembly.

In case of vacancy in the offices of both governor and lieutenant-governor, a governor and lieutenant-governor shall be elected for the remainder of the term at the next general election happening not less than three months after both offices shall have become vacant. No election of a lieutenant-governor shall be had in any event except at the time of electing a governor.

In case of vacancy in the offices of both governor and lieutenant-governor or if both of them shall be impeached, absent from the state or otherwise unable to discharge the powers and duties of the office of governor, the temporary president of the senate shall act as governor until the inability shall cease or until a governor shall be elected.

In case of vacancy in the office of lieutenant-governor alone, or if the lieutenant-governor shall be impeached, absent from the state or otherwise unable to discharge the duties of office, the temporary president of the senate shall perform all the duties of lieutenant-governor during such vacancy or inability.

EXHIBIT 2

STATE OF NEW YORK COUNTY OF STEUBEN

SUPREME COURT

----------X

TIM HARKENRIDER et al., : Index No.

Petitioners, : E2022-0116CV

-vs- :

:

GOVERNOR KATHY HOCHUL et al., :

Respondents. : Special Proceedings

---------- X

Hall of Justice
Bath, New York
March 3, 2022

BEFORE:

HON. PATRICK F MCALLISTER
Acting Supreme Court Justice

APPEARANCES:

TROUTMAN PEPPER
875 Third Avenue
New York, New York 10022
By: BENNET MOSKOWITZ, ESQ.
MISHA TSEYTLIN, ESQ.
Attorneys for Petitioners

KEYSER, MALONEY & WINNER, LLP
150 Lake Street
Elmira, New York 14901
By: GEORGE H WINNER, ESQ.
Attorney for Petitioner

STATE OF NY, OFFICE OF ATTORNEY GENERAL
Rochester Region
144 Exchange Boulevard
Rochester, New York 14614
By: MICHELE R CRAIN, ESQ.
HEATHER MCKAY, ESQ.
MUDITHA J HALLIYADDE, ESQ.
Attorneys for Executive Respondents

PHILLIPS LYTLE LLP
125 Main Street
Buffalo, New York 14203
By: CRAIG R BUCKI, ESQ.
Attorney for Speaker Heastie

CUTI, HECKER, WANG LLP
305 Broadway, Ste. 607
New York, New York 10007
By: JOHN R. CUTI, ESQ.
ERIC HECKER, ESQ.
ALEXANDER GOLDENBERG, ESQ.
ALICE REITER, ESQ.
Attorneys for Senate Majority Leader

REPORTED BY: LAURA BLISS POWER
Official Court Reporter

THE COURT: This is the matter of Tim Harkenrider, et al. Versus Governor Kathy Hochul, et al. Just a word before we start today, I see everybody has got their mask on. Masks are still required in the state courtrooms. When you move outside the courtroom, that's the county and they don't have a mask requirement, but when you're in here, all masks are required. The only exception to that is if the attorneys are speaking at the podium I'll allow them to take down their masks to speak. I'm a little hard of hearing, I'm going to ask you all to speak up, and we'll use the podium for argument. This is being simulcast, and that way people will be able to see you.

Let's find out who's here today. Do we have any of the Petitioners here?

(No indication.)

THE COURT: Not present, but their attorneys are. I'm going to ask the attorneys to put their appearances on the record. We'll start with Petitioners.

MR. MOSKOWITZ: Bennet Moskowitz; Troutman Pepper.

THE COURT: Thank you, Mr. Moskowitz.

MR. TSEYTLIN: Misha Tseytlin; Troutman, Pepper.

THE COURT: Misha Tseytlin. Am I saying that

correctly?

MR. TSEYTLIN: Yes, Your Honor.

MR. WINNER: George H Winner Junior, Petitioner.

09:32:56 THE COURT: Mr. Winner.

All right on behalf of Governor Kathy Hochul, attorneys?

MS. MCKAY: Heather McKay of The New York State Attorney General's Office.

09:33:06 THE COURT: Was that Heather McKay?

MS. MCKAY: Yes.

MS. CRANE: Michele Crane from the New York State Attorney General's Office.

THE COURT: What's the name again?

09:33:14 MS. CRANE: Michele Crane.

THE COURT: Michele Crane.

MS. HALLIYADDE: Muditha Halliyadde for Attorney General's Office.

THE COURT: I'm sorry?

09:33:28 MS. HALLIYADDE: Muditha Halliyadde.

THE COURT: Thank you.

On behalf of the Senate Majority Leader?

MR. HECKER: Eric Hecker from Cuti, Hecker, Wang.

09:33:42 THE COURT: Eric Hecker?

MR. HECKER: Yes.

MR. CUTI: John Cuti from Cuti, Hecker, Wang.

THE COURT: John, what's the last name?

MR. CUTI: Cuti.

09:33:54 MR. GOLDENBERG: Alexander Goldenberg for Cuti, Hecker, Wang.

MS. REITER: And Alice Reiter from --

THE COURT: Alex Reiter?

MS. REITER: Alice Reiter.

09:34:14 THE COURT: Alice Reiter.

Are the same attorneys here on behalf of the Speaker of the Assembly?

MR. BUCKI: No, Your Honor, I'm here on behalf of Speaker Heastie. My name is Craig Bucki, last name spelled, B-U-C-K-I from The Law Firm of Phillips Lyte in 09:34:24 Buffalo.

THE COURT: Thank you, Mr. Bucki.

Anyone else here on behalf of the Speaker of the Assembly?

09:34:36 MR. BUCKI: No.

THE COURT: Is there anyone here on behalf of The New York State Board of Elections? Is there anyone here on behalf of the New York State Legislative Task Force on Demographic Research and Reapportionment?

09:34:52 MR. HECKER: Your Honor, each house of the

legislature has two appointees to Lot 4, so collectively the attorneys for the Senate Majority Leader and the Assembly Speaker effectively represent Lot 4.

THE COURT: Very good, thank you.

09:35:11 We have several matters on this morning. We're going to start with the motion to dismiss brought by the Governor and Lieutenant Governor. Which attorney for the Governor/Lieutenant Governor would like to present that?

MS. MCKAY: Heather McKay, Your Honor.

09:35:32 THE COURT: Okay, Ms. McKay, please proceed.

MS. MCKAY: Good morning, Your Honor.

THE COURT: Good morning.

MS. MCKAY: I don't want to -- there's been extensive briefing on our motion to dismiss. I don't

09:35:50 want to belabor the points. I'm sure that Your Honor is familiar with our arguments as detailed in those papers. I want to touch on a couple of highlighting points here, and I'm happy to answer any questions that Your Honor may have. First, I want to discuss the jurisdictional defect

09:36:10 that we've raised in our papers. The retroactive service attempts do not in fact cure the jurisdictional defect, and I believe our papers make abundantly clear that no email service occurred, nor was it actually agreed to by the Governor and Lieutenant Governor --

09:36:33 THE COURT: But they did receive notice, did

they not?

MS. MCKAY: Notice -- we certainly are able -- we're able to access the papers, those are publicly filed documents. So to the extent that we can access NYSEF, we certainly have access to it. However these rules are in place for very important reasons, and that's how the Court obtains jurisdiction over the Respondents and with respect to any discussion of waiver, the docket makes abundantly clear that the Executive Respondents did not appear until the time of our filed motion in which obviously we were raising the issue. With respect to the Lieutenant Governor it appears the Petitioners have abandoned any purported claim against him by failing to address that in their opposition papers to our motion. With respect to the Governor herself there's still no competent evidence. Our memo of law cites extensive cases that establish that in a proceeding such as this, a special proceeding, the Petitioners have a burden of providing competent proof, and here there's absolutely no proof whatsoever with respect to Governor Hochul's involvement.

THE COURT: But, Ms. McKay, doesn't the law require the Governor and the Lieutenant Governor to be served in this type of matter?

MS. MCKAY: Yes, absolutely.

THE COURT: How do I let them out? They're necessary parties, aren't they?

MS. MCKAY: Well, I don't believe that's what Unconsolidated Laws 4221 says. That provision is indicating that service need to be made on them, amongst many others, and not all of those entities are named in this action because that provision does not pertain to -- it doesn't establish a basis for bringing a legal claim against any of them individually. And here there's nowhere -- there's no allegations as to her involvement in the actual drawing of redistricting lines.

THE COURT: She had to approve it.

MS. MCKAY: Sure.

THE COURT: Correct?

MS. MCKAY: Absolutely. The Governor pursuant to the Constitution does play a role the same way that she does with any legislative act that she signed it into law, and she certainly did. So here however what we're left with then is a quasi-legislative act that's entitled to absolute legislative immunity. So that's why she should be released from this case. The first cause of action fails as a matter of law the attempts at having the -- that the IRC needs to take the first and second attempts at creating a plan. The fact that that shall be the redistricting process does not automatically equate

to failure of the IRC agreeing, then transforms what is a fundamental legislative function and always has been into a -- frankly a judicial one. The legislature -- that the legislature has the authority to draw the maps is absolutely clear and unambiguous even after the 2014 amendments and even if there were an ambiguity in the constitutional provisions, including the 2014 amendments, Petitioners' suggested interpretation of intent behind the 2014 amendment to take that quintessential legislative function and remove it entirely leads to absurd results. Certainly the 2021 legislation is permissible because it doesn't contradict anything in the 2014 amendment. So obviously all these arguments are very intertwined. If you buy into the concept that Petitioners are advocating here that the legislature in first proposing the 2014 amendments and then the people in approving them -- if you buy into the concept that that meant that the legislature no longer has the authority, and that the IRC can essentially hold everyone hostage, at which point it has to be now drawn by a Court, then you're necessarily going to find that the 2021 legislation did not fill in a gap that's there. So these things really rise and fall together.

THE COURT: Did the 2021 legislation pass basically what was proposed and voted down in the

constitutional amendment?

MS. MCKAY: Well I'm glad Your Honor asked about that because the arguments that Petitioner's make on this are -- they're borderline misleading. First, the 2021 legislation was fully approved by both houses of the legislature in June of 2021, so that predates the failure of Ballot Proposal 1. In addition to that, while Ballot Proposal 1 did contain language that clarified this issue of an IRC stalemate, it was only one tiny part of that overall ballot proposal which is why I've included the ballot proposal in our papers from the Board of Elections' public website which shows that there were numerous matters in that proposed ballot initiative that would absolutely have required constitutional amendment. Changing quorum requirements, changing timing, those are things that would truly have changed the terms in the 2014 amendments, and therefore did absolutely need a constitutional amendment approved by the voters. This aspect of the IRC stalemate, which essentially just clarified what was already the process, was not something that actually needed to be in a constitutional amendment, it would be great if it was, but it could be accomplished by legislation.

Finally, as to the second and third causes of action, the Governor doesn't have an expansive amount of

arguments to present in that, other than indicating that Petitioners really have not satisfied their extremely high burden of demonstrating a con -- that the maps are unconstitutional beyond a reasonable doubt. Given the 09:43:28 Governor's extremely minimal role -- excuse me -- in just merely signing the maps, we are not prepared -- excuse me one moment.

THE COURT: You're fine.

MS. MCKAY: We would primarily rely on the 09:43:48 arguments of our Co-Respondents in terms of the substantive maps as they've been drawn.

And finally, as to the motions to amend, I'm happy to address those now. We have very minimal -- primarily we would rely on our papers. Again these were 09:44:02 extensively briefed, and unless Your Honor has any questions for us --

THE COURT: In regards -- I'd like to go back to the legislative immunity. I mean, isn't that really qualified immunity under the Pataki and Cuomo cases?

09:44:21 MS. MCKAY: No. It is right conferred under the Constitution in New York State, and it's not -- it is -- in fact the cases that we've cited do indicate that it is an absolute right with respect to the -- especially the particular tasks that are alleged here by Governor 09:44:40 Hochul. Just in terms of signing, it's very limited, the

actual factual allegations against her, and given that very limited nature this can be a basis for dismissal, not just obviously a basis for opposing discovery requests and all of that, which here you couldn't envision much more broad discovery demands than we have here. But that's why that's included in our motion is because given the limited nature of the factual allegations against the Governor, those are absolute immunity she's entitled to under the cases that we've provided.

THE COURT: Thank you.

MS. MCKAY: Thank you, Your Honor.

THE COURT: I may call you back up, Ms. McKay, on the motion to amend. We'll deal with that separately.

MS. MCKAY: Okay, thank you.

THE COURT: Who'd like to answer this on behalf of the Petitioners?

MR. TSEYTLIN: Thank you, Your Honor. Misha Tseytlin on behalf of the Petitioners.

First, briefly on the service issue. As we pointed out in our papers, service of a petition is governed by CPLR 403 not 2214, that was reflected in this Court's order to show cause, which directed us to serve in the manner of a summons, that's docket 18 -- docket 11. We followed that to a T. To the extent my friends

wanted the papers at the Rochester office for some reason we did serve them their as a courtesy. They received services in their reply brief filed last night. Their only objection to that was while they claimed that that was violative of this Court's order to show cause, the initiating one, again that's docket 11, that orders us to deliver the -- to serve it consistent with a summons, not under 2214. So the issue is not only frivolous, but it's also moot. Further, Counsel for the Governor did in fact waive this entire issue by participating in the court ordered meet and conferral process. I think almost every --

THE COURT: Didn't they bring a motion to dismiss? Isn't that -- the motion to dismiss for lack of jurisdiction and proper service right off the bat cover that?

MR. TSEYTLIN: They participated in that conference before they filed that. I think almost every attorney here was on that call. Counsel for the Governor participated and quite aggressively making multiple points that a conferral occurred consistent, and by the direction of this Courts on its order to show cause. Finally under the controlling O'Brien case any defect here is a technical defect under CPLR 2001 and so there is no jurisdictional defect at all with regard to

O'Brien. The service there wasn't made at all on the Governor at all, not to the claim drawing office. And yet the fourth division said that because that case -- the Board of Elections was represented, there was no 09:47:54 prejudice, no substantial rights were violated under 2001. Here of course the Board of Elections represented by separate counsel, all the legislative respondents represented by separate counsel, Governor's counsel appearing here, no prejudice. So if there was some sort 09:48:12 of error, which absolutely clearly there wasn't, it would be just a technical issue that is not jurisdictional at all under 2001. Unless Your Honor has any questions about that I would move on to the other points.

THE COURT: Go ahead.

09:48:29 MR. TSEYTLIN: With regard to the Governor as a Defendant -- and the only thing I would add to Your Honor's question is the Governor has been a Respondent or a Defendant in virtually every single redistricting challenge in the state's history, that's because not only 09:48:42 does the Governor sign the maps, the Governor also is above the Board of Elections, which needs to administer the elections. Now of course I agree with my friends that because we did in fact name the Board of Elections, if the Governor was dismissed including on this by 09:49:00 submission -- frivolous service issue, the case could

fully go on and we could have binding injunction prohibiting the Board of Election represented by separate counsel from administering the elections on any of these unconstitutional maps.

09:49:14 THE COURT: Doesn't there have to be some allegations against the Governor and Lieutenant Governor to hold it in there?

MR. TSEYTLIN: First of all, we do have an allegation against the Governor that she promised to do

09:49:25 the very egregious gerrymandering that occurred.

THE COURT: Which they say was taken out of context.

MR. TSEYTLIN: I leave it to Your Honor to lead that article and see if that is a credible articulation

09:49:36 of what she said. But in any event, for example, the Board of Elections, we don't have any allegation that they did anything wrong, but there's no gainsaying that they can be named as a respondent here because we need them here to obtain effective relief. We are seeking an

09:49:51 injunction against administering elections under unconstitutional maps. So the Board of Elections is a proper Respondent because we need them for full relief, they're a necessary party. The Governor is in this case for the same reason. Now, again, because we did name the

09:50:10 Board of Elections, the Governor is not an essential

party, but it is entirely appropriate to name the Governor because she oversees the Board of Elections, and an injunction stopping elections from happening under these unconstitutional maps should certainly bind both the Board of elections and the Governor.

09:50:28

Now moving on to the procedural argument and the substantive argument. I don't know to the extent that Your Honor would like me to fully opine on why we think we are not only -- defeat their motion to dismiss, but in fact on the papers before Your Honor, Your Honor should with respect today enter a judgment in our favor and injunction in our favor on the procedural argument. Now --

09:50:44

THE COURT: Well Ms. McKay covered it somewhat. So you can respond.

09:50:57

MR. TSEYTLIN: Okay the text of the Constitution is clear and my friends don't engage with it at all. It says that the process shall govern redistricting. The process involves two rounds of maps coming out from the IRC and the legislature voting on it, only thereafter does the legislature get to enact a map.

09:51:12

THE COURT: It's not a complete process, is it? It's part of the process?

MR. TSEYTLIN: The process, there's definite --

09:51:27

THE COURT: That's in the Constitution, but --

MR. TSEYTLIN: Right.

THE COURT: But it is not the complete process, is it?

MR. TSEYTLIN: The --

09:51:35 THE COURT: It still takes the Governor and the legislature to pass it.

MR. TSEYTLIN: Your Honor, that's also in the Constitution.

THE COURT: That is.

09:51:43 MR. TSEYTLIN: And the problem for them is the process wasn't followed. They don't engage with that cautious language. To the extent I think I understand the argument -- it's hard to follow -- is what they're saying is if that process isn't followed, we get to

09:52:00 default to a different process, the process used before 2014, but that's not what the Constitution says. The Constitution could have said if this process doesn't work then go to the pre-2014 process, that is not what it says. In fact, what the Constitution says -- I'll read

09:52:20 this language, it's very short and I think it settles this issue and it's so straight forward that I think both Congressional and Senate maps should be struck down to short order. Quote, "The process for redistricting congressional and state legislatives shall be established

09:52:42 by this section and section 5, and it shall govern

redistricting in the state except to the extent that a court is required to order the adoption or changes to a redistricting plan as a remedy". So what does that mean? There is one exclusive process. The process there is one and only one exception when courts order a fix. There is no off-ramp for a different process, if the IRC doesn't pass the map such that the legislature can't enact any maps. The legislature understood this, which is why they attempted to put this ballot measure before the People. I heard my friend for the Governor say, well there were other provisions in that, fair enough, but why do they put that provision in there before the People --

THE COURT: But is your argument that the Commission absolutely has to send a first set of maps? If they're turned down they have to submit a second set of maps? Is that the argument?

MR. TSEYTLIN: That's exactly --

THE COURT: That's the procedural argument.

MR. TSEYTLIN: That's exactly --

THE COURT: What if in good faith they can't come to an agreement on that? We don't have an election?

MR. TSEYTLIN: That's right, Your Honor. That it could be the same as if the Governor and the legislature couldn't agree on a map. You know if -- let's say you had -- in good faith the Assembly can't

agree to a replacement map with the Senate or the Governor, that happened in the last cycle, in the 2012 cycle with regard to the Congressional maps. So what happens then? The old map still governs, if the old map is still constitutional. Let's say there weren't any population changes, you can hold an election under the old map. If the old map is now unconstitutional because it's mal apportioned then it becomes the duty of the courts to correct this. This is not unusual. Again, when the mandatory constitutional process for enacting a new map fails and the old map is unconstitutional, the courts always step in. But again, the old map is still the law of the lands, the one that was enacted in 2012. And an election can be held under that map unless someone challenged that map in court. We have challenged those maps in court.

THE COURT: I see that.

MR. TSEYTLIN: So both the 2012 map is unconstitutional because it's mal apportioned and the 2022 map is unconstitutional because they didn't follow the exclusive process in the same way as if they can't -- under the old system if they didn't follow the process of getting by cameralism of presentment. It's just an ultra vires act, and it becomes the duty of the courts to enjoy any actions under that act, and then a court will need to

adopt a remedial map. In -- and the reason the Court needs to adopt a remedial map is because the Constitution provides the legislature with the opportunity to -- a reasonable opportunity to fix any errors. But when the
09:55:35 error is procedural, there's no way that error can be fixed. It would be as if the legislature -- only one house of the legislature passed a new map. That before 2014 was the exclusive process for enacting redistricting legislation. One house didn't pass it or two houses
09:55:53 passed it, but the Governor vetoed, that was an ultra vires law. In the same way if the commission does not do a necessary step in the exclusive redistricting process, the output is an ultra vires act, which is not the law of the lands. The law of the lands currently is the 2012
09:56:13 maps, but again we have challenged those as unconstitutional, and my friends have not argued to the contrary, they have conceded by silence that those maps are now unconstitutional even though they were constitutional when a federal court adopted the 2012
09:56:28 congressional map and a legislature with the Governor's signature adopted the Senate map.

THE COURT: Are you claiming that the 2021 legislation is unconstitutional?

MR. TSEYTLIN: It is absolutely
09:56:39 unconstitutional. We put that in our briefs and we put

that in our petition. The reason for that is it attempts to create an additional process. Again the Constitution provided that there's only a single process for adopting replacement redistricting maps, and it provides only one exception, a textural exception where a court can order some change. What they attempted to do with Section 633 was create an additional process, and again I will emphasize, they knew that this couldn't be done without constitutional amendment which is why they also passed the constitutional amendment and put it before the People because they knew they were changing the process, the process that was exclusive in the Constitution. Now of course if the constitutional amendment had passed, then the legislation -- then it would be under a different constitutional footing. There's all kind of legislation that's passed that reenforce constitutional amendments. In fact they have legislation that codifies the 2014 process. But upon -- but because the People rejected that amendment resoundingly, the legislation that they drafted in view of that amendment is unconstitutional.

THE COURT: Anything further?

MR. TSEYTLIN: I do have obviously extensive arguments on the substantive aspect of our challenge. However, Counsel for the Governor only addressed that briefly, so perhaps I'll reserve that until --

THE COURT: How about legislative immunity or qualified immunity?

MR. TSEYTLIN: Your Honor, do you mean with regard to the Governor being a Defendant or with regard to discovery?

09:58:19

THE COURT: Well, both.

MR. TSEYTLIN: With regard to the Governor being a Defendant, again we have explained -- and I've explained this morning that the Governor is a Defendant in large part for the same reason the Board of Elections is a Governor -- is an enforcer of the elections in the state. Again, the Board of Elections is the primary enforcer, but the Governor, she sits above the Board of Elections and there's no legislative immunity to not be enjoyed, not to enforce unconstitutional law. The Governor is sued all the time. There was a pretty big case maybe about a year ago where Governor Cuomo was sued to not enforce certain restrictions on places of worship. You know, he was sued because he would have been enforcing those restrictions. This kind of thing happened all the time. Now with regard to legislative privilege, as Your Honor pointed out, that's a qualified privilege. What we're seeking here is the -- and we've quoted case law from New York that says that the New York Speech and Debate Clause is parallel to the Federal

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Speech and Debate Clause. We now have many years of experience with the federal courts treatment of legislative immunity in the partisan gerrymandering context. What the Federal courts have said is this is a 09:59:41 qualified privilege and there's five factors that need to be determined whether to set aside. Those factors are readily satisfied in partisan redistricting cases, because a significant portion of the evidence of a partisan gerrymandering -- of gerrymandering purpose is 10:00:00 exclusively in the hands of the legislature or the Governor, and the need for it is great. The issues are very serious and because partisan gerrymandering is unconstitutional, it wouldn't have any sort of chilling affect. So the New York Speech and Debate Clause is 10:00:17 parallel to the Federal one, and all the Federal cases that have been cited to Your Honor apply this five factor test, only thing we're asking is for the very standard form of discovery that's always given to Plaintiffs in partisan gerrymandering cases here -- Petitioners, things 10:00:34 like did they look at political data which could be unconstitutional, did they speak --

THE COURT: I won't have you get into the discovery because we'll cover that soon.

MR. TSEYTLIN: Yes, Your Honor. So that's the 10:00:45 extent of what I'll say on that.

THE COURT: All right, thank you.

MR. TSEYTLIN: Thank you.

THE COURT: With regard to the Governor and Lieutenant Governor's motion to dismiss for lack of proper service and not mentioning anything in the paperwork, there's some -- as regards to Governor, nothing that I saw as regards to Lieutenant Governor. I'm still denying the motion for the following reasons. The New York Unconsolidated Law Section 4221 requires service of the petition on the Governor and the Lieutenant Governor. I believe they're necessary parties. CPLR 403 is controlling, it doesn't specify service upon the nearest office of the Attorney General, and while CPLR 2214 does refer to services of an order to show cause upon the nearest Attorney General's office, that is specifically in reference to motions and not the commencement of an action which we have here. In addition, the Governor and Lieutenant Governor admit they received notice, and I've heard no argument that anyone was prejudiced by it. So that's my ruling on that motion.

And that's going to move us to the Petitioner's order to show cause to add the New York Senate redistricting to the action. Who will be arguing that on behalf of the Petitioner? Mr. Tseytlin?

MR. TSEYTLIN: Yes, Your Honor. I'm going to be very brief on this. Leave to amend is freely granted, there's really two considerations, one; whether it would basically be so insubstantial as to be dismissed. I've already explained why our procedural argument is not only substantial, but sure to win. We also have a substantive argument and the procedural argument applies to the same extent to the Congressional and Senate, they use the same procedure.

10:02:58 With regard to the substantive arguments we haven't developed those this morning, but Your Honor can see in the papers that the process that was used was justice partisan, which is a major consideration in substantive partisan gerrymandering allegations and our 10:03:15 experts methodology which is wildly accepted by courts around the country including most recently by the Ohio Supreme Court showing that the senate map was more pro-democrat than 5,000 computer generated maps, is powerful evidence of substantive gerrymandering. We also 10:03:33 have an expert based specific discussion about specific senate districts that were gerrymandered to favor the Democrats. So we can discuss those things in more detail, but that certainly survives that low barrier for it's so insubstantially dismissed.

10:03:49 The only other inquiry on the motion on an

amendment is prejudice. There's clearly no prejudice here. We filed our initial petition within a couple of hours of the Governor signing the maps. We filed the motion to amend, I think three business days later. The reason we did that is during the legislative process they revealed the Congressional map first, so we had more time to analyze it. The Senate map didn't get put out to the world until a little bit later, so we needed more time to look at it. There was absolutely no prejudice to anyone by the way that we did this.

THE COURT: Are you saying the Senate map came out after the Congressional maps?

MR. TSEYTLIN: Yes, it came out to the world. They were signed together, but it came out to the world later. And given the complexity of how many districts there are, we needed a couple more days to analyze. There was absolutely no prejudice. The procedural arguments are entirely identical, so there's no -- you know, those rise and fall together. With regard to the substantive arguments, you know, we have the Trende Report which applies the same methodology to both. They presumably have the same critique of the Trende Report with regard to the Senate and the Congressional. In fact, in their opposition to leave to amend, they just repurposed our expert criticism of the Trende approach to

the Senate map.

So now -- and then the only other aspect is the discussion of the specific Senate districts. They chose not to put anything in writing responding to that, but I will note that even when they contempted[sic] to contest the specific congressional districts, they didn't put in any competent evidence to rebut our showing. They put in an expert report from this Harvard professor from Mesiti[sic], looks like he may have never been to the State of New York, let alone certainly had no expertise in New York to be able to talk about New York's district. So even if they had responded to the Senate specific districts, they presumably would have put in the same expert who has no ability to testify on New York communities of interest and that sort.

In any event the Court can strike down the Senate districts today on the procedural arguments and during remedial process they can be given the opportunity to make any supplemental submission to the substantive challenges to the Senate districts which would permit this whole case to wrap up within the 60-day window that the Constitution provides.

THE COURT: Thank you.

On behalf of the Governor?

MS. CRANE: Good morning, Your Honor.

THE COURT: Good morning.

MS. CRANE: I'm Michele Crane from the Attorney General's Office, Your Honor. The jurisdictional argument which we raised with regard to the motion to dismiss was also raised with respect to this motion to -- for leave to amend, the petition and given the fact that this is a motion and that they made a motion to amend their original pleading, then we would say that the CPLR provision 2214 does apply here, and therefore they do not have jurisdiction over the Governor or Lieutenant Governor. I know you've already discussed this in detail, and I think you're familiar with the arguments, so I just want to make the distinction here with respect to that issue. We also raised in this motion or our opposition to the motion to amend the legislative immunity and non-justiciability arguments, we'd like to reiterate those to the Court. I think the Court is familiar with those and lastly, Your Honor, we do believe that allowing this amendment to occur would significantly interfere with the election cycle and in the declaration of Mr. Brown from our office, he specifically sets forth the dates upon which everything needs to be accomplished, and I would really ask the Court to look at those dates.

THE COURT: I did.

MS. CRANE: And to consider the impact that

this amendment may have. The Attorney General's Office on behalf of the Governor and Lieutenant Governor have not responded or answered the petition yet. We would need time to do that. If the Court allows discovery there would be a --

10:08:06

THE COURT: You've had it for 20 days or so, haven't you?

MS. CRANE: Well, we still need to put --

THE COURT: I understand.

10:08:13

MS. CRANE: It needs to be approved by Counsel and the Governor's office before we submit, Your Honor, we didn't really have this. There's a dispute about how this was served obviously, and our office was not assigned to represent the Governor and Lieutenant

10:08:27

Governor until fairly late in the game. Our focus was on the papers that are before you today. We have not spent the time answering the petition, so we will need time to accomplish that.

THE COURT: The amended petition?

10:08:42

MS. CRANE: Yes, the amended petition. And so that will need to be done. If the Court allows discovery, that will need to be done, and all of this now -- these cases are in jeopardy for this election cycle to occur. So based on that, we would ask the Court

10:08:57

to deny the motion to amend the petition.

THE COURT: Thank you, Ms. Crane.

MS. CRANE: Thank you.

THE COURT: On behalf of the Senate Majority Leader will you be speaking on behalf of the Senate Majority Leader and Senate Minority Leader there?

MR. HECKER: Assembly Speaker there(indicating), Senate Majority Leader.

THE COURT: Very good.

MR. HECKER: Good morning, Your Honor, Eric Hecker from Cuti, Hecker, Wang for the Senate Majority Leader. I'll be very brief because I expect our discussion to be extensive when we get to the petition itself.

As we said in our papers we acknowledge generally speaking that leave to amend is granted liberally in a usual case. This is an unusual case for three reasons. First of all, they've put in expert testimony that fatally undermines their theory. Mr. Trende has shown unmistakably and unequivocally that in literally every single one of his thousands of simulations, there are more Republican majority districts in the Senate plan than in the enacted Senate plan --

THE COURT: He disputes that in the reply though, doesn't he?

MR. HECKER: He doesn't actually. We can get

into all that. I would respectfully suggest when we get into the petition, but suffice it to say, we have that futility argument.

Also as the Attorney General's Office is arguing, we have a significant time problem. There is no amended petition. Your Honor, we've been working very hard on this case, we haven't taken days off in weeks, it's taken everything we have to rebut the evidence both statistically and also in terms of actually how the lines were drawn. And if we have to go back and amend the answer, the amended petition -- which we certainly will if we're directed to, it's going to take time. And then beyond that, as the Attorney General also emphasized, the election season is already underway. The designating petition period started two days ago. It would sew confusion in the extreme for this Court to enjoin anything, which is why in almost every case where there's ever been a really bona fide argument of unconstitutionality at this stage of the process, you stick with what you've got, and you address whatever arguments there are for the next cycle. So for those three reasons, we think there's no reason to grant the amended petition, and I look forward to addressing the merits of the petition when we get to that motion.

THE COURT: But there has been a time crunch

for you, for them, the Petitioner, for everybody. I mean, the maps just got passed here, what? Three weeks -- a month ago?

MR. HECKER: Correct, and we've now burned half of the 60 days that Your Honor has jurisdictionally because they didn't bother to challenge the Senate map when they could have. They were passed together. The Congressional map was announced 24 hours before the Senate map, several days before they were enacted simultaneously. They didn't bother to put it in their petition, and we lost a month. Thank you, Your Honor.

THE COURT: Thank you.

Assembly Leader?

MR. BUCKI: Good morning, Your Honor, we would second the arguments that were put forth by Counsel for the Senate Majority Leader. We would agree with the futility of the amendment, and in particular what I would note from the evidence that is before the Court, in particular the expert reports, is that typically when you would do all of these various simulations, which Mr. Trende did 5,000 simulations, we would submit pursuant to the experts that we've offered that in fact 50,000 simulations would be a more appropriate sample size, specifically in order to draw any kind of conclusions concerning these maps. But what would

specifically be expected, given the Partisan makeup of the voters of the State of New York, is that you would have a map with 63 senate districts with between 51 and 53 being more likely to elect a Democrat to the State Senate. And in fact when you look at the map, only about 49 of the districts could be expected to have an advantage for a democrat. So as our experts, both from the Assembly side and the Senate side have demonstrated, actually there is a Republican advantage to these maps rather than a Democratic vantage. So we would submit that given that evidence that we provided to the Court, given the expertise that we've offered from our experts -- I would note that in particular Mr. Trende is a graduate student, he's never published anything that's been subject to peer review. Mr. LaVigna is well -- very much an expert in the field of communications, he worked in communications for the State Senate, but he doesn't claim to be a statistician, he doesn't claim to have any kind of particular background that would give him the authority to be able to give a proper statistical opinion as to the propriety of these maps because when you get down to it, evaluating these maps is a matter of social science and a matter of evaluating mathematically whether in fact there is an unfair partisan advantage that's been given to one party or another. So we would submit that

the petition is lacking in merit. The proposed amended petition is lacking in merit.

The other thing I'd like to say, and I'm going to touch on it briefly now, but I do anticipate discussing it in greater detail later on if we do get to argument on the merits of the actual petition, is the issue of standing. We only have a limited number of Petitioners in this case and there is no proposal to add any Petitioners in the amended petition. And we would submit that the law is clear both from the United States Supreme Court as it's been put forth in the Gill versus Whitford case which Mr. Tseytlin had the opportunity to argue before the Supreme Court. This is true under the Hays versus United States case, and in the State of New York. It's true under the Bay Ridge Community Council versus Carey case from the mid 1980's, is that in order to challenge the lines of a particular district the Petitioner needs to have standing, and the person who would have standing is a person who actually lives in that district. There are 63 Senate districts that are proposed in this redistricting plan from throughout the State of New York, and many fewer petitioners than 63. And what the Court will find is that the vast majority of districts are not represented by any Petitioner in the amended petition.

THE COURT: Let me ask you something.

MR. BUCKI: Yes.

THE COURT: The case law seems to indicate that prior to predating the 2014 constitutional amendment that required a Petitioner to be a resident of the district before he would have standing, but wasn't that changed by the constitutional amendment? Doesn't anyone have the standing to challenge it?

MR. BUCKI: No, it was not, and I'm glad Your Honor brought this up because we looked into this yesterday, and in preparation for today. And in particular the key case is the Bay Ridge Community Council case that determined that in order to have standing you need to live, for state constitutional purposes, in a district. And the language that Mr. Tseytlin cites from the state Constitution that says any citizen may challenge a map, that very language was not added to the Constitution in the 2014 amendment. In fact, that language was in the state Constitution as it existed in the mid 1980's when Bay Ridge Community Council was decided. So as a consequence, just because it says any citizen may challenge a map -- it's true any citizen may challenge a map, but there's an additional requirement that's unstated expressly in Article 3 of the Constitution. But that is a requirement that comes to us

from the tradition of the common law which is that in order for a citizen to challenge, that citizen needs to have standing. So that language was in the Constitution in the mid 1980's, and not with understanding that -- Bay
10:17:29 Ridge Community Council at the Supreme Court level, as affirmed by the appellate division, as affirmed by the Court of Appeals on the decision that are rendered by the Appellate Division, determined that there was no standing on part of a gentleman who I believe lived in Long Lake
10:17:44 in Hamilton County who was trying to allege that somehow there was an improper gerrymander on racial grounds in Queens, and the Supreme Court said a person in Long Lake cannot challenge what goes on in terms of how a map is drawn in Queens. And that was true even though the state
10:18:06 constitution said then as it does now that any citizen can make a challenge. So we would submit that with respect to the amended petition, the vast majority of Senate districts are unrepresented by the Petitioners, and so as a consequence, the amended petition would lack
10:18:21 merit in that the vast majority -- in that the Petitioners themselves cannot challenge the vast majority of the districts that have been put forth in the Senate map.

And then of course we would second the
10:18:35 contentions made by the counsel for the Senate Majority

Leader with respect to the prejudice if this amendment were to be granted, in that, for example, there are deadlines with respect to issuing ballots under the UOCAVA, U-O-C-A-V-A statute that are coming upon us as
10:18:55 soon as the middle of May, not to mention the fact that this proceeding needs to be completed by April 4th. And so for all of those reasons, we oppose the motion for leave to amend.

THE COURT: Thank you, Mr. Bucki.

10:19:07 Is there anyone else I haven't called on yet?

(No response.)

THE COURT: The issues in both the petition and the amended petition seem to be the same. The parties are the same, the requested relief is almost identical.
10:19:36 I don't see any prejudice. I'm going to grant leave to amend the petition to add the New York State Senate redistricting. I'm directing that the answer to the amended petition be filed by March 10th which is Thursday. That brings us to the Petitioner's order to
10:20:03 show cause for expedited discovery, and it's been touched upon, but let's revisit it. Who will be arguing that on behalf of the petitioner? Mr. Tseytlin?

MR. TSEYTLIN: Thank you, Your Honor, I did touch upon this earlier. What we've requested here is
10:20:29 the standard discovery that partisan gerrymandering

Plaintiff's do readily obtain in cases around the country. The only case they've cited that denied the discovery, only did so after there was already a holding that the case was lacking in merit. Now just to be clear on our procedural argument, which I think can be ruled upon today or as soon as Your Honor is able, we do not need discovery in our procedural argument. That is just a matter of straight constitutional text. We are -- on our substantive argument, we do think we have put before Your Honor more than sufficient evidence for us to prevail. Having said that, just because we put enough evidence for us to prevail doesn't mean we're not entitled to the full scope of evidence including -- because I'm sure that one way or the other this matter is going to get appealed.

THE COURT: Subject to qualified privilege?

MR. TSEYTLIN: Sorry?

THE COURT: Subject to qualified --

MR. TSEYTLIN: Of course, Your Honor. If Your Honor things this aspect of our request is overbroad or subject to that privilege, we would certainly be open to a narrowing of our discovery request.

THE COURT: Well, your request seemed a little overbroad to me. It was just sort of open ended. Anything relating to the redistricting, that's pretty

broad.

MR. TSEYTLIN: If Your Honor thinks that's too broad, Your Honor, we would not oppose Your Honor narrowing that or striking that paragraph.

10:21:57 The primary thing that we do want is to find out what political data -- what political information they looked at and what communications that they had with the IRC or other third parties which are all deeply relevant to when we get to the substantive aspect of our

10:22:16 petition. The courts are -- around the country look at three categories of information when deciding whether there was partisan intent, which is the only thing that would be -- that we need to prove. We don't need to prove some sort of other things, partisan intent. So

10:22:34 they look at statistical evidence of partisan bias, we've talked about that. If you look at the individual specific lines and see which communities of interest have been broken up for what. Don't necessarily need discovery on that, but they also look at the process.

10:22:51 Did the map drawers look at political data? Had -- did they consult with a third party? Did they get behind-the-scenes directions from the state party?

THE COURT: I assume you're looking for something that shows somebody directed the Commission not

10:23:07 to make any decisions on this thing? Am I right?

MR. TSEYTLIN: That would certainly be a relevant consideration in determining whether the process was directed towards the goal of drawing a partisan map. Under standard intent case law the overall process --

10:23:28 THE COURT: Wouldn't that be relevant if that's what you were seeking? Wouldn't that be relevant to your procedural argument?

MR. TSEYTLIN: I think it would be more relevant to our substantive argument because even if they

10:23:39 hadn't attempted to break the process -- which you know with discovery will reveal if they did -- the bottom line is they just didn't follow the exclusive process. So certainly that kind of evidence would show why their argument must be wrong. That the ability to tell those

10:24:00 that you appoint, don't pass anything so we can go back to doing the business exactly how we did in 2014, you know, that is an absurd result of what they're arguing, but we don't need to prove that in any way to prevail in our procedural argument. The reason for that is that's

10:24:17 just like -- because the commission didn't pass out a second set of maps, that's just like under the prior system if the assembly didn't pass out a map. It's just a necessary part of the law making process that did not occur. However if they did act to undermine the

10:24:35 committee the commission process in service of a map that

left, right and center, everyone -- I mean, I heard my friend say, this is a Pro-Republican, that's silly. Left, right and center. Everyone recognizes this is an egregious partisan gerrymandering. If in service of that they told the IRC, don't pass anything because we don't want to have the political accountability of rejecting a Commission map because we want to jam through this egregious gerrymandering to fulfill the Governor's promise to advance the interest of the national democratic party to fulfill the -- one of the Democratic leaders point that they wanted to gerrymander New York or they did gerrymander New York to get revenge for what Republicans are doing in Texas and North Carolina allegedly in service of that, they communicated with those individuals, they communicated with the IRC, that would be relevant evidence of partisan intent, which is what's illegal. Intent is a fact specific inquiry. While we do have overwhelming evidence of it already, certainly those kind of communications would further bolster our showing of partisan intent. And that's why it's deeply irrelevant under the five-part test that courts use to analyze the qualified Speech and Debate privilege. But again, I will reiterate, if Your Honor thinks some of those later requests we have in our five requests are overbroad, anything to do with

redistricting, you know we certainly would welcome Your Honor narrowing that to get to the nub of what we're really trying to get to, which is the political data they looked at, and the communications they had with third parties about the obvious gerrymander -- the obvious embarrassing gerrymander they've imposed on the state of New York.

THE COURT: Thank you, MR. TSEYTLIN.

On behalf of the Governor?

MS. MCKAY: Yes, Your Honor. Heather McKay, again.

First of all, I want to emphasize that as our papers made clear, this kind of a special proceeding which Petitioners themselves have selected here, generally disfavors discovery. And that in particular in order to justify discovery in a case such as this one that it makes them -- it even more necessary that the demands that they need to obtain a court order for, need to be appropriately narrow, and it's not Your Honor's job to narrow those. The requests are completely overbroad, and should therefore be denied in the sense that Petitioner's have to obtain this is different than a regular preliminary action. Petitioners have to obtain a court order to get their discovery and what they've provided to Your Honor is vastly overbroad and again,

it's not Your Honor's job to narrow the scope of those demands. With respect to the first cause of action, Petitioners have conceded that they are raising a purely legal question. I do want to touch just briefly though upon the fact that they continue to insist that they need a discovery with respect to the IRC process. That's absolutely untrue. They need to justify that as relevant material and necessary to prove their claims. And given that all parties agree on the facts surrounding the evidence in the IRC, the IRC could not reach an agreement that's undisputed. They don't need to do a pointless fishing expedition into the IRC process. And that's just one example of how vastly overbroad these are, as presented. And it's the Petitioners' obligation to appropriately narrow any of their requests they've --

THE COURT: Wouldn't it be relevant if someone did touch base with the Commission or any member of that Commission to say, you know, then you're doing your job, but don't come up with a set of maps?

MS. MCKAY: To be honest, Your Honor, I'm not entirely sure it would be particularly relevant here. We obviously have Democrats and Republicans pointing the finger at each other saying --

THE COURT: Wouldn't that sort of tend to indicate someone intentionally not following the process?

MS. MCKAY: Well, I think the only relevance that it could have would be establish that the breakdown of communications -- which again is undisputed between all the parties, they couldn't reach an agreement, so their argument says that necessarily the legislature no longer has any role in the redistricting process and has to completely turn to the judicial branch, and our argument is that of course that's preposterous. If they have the ability to freely change or amend the maps, that would be passed by the IRC in the first place, then obviously they have the ability to create maps when there's an IRC stalemate. As to the second and third causes of action, again our arguments fall back on the principles that we've already covered which is that these claims are not implicating the Governor and now they're essentially admitting here in court that she's named in the same way that the Board of Elections is named, to obtain the relief that they're seeking. Well, now they've completely eviscerated any claims of necessity of discovery from the Governor. They're not seeking any discovery from the Board of Elections, and we've also already -- my colleague has gone into the issues of timing, in particular this motion is where that's relevant because the discovery demands, the document demands, and the number of depositions that they're

proposing to hold of very high ranking statewide officers, would significantly delay the proceedings and not allow resolution within the constitutional confines. And finally I think that we've covered a lot on privileges today, so I'm not going to get further into that, but obviously we're reserving our rights to raise specific privileges as to specific demands, if any are in fact served. Those are absolutely going to bar the discovery in the first place which will mean that we've delayed only to come to that conclusion, and they will not have access to the materials that they're seeking because of the importance of the legislative process and the executive's need to be able to do her job. Thank you.

10:31:09 10:31:26 10:31:46 10:32:05 10:32:23

THE COURT: Thank you, Ms. McKay.

On behalf of the Senate Majority Leader?

MR. CUTI: Thank you, Your Honor, John Cuti.

THE COURT: Good morning.

MR. CUTI: Good morning. A lot to cover. Let's start with CPLR 408. The standard is not relevance, as Your Honor's questions reflected, it is whether discovery should be allowed in, and the standard for that is whether it's essential. Now Petitioner's counsel has gotten up here today and said that Your Honor should enter judgment on the merits today on their

procedural claim. So obviously discovery is not essential for that claim even on their view. He just told you a few minutes ago, counsel for Petitioner, that they have with respect to their second claim the substantive claim, overwhelming evidence already. So if they already have overwhelming evidence, then discovery by definition is not essential, for that reason alone you should deny leave. Related to another reason to deny leave is the inevitable delay. Now, no discovery requested have yet been propounded. The issue before you is whether they should be allowed to, and as Your Honor noted, they're rather dramatically overbroad. So one assumes if leave is granted they would serve some sort of narrowed requests. But then -- and here I want to talk about absolute legislative privilege. There is going to be intensive litigation both here and depending on Your Honor's rulings interlocutory in the Fourth Department. Now Petitioner's counsel either misunderstands the law of the Speech or Debate Clause or he mislead, Your Honor. The federal cases that apply a qualified privilege do not involve the Speech or Debate Clause. Let me just take a few minutes to unpack that. The United States Constitution has a Speech or Debate Clause. And there's a long line of decisions beginning in the 1940's and running through the 80's where the court in opinion after

opinion stresses that the privilege is absolute based on the plain language of the clause. The Members of the House and Senate shall not be questioned in any other place with respect to their legislative conduct. Now, 10:34:28 New York's Constitution has a virtually verbatim clause and the New York Court of Appeals has held in Ohrenstein that the New York Speech or Debate Clause provides at least as much protection as the Federal clause does to members of the Federal Congress, and that privilege is 10:34:49 absolute. The law is crystal clear that members of the legislature cannot be questioned about their motives or their intentions or their work they do at the subcommittee or anything that is directly related to the legislative process. Drawing maps is a quintessential 10:35:10 legislative function, and the case law from the Supreme Court -- and again there are cases cited in our papers that make clear that the Federal cases construing the Speech or Debate Clause are persuasive authority. The privilege doesn't just apply to the elected members, but 10:35:26 to their aides, even to consultants, anyone who is performing legislative functions. It's a functional analysis, it doesn't turn only to the title of the person.

And so where does the notion of a qualified 10:35:40 privilege come from? I'll explain. There are many

redistricting litigations where state maps are challenged in cases filed in Federal Court. Now one of the main reasons there are two main foundations for the absolute nature of the Speech or Debate Clause privilege, one is respect for the independence of the legislator and legislature, and relatedly respect for the separation of powers. The executive and judiciary are not permitted ever to question what members are doing with respect to their legislative conduct. But when a Federal Court has state legislators before it, there are no separation of powers concerns, it's two different governments. The Federal Court isn't telling a Federal legislator what she can do. There are federalism concerns, but that cuts in favor of the federal government because of supremacy clause. And so when those federal district courts and circuit courts are talking about a qualified privilege, they're not applying the speech or debate clause at all. How could they? The Federal Speech or Debate Clause doesn't apply to state legislators, it says Senators or representatives. A Federal District Court is not going to apply the New York Constitution or the Pennsylvania Constitution. What they do in all the cases, including in every single case they cite for the proposition applies what's called the Federal common law. The Federal common law has long respected legislative

privilege, but when a Federal court's applying the Federal common law, they're bound by Federal Rule Civil Procedure 501, and that rule says; we respect common law privileges, but you must construe them narrowly. The 10:37:34 Speech or Debate jurisprudence is the polar opposite, case after case from the Supreme Court says it must be broadly construed to protect the independence of legislators. So this is -- the five-factor test is not applicable at all, not even for illustrative purposes. 10:37:54 The cases that matter are cases like Eastland and Graves and Brewster and Helstoski, all Supreme Court cases that stress the privilege is absolute and the core of the privilege protects the motivations and the intentions of legislators. There is what Justice Harlan said in 10:38:17 Johnson that is precisely what the Speech or Debate privilege protects. And so yes, intent can be an issue, but it can be proved in many ways. It can be proved by objective evidence. We all know that to prove murder in the second degree in New York you have to prove intent, 10:38:36 and while motive is not an element, it's certainly relevant. But you can't ask the Defendant what he intended because he has an absolute privilege, but you can still try to prove the case. Now they say they've already proved their case, so they don't need this 10:38:52 discovery at all, but even were they allowed to seek

discovery, they can't have Your Honor order legislators to answer questions or produce documents about their correlative functions. You don't have the power to do that under the Constitution. And for them to tell you that it's a qualified privilege is either really a poor reading of the law or something worse. So if Your Honor has any questions, I'm happy to answer them.

THE COURT: Thank you. Thank you. Appreciate it, sir.

Mr. Bucki?

MR. BUCKI: Thank you, Your Honor. Of course we would agree with counsel for the State Senator Majority as to the absolute nature of the privilege, and as much as it would apply to State Senators it would also apply to Members of the Assembly. We would further agree that just by the nature of the papers that have been offered by the Petitioners, they have offered statistical evidence, they have offered evidence of so called public statements by the Governor. And as Mr. Cuti said, there are other ways to prove partisan intention with the Petitioners' claim is their objective, and I would submit that a good synonym for the word intent -- and this phrase partisan intent comes directly from their motion for leave to engage in discovery. A synonym for intent is motive. And matter of Maron versus Silver from the

Court of Appeal from about a decade ago is clear, that there is no place to require state legislators to answer for their motivations in terms of how it is that they come to enact a certain piece of legislation. And we would agree that enacting a new proposed map for the congressional lines and State Senate lines is quintessentially a legislative act. Where I would like to focus is with respect to the reply papers that were served by the Petitioners on Tuesday, March 1st which we did not have an opportunity to respond to in writing. And in response to the ample authority that demonstrates the absolute nature of the legislative privilege, the Petitioners offer several cases wherein they claim that in fact the privilege is not absolute, and I think it's really important to go through each one of those cases to demonstrate the distinctions such that the argument that the Petitioners' offer does not have merit.

So first of all they cite to a case called Larabee versus Governor of the State of New York which eventually went up on appeal under the matter of Maron versus Silver case. They said Larabee demonstrates that in fact the privilege is not absolute. That's not the case. What Larabee was about was the issue of legislative immunity, because there -- what was alleged was that the state legislators had violated their

constitutional requirement to raise the pay of the judges in the State of New York, and the response that was given by state legislators is, well, we cannot be held to account for that on account of legislative immunity. And in fact what eventually was held, in matter of Maron versus Silver was that while legislators could not be required to pay out of their own pockets for additional amounts to be allocated for salaries for judges, a declaratory judgment to be issued such that it could be held that in fact the Constitution had been violated in as much as under the separation of powers doctrine, the legislature had not done its job to give proper compensation to the State Court Judges. So they could do their job. But on appeal when the Larabee case went up with Matter of Maron versus Silver, Maron versus Silver was clear when it got to a paragraph talking about the privilege issue rather than the immunity issue as to the absolute nature of the legislative privilege because under the Speech or Debate Clause in the State Constitution, it could not be more clear, that for any speech or debate in either House of the Legislature, the members shall not be questioned in any other place. And over time this clause has been construed by the courts. And in particular I would note the campaign for fiscal equity case, that was a case where the person who was

being deposed was a staffer at The State Education Department. And that staffer in the deposition was starting to be asked, well what is the nature of your communications with folks in the State Legislature with respect to school funding. And so we would submit that that's a very similar kind of inquiry that the Petitioners are looking to pursue with respect to, oh legislators, what were the nature of your communications that you had with members of the Independent Redistricting Commission and there in campaigned for fiscal equity. The Court said this privilege is so broad that it isn't simply a privilege that can be invoked by state legislators. It can be invoked by the staff, by the people who work with them, by the consultants, by people who work for other state agencies with respect to the interface that takes place with state legislators both orally and in terms of their written communications as well. And we would submit that that same privilege applies, and no matter how much Petitioners may say that they could try to make their request a bit more narrow, and as much as they make -- they offer that invitation to the Court, we would submit that the privilege issue would still apply and we could continue to raise it such that none of -- that no discovery demand that the Petitioners could ever create as to the motivations or partisan

intent could ever be countenanced under the absolute legislative privilege. And Your Honor made a point, well isn't it relevant that in fact say a State Legislator had some communication with a member of the Independent
10:45:00 Redistricting Commission, and I would say that under the law, privilege has superiority over relevance all the time. So for example, if an attorney is counseling a polluter with respect to bad documents that exist in the polluter's files about some kind of toxic tort
10:45:22 allegations, documents that would not be helpful if they were to see the light of day, that document -- that memo is subject to attorney/client privilege.

THE COURT: And your example though, could they get that information from the member of the Commission?
10:45:36 If they talked with the legislator?

MR. BUCKI: I would submit that a member of the Commission is the same -- is in the same position as --

THE COURT: They're not legislators --

MR. BUCKI: -- as the education department
10:45:48 employee who was being deposed in the campaign for fiscal equity case. There it was in the middle of a deposition and that employee was being asked questions about her interface with the legislature. That employee was being represented by someone from the State Attorney General's
10:46:05 Office who raised an objection on the basis of privilege,

and it had to go to State Supreme Court and actually went up to the First Department in 2009. And the person who was taking the deposition said this is someone who works for State Ed, this is someone who works for a state agency, this isn't somebody who's a legislator. But not withstanding, the privilege was so broad that the Court was clear that that person could not be questioned with respect to those communications.

THE COURT: Isn't it supposed to be an Independent Redistricting Commission?

MR. BUCKI: Well, actually there was a case that went before Albany County Supreme Court, the Leib case wherein it was supposed to be on the ballot in part of the syllabus that was presented to the voters that this was an Independent Redistricting Commission. And in fact the Court held you can't call it an Independent Redistricting Commission in terms of ballot proposal, not withstanding the fact that in the parlance that's developed since then they have called themselves independent, but likewise if somebody committed murder and then goes to their priest for confession and says I confess that I committed this murder, absolutely that would be relevant, but there's an absolute priest penitent privilege in the State of New York. And so likewise, just because something is relevant doesn't mean

that it isn't privilege, and the privilege trumps the relevance every single time. With respect to the Ohrenstein case, they say that's another case that demonstrates the privilege isn't really absolute. That
10:47:33 was a case that involved allegations of bribery. There are no allegations of bribe or money changing hands or anything of that nature. And then in fact where I'd like to focus also is on a case that they cite from Illinois which is Burton versus Corn Products Refining Company
10:47:51 from 1918. And little more recently from the appellate division in the late 1950's; Reformed Church of Mile Square. And they say here are instances where not withstanding a Speech or Debate Clause, the legislators were brought in and required to testify concerning the so
10:48:10 called purpose of legislation. I think it could be argued that intent and purpose could be two totally different things. But setting that aside, what's important to see about those cases is these are cases that involved municipal legislators. So in the Reform
10:48:27 Church of Mile Square case, that concerned the prospect of getting discovery from persons who served on the City Council in the City of Yonkers, and with respect to the Burton case that was a case that involved getting discovery from people who served on a City Council in
10:48:42 Granite City, Illinois -- I had to look up where that is,

it's just outside of St. Louis -- but what's important is in neither case does it talk about getting discovery from members of the State Legislature or people who interface with members of the State Legislature, and there's a reason for this, because as the Humane Society case that the Petitioners also rely upon makes clear, there is a difference between the jurisprudence that exists with respect to the privilege that -- the legislative privilege that state legislators receive, versus the jurisprudence that exists with respect to the privilege that local legislators receive such as members of a city council or a town board in the State of New York or county legislator. So that is a common law privilege that has been set forth from the courts, and there can be exceptions to the common law privilege. Whereas the privilege for state legislators is an absolute privilege that exists under the State Constitution. And so the bottom line is none of the authorities that the Petitioners, my friends on the other side, have offered in reply would support anything other than an absolute legislative privilege. And if the Petitioners did not want there to be an absolute legislative privilege applied, they could have brought this case prospectively in Federal Court. They talk about the various five factor tests that are applied. That may be true in

Federal court, but we're not in Federal court for the western district of New York, we're not in the United States Supreme Court, we are in the Supreme Court for New York State, Steuben County, and in Steuben County Supreme 10:50:26 Court we would submit like anywhere else in New York State Court, there is an absolute privilege that attaches.

The last thing I would like to say -- actually two more things. First of all, with respect to the 10:50:39 burden.

THE COURT: With respect to what?

MR. BUCKI: With respect to the burden. Much has been said about the burden by my colleague Mr. Cuti, but I would like to emphasize that if there were to be 10:50:52 any kind of discovery demands simply the task of putting together copious privilege logs, not to mention the task of having to search for all the different documents that could potentially be responsive to a request that would eat up the remaining time that we have, this proceeding 10:51:11 needs to be decided within one month from tomorrow, and authorizing discovery which the Petitioners acknowledge in saying this petition can be granted today, they're basically acknowledging that they don't really need it. But even if this discovery were to be authorized, simply 10:51:30 the litigation that would happen on appeal in terms of a

notice of appeal, the fact that there would be an automatic stay of the discovery under CPLR 5519(a)(1), the fact that then we'd have to go before a special session of the Fourth Department to have to sort this out, every day that goes by is another day that this proceeding is not going to be decided on the merits, which it needs to by April 4th. And so we would submit that the materiality and the necessity that would require not only under CPLR 408 but also CPLR 3101 simply is not there.

And the last thing I'll say at this juncture is in as much as the Petitioners say this petition can be granted today, I wanted to make absolutely clear that now that the petition has been amended, it's impossible to grant the petition today. It would be possible to deny the petition today, but to grant it, no, and the reason for that is that the Respondents have not had an opportunity to answer for every petition. There needs to be an answer. And the case on this point is matter of Kickertz, K-I-C-K-E-R-T-Z, versus New York University. It's from the Court of Appeals from about a decade ago, that if the petition is granted without an opportunity for the respondents to answer, then that's going to be overturned on appeal because as a matter of due process the Respondents need an opportunity to answer to -- we

would submit that to take that step of granting a petition at this time, as the Petitioners would invite this court to do, simply is not something that can happen at this juncture.

10:53:06 THE COURT: Thank you, Mr. Bucki.

MR. BUCKI: Thank you.

THE COURT: The Constitution provides both legislative immunity and legislative privilege, however the Courts have found the state legislators do not have 10:53:28 an absolute right to legislative privilege. In 2003 in the case of Rodriguez versus Pataki the Court laid out a balancing test to determine what information should be disclosed and what needs to be protected because of the chilling affect it would have on the legislature if the 10:53:46 information was disclosed. The Rodriguez court adopted a five-factor test. Under the five prong test the Court finds the request to discovery is relevant, that the relevant discovery is not otherwise available, that the issue of this -- the issues of this case are very 10:54:06 serious, and that the Government's role in the case is huge. Further, that limited discovery will not have the potential of chilling legitimate legislative actions in the future. Since this Court only has until April 4th to decide this matter, the Court will grant expedited 10:54:25 discovery, however short time period that may be. All

persons asked to provide discovery are to give this his or her highest priority, and to set aside other matters. The Court will permit discovery of legislative respondents as to whether or not the map drawing process was directed and controlled by one political party or the legislative leaders of one political party. This would include whether the Respondents without Republican input directed and/or controlled the map drawing process. The Court will also permit discovery of the legislative Respondents as to any public remarks or statements made by them, any public testimony he or she gave about the redistricting process and/or maps, and any inquiries from and responses to the public or media about the redistricting process and/or maps. This would include public comments made by the Respondents about the Independent Redistricting Commission, and the IRC's action or lack of action. This would include any communication between the Respondent's and third parties about advancing a partisan agenda or any efforts to undermine the constitutional process of having the IRC produce a viable map and/or viable second map. This would also include all documents and communications concerning the work of the Commissioners of the Democratic caucus of the IRC, which documents and communications were received from third parties. Any

discovery from non-legislative persons is not so restricted. The Governor and Lieutenant Governor are not to be considered as non-legislative members. Discovery is to be completed by March 12th, and I know that's tight. I'll be posting an order to this fact and uploading it to NYSEF. Does anyone else wish to be heard on the argument of lack of standing? I know it's been touched upon. Does anybody else need to respond to that?

MR. HECKER: I would like to, Your Honor.

THE COURT: On behalf of the Senate Majority Leader?

MR. HECKER: Hello, again Your Honor, Eric Hecker; Cuti, Hecker and Wang for the Senate Majority.

Just very briefly, the case that they rely upon, the Humane Society case from the third department is a case in which the Court denied standing for every Petitioner but one. And the only Petitioner who was allowed to proceed in that case was allowed to proceed precisely because she lived next door to the foie gras farm at issue that she alleged was contaminating her water. Here they put no evidence in when they filed their petition, none. They put belatedly some evidence of where Petitioners live in reply which appellate courts have held you can't do in a special proceeding, period. It can't be cured in reply. But more to the point, there

is still no evidence in the record at all that anybody in this case lives in Long Island, and this is exactly the kind of generalized non-specific claim made by Petitioners with no injury in fact, who are not within the zone of interest. We are in District 23.

THE COURT: Is an adjoining district that might be affected by another district, is that in the zone of interest?

MR. HECKER: Perhaps. There are many many districts between District 23 and Districts 1, 2 and 3 on Long Island. There's nobody within striking distance of standing. So they have a technical problem that they created by failing to put in any evidence with their petition to establish standing, which my friend Mr. Tseytlin successfully argued before the Supreme Court, it's fatal, and the end of the story, and you can't cure it in reply in the State of New York, but even if you could, this court has no basis to be judging any district based claims in Long Island when nobody in this case lives within striking distance of Long Island. Nobody from one, nobody from two, nobody from three, nobody from four, nobody from five, nobody from six, nobody close to Districts 1 and 2. Just wanted to make that point, Your Honor.

MR. TSEYTLIN: May I be heard on standing?

THE COURT: Pardon me?

MR. TSEYTLIN: May I be heard on standing?

THE COURT: Go ahead, Mr. Tseytlin.

MR. TSEYTLIN: A couple of things standing, Your Honor. First of all, with regard to our procedural claim that would knock out the entire map, there's no way to divorce that knockout from any particular district. So with regard to at least a procedural claim there's not even a colorable standing argument. Any person can raise that, that would knock out that.

With regard to their reference to the Gill versus Whitford case of the US Supreme Court, I did in fact argue they should not be allowed to cure by having additional plaintiffs, the argument was rejected by the US Supreme Court. The Us Supreme Court sent the case back down to the lower court to allow them to add more plaintiffs, that was way later then what happened here, which is -- we correctly submitted under the constitutional language that any citizen can challenge the map, that's the constitutional language. It was not addressed in the Bay Ridge decision, which was a trial court decision in any event, and it was not addressed. So any citizen language we relied on that to the extent they raised some objections. We then put in sworn affidavits from citizens throughout the state who are

Petitioners, all of the districts are interlinked. If Your Honor strikes down the districts that the Petitioners are in on substantive grounds, the other districts will need be to be changed in creating the remedial map, a partisan interest cannot be advanced as it was in Long Island.

Finally with regard to standing, again, I will reiterate that for our procedural claim, there is no colorable argument, and on the others we have citizens all over the state who have submitted competent evidence timely before the return date, which is all the rules require. Thank you.

THE COURT: Thank you. Is there anyone else who wishes to be heard on that?

MS. MCKAY: Your Honor, may we seek clarification with respect to the discovery ruling, as applied to the Governor and Lieutenant Governor, please?

THE COURT: They're considered part of the legislative, so they have the privilege to the extent that I said.

MS. MCKAY: Okay, and with respect to Your Honor's rulings as to legislative Respondents need to provide discovery, are you including the Governor and Lieutenant Governor in --

THE COURT: Yes.

MS. MCKAY: Thank you for the clarification.

THE COURT: Mr. Bucki, I saw you start to get up. Is there anything you wanted to address on the standing issue?

11:02:23 MR. BUCKI: I already had the opportunity to talk quite a bit about standing, I just want to second what Mr. Hecker says which is that vast swaths of territory within the State of New York are not represented by any Petitioner, and he mentioned Long 11:02:38 Island as a really good example. So even if it could be argued and countenanced, which I don't think it can be, that somehow as long as you live in the district next door that you have standing to challenge the way the district next door is created, well in a lot of cases 11:02:57 there is nobody in the district, and there's nobody next door. And so as a consequence this really is in the -- more in the nature of a generalized political grievance rather than a situation where the individuals at issue would have standing to challenge the entirety of the map 11:03:16 as they claim to do. And with respect to that -- any citizen language the Bay Ridge Community Council case that talked about it in detail about the standing of the person in Long Island -- I should say the lack of standing of that person with respect to challenging the 11:03:29 way a district map looks in Queens, that was later

affirmed in a detailed decision from the Appellate Division and then later affirmed on the basis of the Appellate Division opinion at the Court of Appeals. So we would submit that this is more than just a
11:03:45 miscellaneous case, this is a case that went all the way up to the Court of Appeals, and the Court of Appeals would agree with the Federal courts from Gill versus Whitford and Hays versus United States that in order to have standing to challenge your district lines, you need
11:03:57 to live in the district, and the vast majority of the Petitioners simply do not.

THE COURT: But the Petitioners are challenging the map in general, they want everything thrown out. Doesn't any citizen have the right to standing to bring
11:04:12 the petition?

MR. BUCKI: We would submit that if you have a challenge to your particular district you need to live in the district, and that is the position of the Speaker, and I think that's the position of the Senate Majority
11:04:24 Leader as well. And then, second of all, the other reason I was about to rise is I just have a question with respect to the discovery in terms of how things are going to go. I would anticipate once the order is entered that there is going to be a notice of appeal filed certainly
11:04:38 on behalf of the Speaker, I would anticipate on behalf of

the Senate Majority Leader. We would submit -- and I'd like to put it on the record now that simply the filing of that notice of appeal stays the discovery order and that's the position that we take. And I leave it to the
11:04:52 Petitioners to determine how it is that they're going to respond to that opportunity, so CPLR 5519. But further I would have a procedural question as to when we can expect the transcript to be ready so that that could be included in any record on appeal that could be provided to the
11:05:11 Fourth Department.

THE COURT: I'll ask for it to be done ASAP.

MR. BUCKI: Very well, Your Honor.

THE COURT: Thank you, Mr. Bucki.

Have I listened to everyone on the standing
11:05:22 issue?

MR. HECKER: Yes, Your Honor.

THE COURT: The motion to dismiss for lack of standing is denied, the amended Constitution gives every citizen the right to commence this action and allege that
11:05:39 the maps were drawn with a gerrymandering intent. The case law that predates the 2014 constitutional amendment, which required a Petitioner to be a resident of a particularly aggrieved district is no longer a guide to determining standing because of the additional revision.
11:05:59 Petitioners have provided additional affidavits to verify

that in fact these Petitioners encompass a number of districts, and of course any district that abuts their district would also be impacted by any change the Court may make in the dimensions of the district. That's my ruling on that.

11:06:16

That brings us now to just the petition, the original petition itself. Honestly, I don't know if I need to hear argument on that today, and I'll tell you why. The Petitioners requested that I stay the election or the current petition gathering process until this matter can be decided. The Court understands that the Petitioners' experts claim the currently enacted maps are the most egregious display of gerrymandering of any of the 5,000 or 10,000 maps that were drawn allegedly in a non-partisan way. It's a serious allegation. However, the Respondents' experts paint an entirely different picture. I've decided that a hearing will be necessary to be conducted to determine where the truth lies between the Petitioners' experts and the Respondents' experts. Until I have heard this testimony I'm not in a position to know whether or not to strike down these maps or uphold these maps. I'm not inclined at this point in time to void the maps simply because the IRC failed to submit a second map. I do not intend at this time to suspend the election process for the following reasons;

11:06:41

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11:07:53

Petitioners have an extremely high level of proof to be able to prove that the Respondents acted in an unconstitutional way in creating the Congressional and Senate maps. That proof is beyond a reasonable doubt with the Respondents enjoying a presumption of constitutionality. Two; even if I find the maps violated the Constitution and must be redrawn, 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. I believe 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. I'm not ruling on the Petitioners' procedural argument today. I believe I'm not going to make any rulings on anything until the discovery is done. And I know it's a very short time period for discovery, but we're all under the gun. As I said before, the answer to the amended petition is going to be due by March 10th. Expert testimony is to start on March 14th, and whatever other testimony you wish to present. I'm unavailable March 21st through the 28th and my decision is due by April 4th. Naturally I reserve the right to make a

decision on what I have before me at the time. I think everybody here would love to have a lot more time to pursue this and go through extensive discovery and trial, but we're faced with the fact that we're under a deadline. Any future court hearings here will be also simulcast using the same link and the same password just so everyone knows, so we don't get a multitude of calls about whether there's still the same link or a different link. Is there anything else that needs to be discussed today?

MR. BUCKI: Your Honor, if I may just clarify? So then is it true what I'm hearing that testimony from experts is scheduled to commence here on Monday, March 14th?

THE COURT: Yes, at 9:30.

MR. BUCKI: 9:30 a.m.?

THE COURT: And in my mind I'm not telling you how to present your case, but I'd like to hear your main experts. That's important to me. You call it the way you see it, and I don't know if discovery will yield anything or not. We really don't know.

MR. BUCKI: So to clarify further, Your Honor, not withstanding what may happen on appeal with respect to the discovery order, the testimony from experts will regardless commence on March 14th no matter what?

THE COURT: Yes.

MR. BUCKI: Thank you.

THE COURT: Mr. Bucki raised a very good point when he was standing at the podium that, you know and I envision that one side or the other would appeal and they're saying they're going to appeal my decision on the discovery issue which may put a stay on everything here. So I mean I'll leave it to the parties to discuss how you want to deal with that. All I can tell you is my decision is by law due by April 4th, and that's where we are. I'll upload a decision on the discovery issue today, and I'll see everyone on the 14th. Thank you.

Certified to be a true and accurate transcript.

Laura Bliss Power

EXHIBIT 3

Subject: Decision on Petitioners' Order to Show Cause

Date: Wednesday, March 9, 2022 at 10:49:48 AM Eastern Standard Time

From: Hon. Stephen K. Lindley

To: Alice Reiter, Dutton, Sean T.H., Craig R. Bucki, Adam M. Oshrin

CC: Tseytlin, Misha, George H. Winner Jr., LeRoy, Kevin M., Harris-Finkel, Sarah, Moskowitz, Bennet J., Lewis, Richard C., McKay, Heather, O'Brien, Ted, Halliyadde, Muditha, ereich@graubard.com, jlessem@graubard.com, dchill@graubard.com, Eric Hecker, Daniel Mullkoff, John Cuti, Alex Goldenberg

Attachments: image001.gif, image002.gif

Counselors, having reviewed the papers submitted in support and in opposition to petitioners' order to show cause, and having considered the arguments advanced by counsel during our telephone conference yesterday, I am declining to sign the order to show cause, which seeks to vacate a purported automatic stay under CPLR § 5519 (a) (1) triggered by the appeals of respondents Heastie and Stewart-Counsin from Justice McAllister's discovery ruling. I am declining to sign the order to show cause because a motion to vacate the "supposed automatic stay" is "unnecessary" (*Fassl v New York State Dept. of Taxation and Finance*, 159 AD3d 1029 [4th Dept 1990]; *Shorten v City of White Plains*, 216 AD2d 344 [2d Dept 1995]). A motion to vacate is unnecessary because there is no automatic stay in effect. The automatic stay provision of CPLR 5519 (a) applies to "proceedings to enforce the judgment or order appealed from," and, here, respondents have not appealed from a judgment or order. Instead, they appealed from Justice McAllister's decision dated March 3, 2022, and it is well settled that "[n]o appeal lies from a mere decision" (*Kuhn v Kuhn*, 129 AD2d 967 [4th Dept 1987]). The document in question is labeled "decision," does not contain any ordering paragraphs, and, in contravention of CPLR 2219, does not "recite the papers used on the motion" (CPLR 2219 [a]). This paper, as well as its docket entry and characterization by the parties, is substantively identical as that in *Garcia v Town of Tonawanda*, where we held that that no appeal lied from what was, in that case, deemed a mere decision (194 AD3d 1479, 1479-1480 [4th Dept 2021] [although entered as a "decision and order," paper was "on its face" a "mere decision from which no appeal lies"]). Because there is no valid appeal, my colleagues and I on the Appellate Division lack jurisdiction to take action.

In any event, even if we were to treat the decision as if it were an order, respondents' appeal therefrom does not give rise to an automatic stay because the court merely granted petitioners leave to pursue discovery; it did not compel discovery or direct any of the respondents to do anything, such as sit for depositions or turn over emails or disclose other communications regarding redistricting. CPLR § 5519 (a) does not stay all proceedings; as noted, it stays only "proceedings to enforce the judgment or order appealed from" (CPLR § 5519 [a]; *see Young v State of New York*, 213 AD2d 1084, 1084 [4th Dept 1995] ["The stay under CPLR 5519 (a) (1) stays only proceedings to enforce the order on appeal, not all proceedings"]; *see Baker v Board of Educ. of West Irondequoit School Dist.*, 152 AD2d 1014, 1014 [4th Dept 1989] [same]). What constitutes a "proceeding to enforce" is strictly construed. For example, although a trial is "a natural consequence" of an order denying summary judgment, a trial is not a

proceeding to enforce that order, and thus is not stayed by an appeal from that order (*Schwartz v New York City Hous. Auth.*, 219 AD2d 47, 48 [2d Dept 1996]; *see White v City of Jamestown*, 242 AD2d 979, 980 [4th Dept 1997]). Stated another way, the automatic stay applies to "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 AD3d 464, 465 [1st Dept 2019]; *see* 4 NY Jur 2d Appellate Review § 428 ["The inclusion in an order of affirmative directives on matters addressed in the Civil Practice Laws and Rules (CPLR) does not trigger the automatic stay as to obligations provided for in the CPLR pending appeal of that order"]).

Here, again, the court's decision does not itself compel respondents to disclose any specific thing (*cf. Craigie v Consolidated Edison, Co.*, 127 AD2d 556 [2d Dept 1987] [applying stay to appeal from order granting motion to compel]). Instead, the court merely granted leave for petitioners to seek disclosure, which now places the parties within the framework of CPLR article 31, allowing petitioners to seek disclosure in those areas for which the court granted leave and, upon such a request, would allow respondent to raise any objections. Because the court's decision merely granted leave to petitioners to seek disclosure, and required respondents to respond to those demands, as provided for in the CPLR, the decision does not "command a person to do an act beyond what is required under the CPLR," and the stay provided by CPLR § 5519 (a) (1) does not apply to "directives on matters addressed in the [CPLR]" (4 NY Jur 2d Appellate Review § 428; *see Tax Equity Now*, 173 AD3d at 465).

Accordingly, I conclude that § 5519 (a) (1) does not prevent petitioners from serving specific discovery demands on respondents. Of course, if respondents object to those demands, petitioners may file a motion to compel, and the trial court will then be called upon to resolve the discovery dispute. If the court rules against respondents on a particular discovery request and issues an order to that effect, respondents' appeal from such order would trigger an automatic stay.

If counsel for petitioners wishes to prepare an order for me to sign wherein I formally decline to sign their order to show cause, please submit electronically with notice to opposing counsel.

To: Dutton, Sean T.H. <Sean.Dutton@troutman.com>; Hon. Stephen K. Lindley <slindley@nycourts.gov>; Craig R. Bucki <CBucki@phillipslytle.com>; Adam M. Oshrin <aoshrin@nycourts.gov>
Cc: Tseytlin, Misha <Misha.Tseytlin@troutman.com>; George H. Winner Jr. <gwinner@kmw-law.com>; LeRoy, Kevin M. <Kevin.LeRoy@troutman.com>; Harris-Finkel, Sarah <Sarah.Harris-Finkel@troutman.com>; Moskowitz, Bennet J. <Bennet.Moskowitz@troutman.com>; Lewis, Richard C. <rlewis@hhk.com>; McKay, Heather <heather.mckay@ag.ny.gov>; O'Brien, Ted <Ted.O'Brien@ag.ny.gov>; Halliyadde, Muditha <Muditha.Halliyadde@ag.ny.gov>; ereich@graubard.com; jlessem@graubard.com; dchill@graubard.com; Eric Hecker <ehecker@chwllp.com>; Daniel Mullkoff <dmullkoff@chwllp.com>; John Cuti <jcuti@chwllp.com>; Alex Goldenberg <agoldenberg@chwllp.com>
Subject: Re: Assembly Speaker's Papers Opposing Proposed Order to Show Cause in Matter of Harkenrider v. Hochul., Index No. E2022-0116CV (Sup. Ct. Steuben County)

Justice Lindley:

Attached please find the Sur-Reply Affirmation of John R. Cuti, counsel for the Senate Majority Leader, in further opposition to Petitioners' emergency application.

Respectfully submitted,

Alice Reiter
Cuti Hecker Wang LLP

From: "Dutton, Sean T.H." <Sean.Dutton@troutman.com>
Date: Tuesday, March 8, 2022 at 12:32 PM
To: "Hon. Stephen K. Lindley" <slindley@nycourts.gov>, "Craig R. Bucki" <CBucki@phillipslytle.com>, "Adam M. Oshrin" <aoshrin@nycourts.gov>
Cc: "Tseytlin, Misha" <Misha.Tseytlin@troutman.com>, "George H. Winner Jr." <gwinner@kmw-law.com>, "LeRoy, Kevin M." <Kevin.LeRoy@troutman.com>, "Harris-Finkel, Sarah" <Sarah.Harris-Finkel@troutman.com>, "Moskowitz, Bennet J." <Bennet.Moskowitz@troutman.com>, "Lewis, Richard C." <rlewis@hhk.com>, "McKay, Heather" <heather.mckay@ag.ny.gov>, "O'Brien, Ted" <Ted.O'Brien@ag.ny.gov>, "Halliyadde, Muditha" <Muditha.Halliyadde@ag.ny.gov>, "ereich@graubard.com" <ereich@graubard.com>, "jlessem@graubard.com" <jlessem@graubard.com>, "dchill@graubard.com" <dchill@graubard.com>, Eric Hecker <ehecker@chwllp.com>, Daniel Mullkoff <dmullkoff@chwllp.com>, John Cuti <jcuti@chwllp.com>, Alex Goldenberg <agoldenberg@chwllp.com>, Alice Reiter <areiter@chwllp.com>
Subject: RE: Assembly Speaker's Papers Opposing Proposed Order to Show Cause in Matter of Harkenrider v. Hochul., Index No. E2022-0116CV (Sup. Ct. Steuben County)
Resent-From: Proofpoint Essentials <do-not-reply@proofpointessentials.com>
Resent-To: Alice Reiter <areiter@chwllp.com>
Resent-Date: Tuesday, March 8, 2022 at 12:29 PM

Your Honor,

Please see attached Petitioners' Reply Affirmation In Support Of Vacating The Automatic Stay.

Best,
Sean

Sean Dutton
Associate
troutman pepper
Direct: 312.759.1937 | Mobile: 248.227.1105 | Internal: 20-1937
sean.dutton@troutman.com

From: Hon. Stephen K. Lindley <slindley@nycourts.gov>
Sent: Tuesday, March 8, 2022 1:39 AM
To: Craig R. Bucki <CBucki@phillipslytle.com>; Adam M. Oshrin <aoshrin@nycourts.gov>
Cc: Tseytlin, Misha <Misha.Tseytlin@troutman.com>; George H. Winner Jr. <gwinner@kmw-law.com>; LeRoy,

Kevin M. <Kevin.LeRoy@troutman.com>; Harris-Finkel, Sarah <Sarah.Harris-Finkel@troutman.com>; Moskowitz, Bennet J. <Bennet.Moskowitz@troutman.com>; Dutton, Sean T.H. <Sean.Dutton@troutman.com>; Lewis, Richard C. <rlewis@hhk.com>; McKay, Heather <heather.mckay@ag.ny.gov>; O'Brien, Ted <Ted.O'Brien@ag.ny.gov>; Halliyadde, Muditha <Muditha.Halliyadde@ag.ny.gov>; ereich@graubard.com; jlessem@graubard.com; dchill@graubard.com; Eric Hecker <ehecker@chwllp.com>; Daniel Mullkoff <dmullkoff@chwllp.com>; John Cuti <jcuti@chwllp.com>; Alex Goldenberg <agoldenberg@chwllp.com>; 'Alice Reiter' <areiter@chwllp.com>
Subject: Re: Assembly Speaker's Papers Opposing Proposed Order to Show Cause in Matter of Harkenrider v. Hochul., Index No. E2022-0116CV (Sup. Ct. Steuben County)

EXTERNAL SENDER

For scheduling purposes, following oral argument on the order to show cause this morning at 9:30 via telephone conference, petitioners may email reply papers to me by noon today, with any sur reply papers due by 3:00 p.m. I will render a decision on the order to show cause by the end of the day.

Get Outlook for iOS

From: Craig R. Bucki <CBucki@phillipslytle.com>
Sent: Tuesday, March 8, 2022 2:14:13 AM
To: Hon. Stephen K. Lindley <slindley@nycourts.gov>; Adam M. Oshrin <aoshrin@nycourts.gov>
Cc: Tseytlin, Misha <Misha.Tseytlin@troutman.com>; George H. Winner Jr. <gwinner@kmw-law.com>; LeRoy, Kevin M. <Kevin.LeRoy@troutman.com>; Harris-Finkel, Sarah <Sarah.Harris-Finkel@troutman.com>; Moskowitz, Bennet J. <Bennet.Moskowitz@troutman.com>; Dutton, Sean T.H. <Sean.Dutton@troutman.com>; Lewis, Richard C. <rlewis@hhk.com>; McKay, Heather <heather.mckay@ag.ny.gov>; O'Brien, Ted <Ted.O'Brien@ag.ny.gov>; Halliyadde, Muditha <Muditha.Halliyadde@ag.ny.gov>; ereich@graubard.com <ereich@graubard.com>; jlessem@graubard.com <jlessem@graubard.com>; dchill@graubard.com <dchill@graubard.com>; Eric Hecker <ehecker@chwllp.com>; Daniel Mullkoff <dmullkoff@chwllp.com>; John Cuti <jcuti@chwllp.com>; Alex Goldenberg <agoldenberg@chwllp.com>; 'Alice Reiter' <areiter@chwllp.com>
Subject: Assembly Speaker's Papers Opposing Proposed Order to Show Cause in Matter of Harkenrider v. Hochul., Index No. E2022-0116CV (Sup. Ct. Steuben County)

Dear Justice Lindley and Mr. Oshrin:

With the Graubard Miller firm, we are co-counsel to Assembly Speaker Carl Heastie in *Matter of Harkenrider v. Hochul*, in which Petitioners-Respondents provided the Appellate Division, Fourth Department, on March 7, 2022, with a proposed Order to Show Cause in support of a motion to vacate the automatic stay of discovery available to the Speaker under CPLR 5519(a)(1).

Attached are the Speaker's papers in opposition to the Order to Show Cause and Petitioners-Respondents' application to vacate that stay. They consist of the Affirmation of Steven B. Salcedo, Esq., dated March 8,

2022, with Exhibit A; and the Speaker's Memorandum of Law also dated March 8, 2022. We plan to participate in the scheduled 9:30 a.m. conference call with the Court to discuss Petitioners-Respondents' application.

Respectfully,
Craig R. Bucki
Phillips Lytle LLP
One Canalside
125 Main Street
Buffalo, New York 14203
Telephone No.: (716) 847-5495

Craig R. Bucki
Partner

Phillips Lytle LLP

One Canalside
125 Main Street
Buffalo, NY 14203-2887
Phone 716 847 5495
Fax 716 852 6100
CBucki@phillipslytle.com
www.phillipslytle.com
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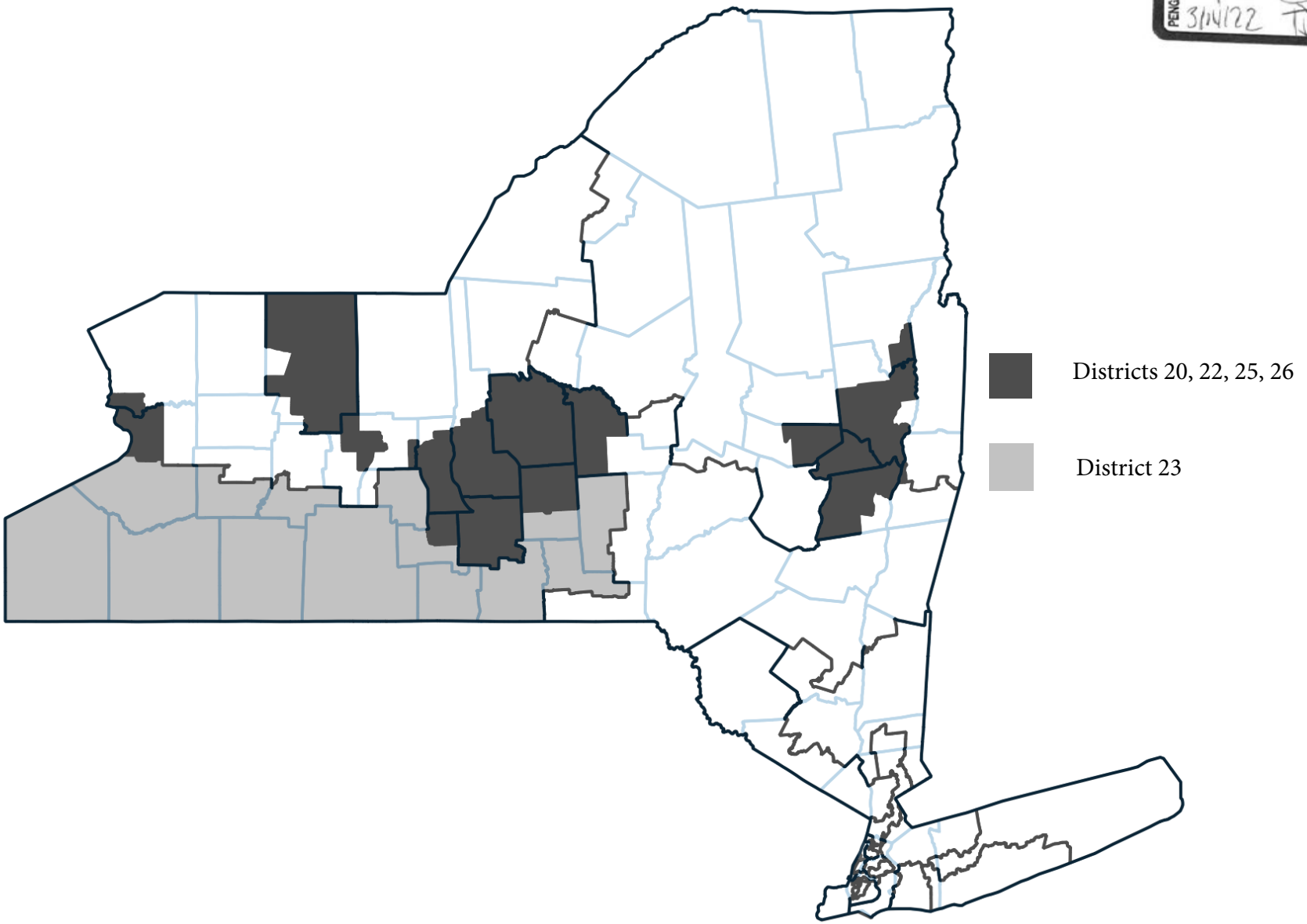
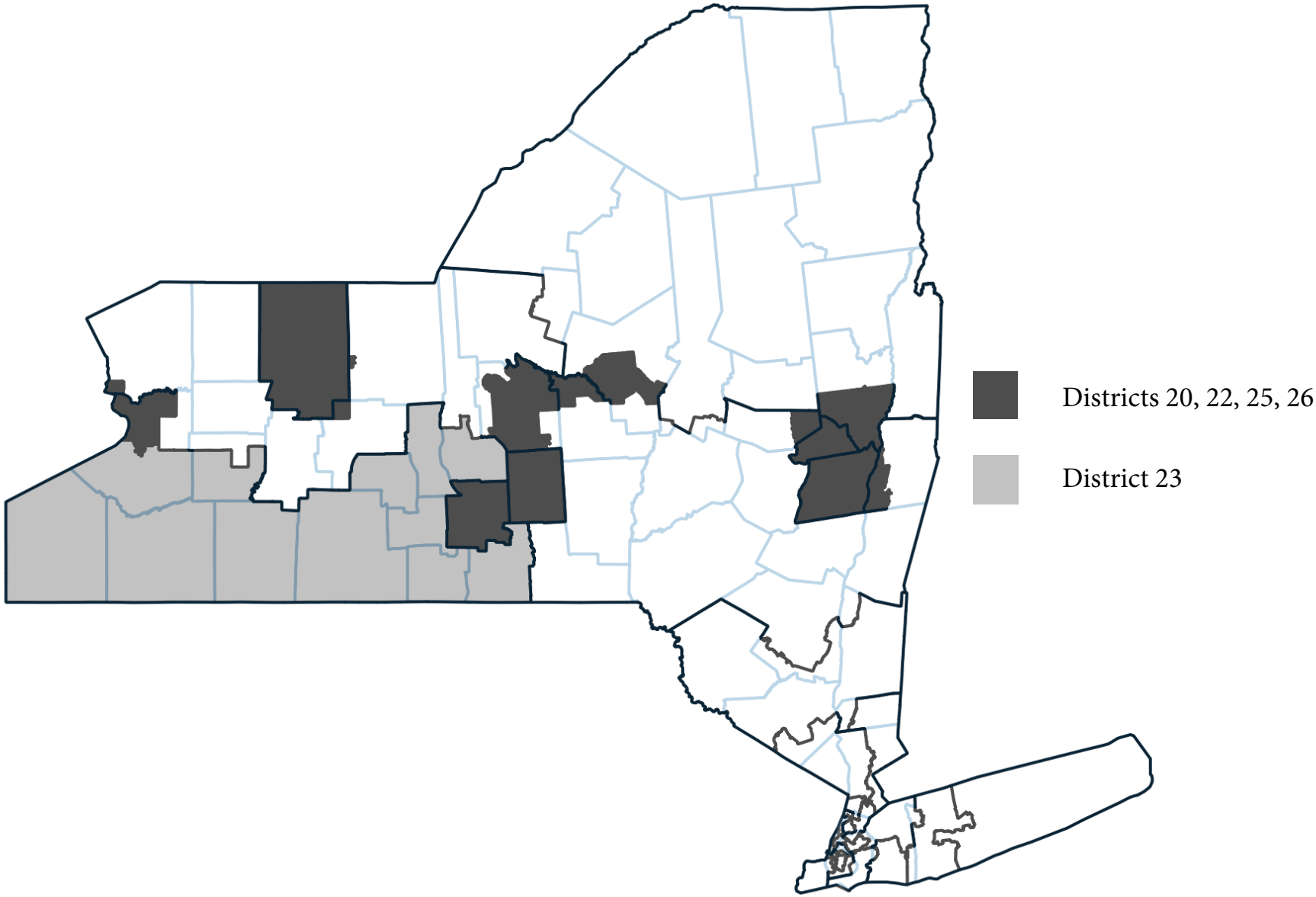
Think before you print and save a tree.

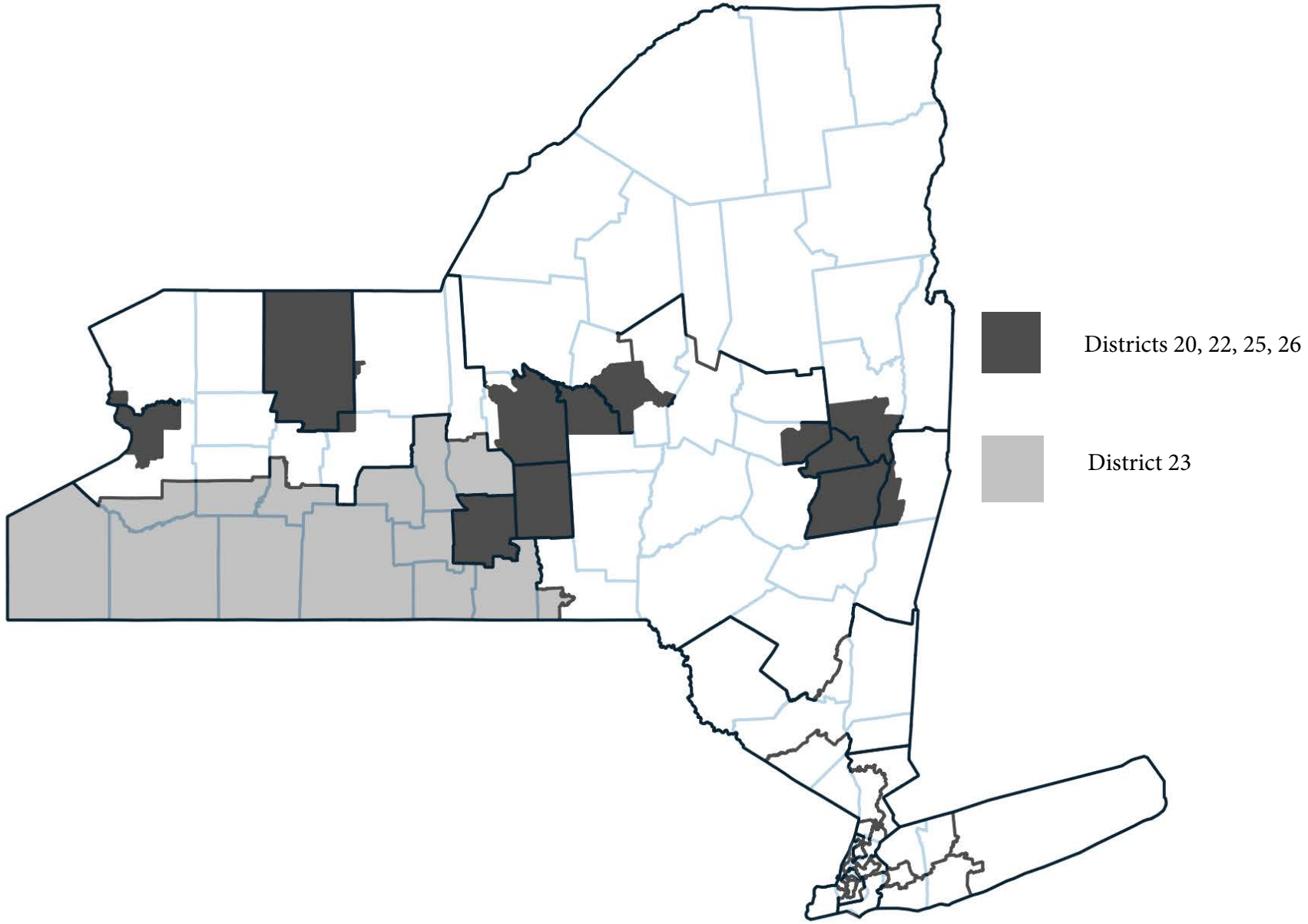
EXHIBIT 4



Enacted 2022 Congressional Plan



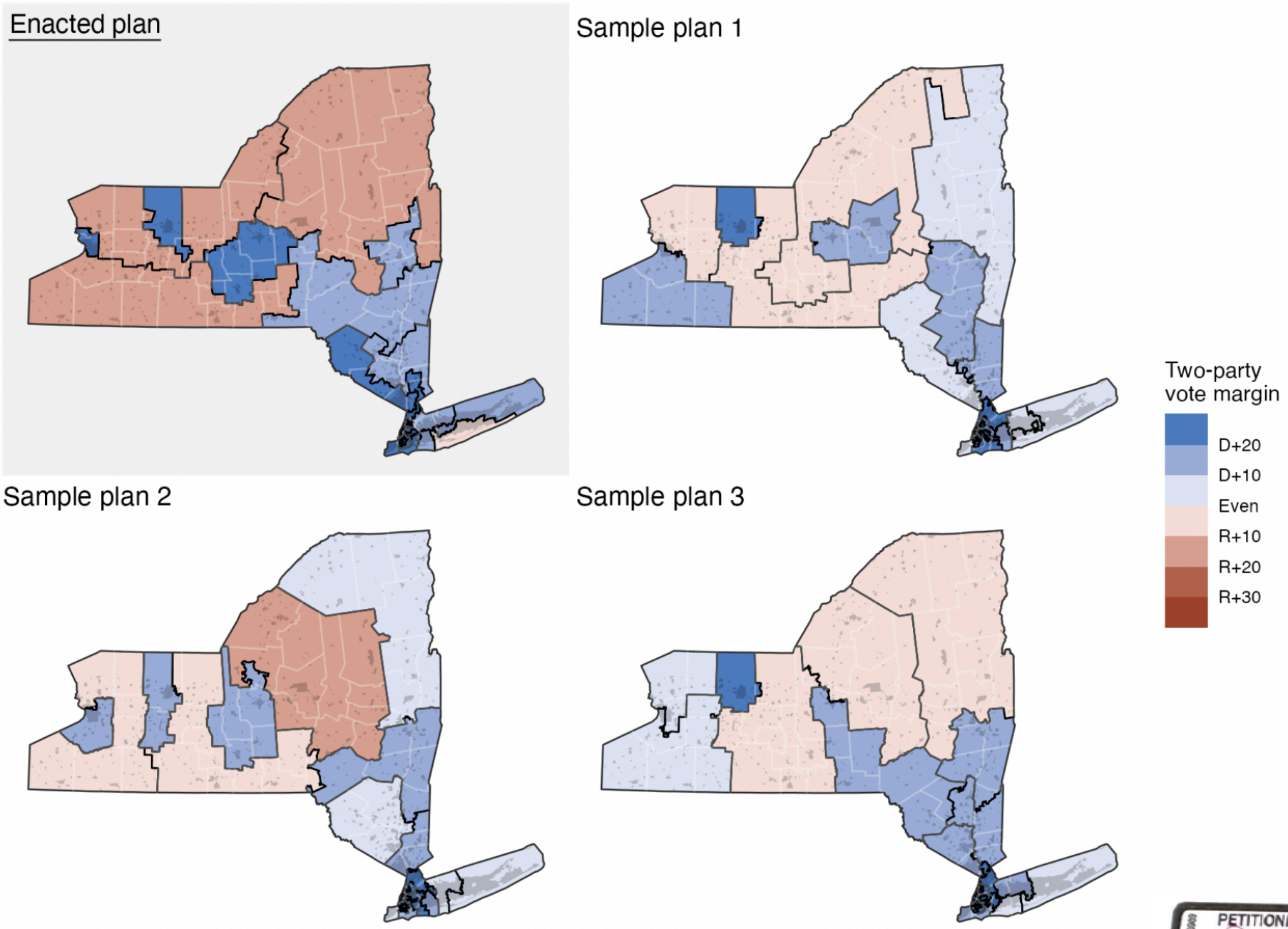
2022 "Plan A" (Democratic Commissioners)



2022 "Plan B" (Republican Commissioners)

EXHIBIT 5

ALARM Project: Comparison of Enacted 2022 Congressional Plan to Simulated Sample Plans



available at: https://alarm-redist.github.io/fifty-states/NY_cd_2020/

EXHIBIT 6

STATE OF NEW YORK
SUPREME COURT : COUNTY OF STEUBEN

Index No. E2022-0116CV

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

Petitioners,

-against-

DECISION and ORDER

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

Respondents.

PRESENT: Hon. Patrick F. McAllister
Acting Supreme Court Justice

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

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

Background:

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

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

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

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

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

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

Standing:

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

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

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

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

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

The 2014 Constitutional Amendment:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The Failed 2021 Constitutional Amendment and Subsequent 2021 Legislation:

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

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

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

Analysis:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

is further

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

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

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

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

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

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

Dated: March 31, 2022

Hon. Patrick F. McAllister
Acting Supreme Court Justice

ENTER

EXHIBIT 7

Troutman Pepper Hamilton Sanders LLP
875 Third Avenue
New York, New York 10022

troutman.com

Bennet J. Moskowitz
bennet.moskowitz@troutman.com

April 1, 2022

VIA EMAIL

Brian Lee Quail, Esq.
Counsel for the New York State Board Of Elections
40 N. Pearl Street, Suit 5
Albany, NY 12207
(518) 474-2063
brian.quail@elections.ny.gov

Re: *Harkenrider, et al. v. Hochul, et al.*, Index No. E2022-0116CV (Sup. Ct. Steuben Cnty.)

Dear Mr. Quail:

Earlier today, your client—the New York State Board Of Elections—erroneously tweeted that the Supreme Court's "March 31, 2022 order . . . which declared the 2022 Congressional, Senate and Assembly lines unconstitutional has been STAYED pending appeal." N.Y. State Bd. of Elections (@NYSBOE), Twitter (Apr. 1, 2022, 10:25 AM).* Your client's erroneous tweets enjoyed wide circulation, causing many members of the public to conclude incorrectly that this Decision And Order has been stayed. In fact, *no portion of the Court's March 31, 2022 Decision And Order has been stayed pending appeal*. The conclusion that the Court's March 31, 2022, Decision And Order is not automatically stayed pending appeal, per CPLR § 5519(a), follows from CPLR § 5519(a)'s statutory text and unambiguous case law. Accordingly, we hereby demand that your client post a corrective tweet immediately.

A. CPLR § 5519(a)(1) is a narrow automatic-stay provision, applicable *only* to proceedings to enforce orders that mandate that the State take a specific action. Specifically, CPLR § 5519(a)(1) provides "a notice of appeal or an affidavit of intention to move for permission to appeal stays all proceedings to enforce the judgment or order appealed from pending the appeal or determination on the motion for permission to appeal" in cases where "the appellant or moving party is 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." CPLR § 5519(a)(1). Since, by its plain text, CPLR § 5519 applies only to "proceedings to *enforce* the judgment or order" against the State, *id.* (emphasis added), its automatic-stay provision necessarily extends only to court orders that *mandate* the

* Available at https://twitter.com/nysboe/status/1509899743396311059 (all websites last visited Apr. 1, 2022).

State to perform some action, rather than court orders that simply *prohibit* the State from taking some action or that *declare* legal conclusions.

Case law interpreting CPLR § 5519 is in accord with this understanding, holding that CPLR § 5519's automatic-stay provision does not apply to court orders that *prohibit* the State from taking some action or declaring legal conclusions. As Siegel's New York Practice explains, New York courts have held—consistent with the statutory text—"that when the appealed decision directs the [State] not to do something . . . the automatic stay is not operative to allow the [State] to do the prohibited thing during the pendency of the appeal." Injunctions and Stays, Siegel, N.Y. Prac. § 535 (6th ed.). For example, *State v. Town of Haverstraw*, 219 A.D.2d 64 (2d Dep't 1996), held that "no automatic stay is available" under CPLR § 5519(a)(1) for an order that "prohibits certain conduct" of the State, since such "[p]rohibitory injunctions" that "*prohibit* future acts" are "self-executing and need no enforcement procedure to compel inaction on the part of the [State]." *Id*. at 65 (emphasis in original). And *Pokoik v. Department of Health Services County of Suffolk*, 220 A.D.2d 13 (2d Dep't 1996), held that CPLR § 5519(a)(1) "is restricted to the executory directions of the judgment or order appealed from which *command a person to do an act*," thus, "the stay does not extend to matters which are not commanded but which are the sequelae of granting or denying relief"—including "the declaratory provisions of a judgment." *Id*. at 15 (emphasis added); *see also Spillman v. City of Rochester,* 132 A.D.2d 1008, 1009 (4th Dep't 1987); David M. Cherubin & Peter A. Lauricella, *The "Automatic" Stay of CPLR 5519(a)(1): Can Differences in It Application Be Clarified?*, 71-Nov. N.Y. St. B.J. 24 (Nov. 1999).

Prior proceedings in this very case demonstrate the limited nature of CPLR § 5519(a)(1). After the Supreme Court issued its decision allowing Petitioners to seek expedited discovery in this case, certain Respondents appealed that decision to the Appellate Division, consistent with their contention that their filing a Notice Of Appeal would automatically stay the Supreme Court's discovery decision. Petitioners then moved the Appellate Division to vacate any automatic stay of the Supreme Court's discovery decision under CPLR § 5519(a)(1). Justice Lindley declined Petitioners' motion in part on the grounds that a "motion to vacate the supposed automatic stay is unnecessary . . . *because there is no automatic stay in effect*." NYSCEF No.134, Ex.A at 1. (citations omitted; emphasis added). As Justice Lindley explained, "CPLR § 5519(a) does not stay all proceedings," but rather "only 'proceedings to enforce the judgment or order appealed from.'" *Id.* (quoting CPLR § 5519(a)). Further, "[w]hat constitutes a 'proceeding to enforce' is strictly construed," *id.*, demonstrating the exceedingly limited scope of CPLR § 5519(a)'s automatic-stay provision. Specifically, and as relevant here, Justice Lindley explained that only proceedings to enforce court orders that contain "executory directions that *command a person to do an act* beyond what is required under the CPLR" fall within CPLR § 5519(a)'s automatic-stay provision. *Id.*, Ex.A at 2 (citations omitted; emphasis added). So, since the discovery decision at issue did "not command a person to do an act beyond what is required under CPLR," Justice Lindley denied Petitioners' motion to vacate any automatic stay as unnecessary. *Id*.

B. In the present case, CPLR § 5519(a)(1) does not apply to the Supreme Court's March 31, 2022 Decision And Order, since that Order does not "command" Respondents "to do an act."

Pokoik, 220 A.D.2d at 15. The Supreme Court issued its March 31, 2022 Decision And Order enjoining the unconstitutional 2022 congressional, state Senate, and state Assembly maps, as variously contravening both the procedural and substantive requirements of Article III, Sections 4 and 5 of the New York Constitution, as well as allowing the Legislature to submit bipartisan maps by April 11, if the Legislature chooses to do so. NYSCEF No.243 at 17–18. In particular, the Decision And Order provides the following relevant decretal language:

> [1.] ORDERED, ADJUDGED, and DECREED that the process used to enact the 2022 redistricting maps was unconstitutional and therefore void *ab initio*; and it is further
>
> [2.] ORDERED, ADJUDGED, and DECREED that with regard to the enacted 2022 Congressional map the Petitioners were able to prove beyond a reasonable doubt that the map was enacted with political bias and thus in violation of the constitutional prohibition against gerrymandering under Article III Sections 4 and 5 of the Constitution; and it is further
>
> [3.] ORDERED, ADJUDGED, and DECREED that the maps enacted by 2021-2022 N.Y. Reg. Sess. Leg. Bills S8196 and A.9039-A (as technically amended by A.9167) be, and are hereby found to be void and not usable; and it is further
>
> [4.] ORDERED, ADJUDGED, and DECREED that the maps enacted by 2021-2022 N.Y. Reg. Sess. Leg. Bills S9040-A and A.9168 be, and are hereby found to be void and not usable; and it is further
>
> [5.] ORDERED, ADJUDGED, and DECREED that congressional, state senate and state assembly maps that were enacted after the 2010 census are no longer valid due to unconstitutional malapportionment and therefore can not be used; and it is further
>
> * * *
>
> [6.] ORDERED, ADJUDGED, and DECREED that in order to grant appropriate relief the court hereby grants to Petitioners a permanent injunction refraining and enjoining the Respondents, their agents, officers, and employees or others from using, applying, administering, enforcing or implementing any of the recently enacted 2022 maps for this or any other election in New York, included but not limited to the 2022 primary and general election for Congress, State Senate and State Assembly; and it is further
>
> [7.] ORDERED, ADJUDGED, and DECREED that the Legislature shall have until April 11, 2022 to submit bipartisanly supported maps to this court for review of the Congressional District Maps, Senate District Maps, and Assembly District Maps that meet Constitutional requirements; and it is further

> [8.] ORDERED, ADJUDGED, and DECREED that in the event the Legislature fails to submit maps that receive sufficient bipartisan support by April 11, 2022 the court will retain a neutral expert at State expense to prepare said maps[.]

Id. None of these provisions of the Supreme Court's Decision And Order "command[ ]" any "affirmative act" of Respondents, *Town of Haverstraw*, 219 A.D.2d at 65; thus CPLR § 5519(a)(1)'s automatic-stay provision does not operate to stay any part of this Order.

Turning first to decretal paragraphs numbered 1–5 above, nothing in this language provides any "executory directions of the judgment or order appealed from which command a person to do an act." *Pokoik*, 220 A.D.2d at 15. These provisions merely declare the 2022 maps unconstitutional and either "void *ab initio*" or "void and not usable," and then declare the post-2010-census maps "no longer valid." NYSCEF No.243 at 17. Such provisions are "self-executing and need no enforcement procedure to compel inaction" based upon the Court's declaration that such maps are unconstitutional and void. *Town of Haverstraw*, 219 A.D.2d at 65. Thus, CPLR § 5519(a)(1) does not operate to automatically stay these provisions.

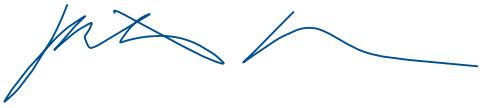
Next, decretal paragraph 6 of the Decision And Order also does not fall within CPLR § 5519(a)(1), as it only grants Petitioners a permanent injunction against the operation of the 2022 maps. Thus, this paragraph is an "order[ ] or judgment[ ] which prohibit[s] future acts," and such "[p]rohibitory injunctions are self-executing and need no enforcement procedure to compel inaction on the part of the person or entity restrained." *Town of Haverstraw*, 219 A.D.2d at 65. Unlike mandatory injunctions that "direct the performance of a future act," prohibitory injunctions like paragraph 6 "operate[ ] to restrain the commission or continuance of an act and to prevent a threatened injury," and "the automatic stay provision of CPLR 5519(a)(1) d[oes] not operate to relieve [Respondents] from the duty to obey the terms of a prohibitory injunction pending appeal therefrom." *Id.* at 65–66; *see also* Siegel, N.Y. Prac. § 535.

Finally, above-numbered paragraphs 7 and 8 similarly do not "command" Respondents to do anything, and therefore CPLR § 5519(a)(1) does not stay their operation. *Pokoik*, 220 A.D.2d at 15. These decretal paragraphs merely provide the Legislature a reasonable period of time to draw new, bipartisan maps, and gives them the option to submit such constitutional maps to the Court, at their own discretion, on or before April 11, 2022, NYSCEF No.243 at 18, and so CPLR § 5519(a)(1) has no effect on Respondents' "voluntary . . . compliance" with this provision of the Decision And Order pending appeal, *Pokoik*, 220 A.D.2d at 15. Thus, paragraph 7 merely notes "[f]uture acts which are not expressly directed by the order or judgment appealed," and "no automatic stay is available" for such "[f]uture acts," even though they "may nevertheless have the effect of changing the status quo and thereby defeating or impairing the efficacy of the order which will determine the appeal." *Id.* at 15–16. Paragraph 8, moreover, orders nothing of Respondents, and merely notes the Supreme Court's follow-up "matters which are not commanded but which are the sequelae of granting or denying relief." *Id.* at 15. By analogy, the Appellate Division has explained that "where an order merely denies a motion for summary judgment or to strike the case from the calendar, an appeal from that order will not stay a trial which is a consequence of

the order but is not directed by it." *Id.* Here, given that nothing in paragraphs 7 and 8 mandates executory directions of Respondents, which paragraphs instead only explain the sequelae of the Court's decision holding the 2022 maps unconstitutional, the automatic stay provision in CPLR § 5519(a)(1) simply does not apply.[†]

Given that your client's widely circulated tweets have misled the public, Petitioners demand that your client issue a corrective tweet immediately, explaining that no portion of Justice McAllister's March 31, 2022 Decision And Order is currently stayed.

Sincerely,



Bennet J. Moskowitz

Misha Tseytlin

cc: All Counsel of Record (via electronic mail)

[†] CPLR § 5519(a)(1)'s automatic stay would only apply, for example, if the Supreme Court had granted Petitioners' request that the Court order Respondents to move the primary election date to a specific date. *See* NYSCEF No.238 at 6–10. Had the Court issued this requested relief, that *particular* provision of the Decision And Order would constitute a specific "command" of Respondents "to do an act," and would fall within CPLR § 5519(a)(1)'s strictures. *Pokoik*, 220 A.D.2d at 15. In that hypothetical circumstance, the filing of a notice of appeal would stay that specific aspect—and only that specific aspect—of the Supreme Court's decision. But the Supreme Court did not grant that type of relief, and so CPLR § 5519(a)(1) does not operate to stay any of the *actual* provisions of the Decision And Order.

EXHIBIT 8

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 VIOLANTE,

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.

Index No.
E2022-0116CV

THOMAS CONNOLLY, being duly sworn, says under penalties of perjury as follows:

1. I serve as Director of Operations for the New York State Board of Elections ("State Board"). I have held this position since 2017. From 2011 to 2017, I was Deputy Director of the Public Information Office at the State Board of Elections. In my previous position I worked with the State Board Counsel's Office

to monitor the transmission of military ballots within the federally mandated time periods and as such am intimately familiar with that transmission system and process. In my current capacity, the Operations Unit of the New York State Board of Elections supports and provides guidance to county boards of elections and the commissioners of each county board of elections pertaining to the administration of elections. Accordingly, I am familiar with state requirements and county board of elections' practices regarding redistricting, election procedures, election district creation, ballot creation, absentee voting, poll sites and poll worker training and assignment. I am fully familiar with the facts and circumstances set forth herein. This affidavit is based on my personal knowledge.

2. I make this affidavit to describe the disruption to the electoral process that would result from altering Congressional or State Senatorial district lines in 2022 for the primary and general election in 2022. The New York State Board of Elections has taken no position in this litigation, so my affidavit is my own and is not made in a representative capacity for the agency.

Ballot Access Is Underway

3. The district boundaries for the offices of Member of United States House of Representatives and New York State Senator ("Legislative Offices") for the primary on June 28, 2022 and general election on November 8, 2022 were

enacted into law on February 3, 2022 as Chapters 13 through 16 of the Laws of 2022.

4. Pursuant to New York's Election Law candidates seeking the nomination of the Democratic, Republican, Conservative and Working Families parties for Legislative Offices obtain access to the primary ballot and ultimately the general election ballot by first filing designating petitions. A valid Congressional designating petition requires 1,250 signatures from enrolled members of the relevant party from the district or the number of signatures that is at least 5% of the enrollees in the district, whichever is less. A State Senate petition requires 1,000 such valid signatures or the signatures of 5% of the party enrollment in the district, whichever is less (Election Law § 6-136).

5. Designating petitioning for statewide offices (Governor, Attorney General, Comptroller) and the Legislative Offices at issue in this proceeding along with many other state and local offices began on March 1, 2022 as provided for in Election Law § 6-134 (4). As of March 1, 2022, parties had endorsed candidates, candidates had printed designating petitions and campaigns had mobilized volunteers and/or paid workers to solicit for signatures.

6. As of Monday March 21, 2022 more than half of the designating petitioning period has elapsed, with only two weeks and two days remaining until the last day to file designating petitions on Thursday April 7, 2022.

7. If the court were to order a halt to the designating process now, it would cause substantial disruption to candidates, political parties and boards of elections. The logistical difficulties would be magnified by the fact that any such order would assuredly be appealed creating a further period of uncertainty.

The Political Calendar

8. As provided by New York law applicable to the June 28, 2022 primary, there are 82 days between the last day to file designating petitions on April 7, 2022 and the date of the June 28, 2022 primary. The latest objections to petitions can be filed is on or about April 11 and specifications and hearings at the state or local boards of elections rapidly to follow. The last day to commence a court challenge to a designating petition is April 21, 2022. The primary election ballot pursuant to Election Law 4-110 *et seq.* must be certified by May 4, 2022, allowing time for boards to then print ballots and begin distribution of absentee ballots. Military and overseas ballots pursuant to law must be sent no later than May 13, 2022. See New York State Political Calendar, https://www.elections.ny.gov/NYSBOE/law/2022PoliticalCalendar.pdf.

9. Under ideal circumstances it is difficult for boards of elections to settle the ballot in time for the certification deadline and the military and overseas ballot transmittal deadlines. If the court ordered new district lines to be applicable this year, assuming boards would need multiple weeks to make adjustments to lines and assuming ballot access processes would need to start over again on the new lines (the petition period is typically 37 days and the post-petition review and litigation process takes about a month beyond that), there is no imaginable scenario where the primary could occur on June 28, 2022 for the Legislative Offices as provided for in current law.

10. No planning has been made for any added or alternative primary date. A new, additional primary would require finding poll sites available on the new date as well as early voting sites that would be available for nine days in the lead up to the election and scheduling thousands of poll workers for the postponed or additional primary. If a new additional primary were ordered, boards of elections would need to prepare simultaneously to provide for new ballot access for a new primary, run the June 28, 2022 primary for the state and local offices not impacted by this proceeding and prepare for the running of an additional primary that may not occur depending on the disposition of this case as well as any appeals.

11. While New York had held a federal primary in June pursuant to a federal court order and a separate state and local primary in September for four

federal election cycles prior to and including 2018, New York did not hold two primaries in the same year with intervening redistricting between the dates of the two primaries being necessary. The federal court order giving rise to the bifurcated primary schedule in New York in 2012 was issued in January 2012 before any ballot access procedures had even begun.

12. In 2012, the congressional, state senate and assembly lines were in place by mid-March. Any remedy in this case involving new lines would not be known until much later and would actually stop ballot access procedures already underway for some offices and not others.

13. The majority of the current voter registration systems used by county boards are simply incapable of maintaining multiple sets of the same district, further complicating any effort to prepare for an additional primary.

14. Under normal circumstances, in the context of a special election for Congress, Public Officer's Law § 42 recognizes that a single congressional special election requires at least seventy days lead time and preferably eighty days from the day of the proclamation of the election to have a primary that complies with federal law requirements related to transmission of overseas and military ballot. This timeframe is for a special election reflects only one contest on the ballot and party ballot access is not by petition (a document with hundreds of signatures

subject to objection) but instead by a streamlined party committee nomination (essentially a single document wherein the party notifies the board of elections as to the identity of the candidate), ***and*** in the special election context the district lines are already established. In contrast a multi-office primary with ballot access by petitions subject to challenge is far more complicated, and alteration of district office lines and election district lines would take additional time (likely weeks) before the actual ballot access process for a new primary could even begin again.

Redistricting Process for Boards of Elections

15. New York is not a top-down state in terms of its voter registration system. Accordingly, each of New York's 58 boards of elections (one board of elections for the City of New York and one for each county outside of the City of New York) is responsible for applying new district lines in their jurisdiction to their voter records and then sending to the statewide voter registration list (NYSVoter) the updated official voter records.

16. When the new lines became effective on February 3, 2022, New York's boards of elections turned their full attention to translating the new district boundaries into their voter registration systems so that New York's 12,982, 819 voters would be assigned to their correct districts. This is necessary to create poll books for elections, allow voters to receive the correct absentee ballots and to

provide data for candidates to create lists of voters from whom to seek petition signatures and to determine the correct number of designating petition signatures required for various offices. This work was largely but not completely done by March 1, 2022.

17. Upon receiving the shapefiles for the new Legislative Office districts, many boards of elections required roughly a month to prepare the local and state registration system for the beginning of petitioning. And in the time since, various latent errors and problems have arisen. Redoing any portion of redistricting introduces the risk of new errors, and the closer to an election event the changes must be made the less likely the problems are to be found and remedied without a disenfranchising impact.

Election Districts

18. For boards of elections, redistricting involves not simply reassigning millions of voter records to the appropriate new political geography, it often involves drawing new election district boundaries before that can occur. Election Districts are drawn by New York's 58 boards of elections.

19. The election district is the foundational unit of political geography that defines a voter's ballot (every general voter in an election district has the same ballot). Each election district is assigned to a poll site, which may have one or

more election districts. There are 15,587 election districts in New York, as of 2021 assigned to 5,354 poll sites managed by New York's 58 boards of elections. Redrawing election districts to reflect redistricting is a significant undertaking.

20. When a larger political subdivision boundary change bisects an existing election district, the election district must be redrawn before voter records can be finally updated. For every bisected election district impacted by redistricting, at least one other adjacent election districts necessarily must also be adjusted or a new additional election district must be designated. This micro-redistricting task of drawing election districts requires considerations of available polling locations, map analysis and consideration of other practicalities related to how voters are impacted.

21. Further, because New York's political parties are comprised of party committees whose representatives are elected from election districts, changes in election districts impact party committees. In many counties petitions are being circulated for member of county committees from election districts. If new Legislative District lines were to be drawn for 2022 some unknown number of election districts will need to be redrawn for the reasons described herein and those election district changes will nullify petitions being circulated for the impacted party positions of member of county committee.

22. Given that so many election related processes depend on the definition of election districts (election district definition defines ballots, defines where a voter votes and defines how party committees are constituted), the normal statutory deadline for altering election district boundaries is one of the earliest deadlines in the unfolding of the political process. Election district changes are required to be made by February 15 of any given year, with certain exceptions. And the last date for local boards to assign poll sites was March 15, 2022. See Election Law § 4-104.

Technical Issues

23. Making changes to the underlying architecture of the voter registration systems of the counties after the election process is underway (as it is now) could impair ballot access and voter registration and absentee ballot assignment functions (absentee voters are applying and being assigned to election districts already). If new lines were ordered at this juncture, it is simply not clear how compliance would be possible without significant risk to the integrity of the electoral process.

Voter and Candidate Confusion

24. Newly registered voters and transferred voters are receiving informational notifications required by law that state their election district and

other district designations and their polling locations. This information will prove false in many instances if a remedy is ordered this year involving altered district lines or a new election.

25. Imminently, as required by Election Law § 4-117, boards of elections will be sending **all** of New York's 11,905,886 active voters an annual informational mailing informing them of their poll site, the primary date and their political geography. A change to district boundaries would create significant voter confusion potentially even requiring these notices to be reissued.

26. At this point hundreds of candidates have engaged in petitioning based on the new lines, created campaign committees and expended funds to seek office based on the new lines.

27. Stopping the ballot access process and restarting it on revised as yet unknown lines and adding an additional primary will cause confusion as well as financial, logistical and administrative burdens on boards of elections.

Dated: March 21, 2022

THOMAS CONNOLLY

Sworn to before me this
21st day of March 2022

Notary Public
BRIAN L. QUAIL, Esq.
Notary Public, State of New York
No. 02QU6071886
Qualified in Schenectady County
Commission Expires 8/15/23

EXHIBIT 9

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 VIOLANTE,

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.

Index No.
E2022-0116CV

THOMAS CONNOLLY, being duly sworn, says under penalties of perjury as follows:

1. I serve as Director of Operations for the New York State Board of Elections ("State Board"). I have held this position since 2017. From 2011 to 2017, I was Deputy Director of the Public Information Office at the State Board of Elections. In my previous position I worked with the State Board Counsel's Office

to monitor the transmission of military ballots within the federally mandated time periods and as such am intimately familiar with that transmission system and process. In my current capacity, the Operations Unit of the New York State Board of Elections supports and provides guidance to county boards of elections and the commissioners of each county board of elections pertaining to the administration of elections. Accordingly, I am familiar with state requirements and county board of elections' practices regarding redistricting, election procedures, election district creation, ballot creation, absentee voting, poll sites and poll worker training and assignment. I am fully familiar with the facts and circumstances set forth herein. This affidavit is based on my personal knowledge.

2. On March 21, 2022 I made an affidavit (Doc# 236) describing the disruption to the electoral process that would result from altering the political calendar for the primary and general election in 2022. I incorporate herein and reaffirm the contents of that affidavit.

3. The New York State Board of Elections has taken no position in this litigation, so my affidavit is my own and is not made in a representative capacity for the agency.

4. On March 31, 2022, Steuben County Supreme Court issued a decision and order that declared the existing state legislative and congressional district lines unconstitutional and affirmatively enjoined the application of those lines for the

purpose of any election in 2022. The Court had previously stated in early March, as the ballot access processes was beginning, that any relief that may flow from the disposition of the case would not apply to the 2022 elections.

5. At the time of the Thursday, March 31, 2022 order, ballot access by petitioning for New York's four political parties was in its final days.

6. Pursuant to New York's Election Law candidates seeking the nomination of the Democratic, Republican, Conservative and Working Families parties for Legislative Offices obtain access to the primary ballot and ultimately the general election ballot by first filing designating petitions. A valid Congressional designating petition requires 1,250 signatures from enrolled members of the relevant party from the district or the number of signatures that is at least 5% of the enrollees in the district, whichever is less. A State Senate petition requires 1,000 such valid signatures or the signatures of 5% of the party enrollment in the district, whichever is less (Election Law § 6-136). A State Assembly petition requires 500 such valid signatures or the signatures of 5% of the party enrollment in the district, whichever is less (Election Law § 6-136).

7. Designating petitioning for statewide offices (Governor, Attorney General, Comptroller) and the Legislative Offices at issue in this proceeding along with many other state and local offices began on March 1, 2022 as provided for in Election Law § 6-134 (4). As of March 1, 2022, parties had endorsed candidates,

candidates had printed designating petitions and campaigns had mobilized volunteers and/or paid workers to solicit for signatures.

8. As of the Thursday March 31, 2022 Decision and Order only a week remained until the last day to file and circulate designating petitions on Thursday April 7, 2022, and only four days remained until the beginning of the filing period on April 4, 2022.

9. Candidates for 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.

10. If the imminent filing of designating petitions pursuant to state statute between Monday April 4 and Thursday April 7 is prevented, the statutory ballot access process will be irreparably thwarted regardless of the final disposition of appeals in this matter.

11. The initial confusion created by the March 31, 2022 Decision and Order has been significant, for all of the reasons stated in my prior affidavit.

12. On April 1, 2022, the New York State Board of Elections issued a notice to filers that the March 31, 2022 Decision and Order as it related to filing petitions is stayed pending appeal and filers must file as required by law. It is important that this not be in any doubt. The nearly completed statutory ballot

access process must come to completion. If not, even if the March 31, 2022 Decision and Order is reversed on appeal the ordinary statutory process for ballot access cannot be restored absent additional prescriptive judicial or legislative intervention altering the political calendar.

Dated: April 2, 2022

THOMAS CONNOLLY

Sworn to before me this
2nd day of April 2022

Notary Public

BRIAN T. QUAIL, Esq.
Notary Public, State of New York
No. QU6071886
Qualified in Schenectady County
My Commission Expires 8/5/23

EXHIBIT 10

2022 POLITICAL CALENDAR

40 NORTH PEARL STREET – SUITE 5,
ALBANY, NEW YORK 12207 (518) 474-6220
For TDD/TTY, call the NYS Relay 711
www.elections.ny.gov

NEW YORK STATE Board of Elections

Primary Election
June 28, 2022

General Election
November 8, 2022

***** Please be aware that since this is a re-districting year this calendar is subject to change by the Legislature and should be used advisedly. ****

FILING REQUIREMENTS: All certificates and petitions of designation or nomination, certificates of acceptance or declination of such designations or nominations, certificates of authorization for such designations or nominations, certificates of disqualification, certificates of substitution for such designations or nominations and objections and specifications of objections to such certificates and petitions required to be filed with the State Board of Elections or a board of elections outside of the city of New York shall be deemed timely filed and accepted for filing if sent by mail or overnight delivery service, in an envelope postmarked or showing receipt by the overnight delivery service prior to midnight of the last day of filing, and received no later than two business days after the last day to file such certificates, petitions, objections or specifications. Failure of the post office or authorized overnight delivery service to deliver any such petition, certificate, or objection to such board of elections outside the city of New York no later than two business days after the last day to file such certificates, petitions, objections, or specifications shall be a fatal defect per NY Election Law §1-106.

All papers required to be filed, unless otherwise provided, shall be filed between the hours of 9 AM – 5 PM. If the last day for filing shall fall on a Saturday, Sunday or legal holiday, the next business day shall become the last day for filing. NYEL §1-106

Within NYC: all such certificates, petitions and specifications of objections required to be filed with the board of elections of the city of New York must be actually received on or before the last day to file. The New York City Board of Elections is open for the receipt of such petitions, certificates and objections until midnight on the last day to file.

PRIMARY ELECTION DATES	
June 28	Primary Election §8-100(1)(a)
June 18 – 26	Days of Early Voting for the Primary Election. §8-600(1)
Feb 1	Certification of offices to be filled at 2022 General Election by SBOE and CBOE. §4-106 (1&2)
Feb 28	PARTY CALLS: Last day for State & County party chairs to file a statement of party positions to be filled at the Primary Election. §2-120(1)

CERTIFICATION OF PRIMARY	
May 4	Certification of primary ballot by SBOE of designations filed in its office. §4-110
May 5	Certification of primary ballot by CBOE of designations filed in its office. §4-114

CANVASS OF PRIMARY RESULTS	
July 11	Canvass of Primary returns by County Board of Elections. §9-200(1)
July 11	Verifiable Audit of Voting Systems. §9-211(1)
July 18	Recanvass of Primary returns. §9-208(1)

GENERAL ELECTION DATES	
Nov 8	General Election. §8-100(1)(c)
Oct 29 – Nov 6	Days of Early Voting for the General Election. §8-600(1)

CERTIFICATION OF GENERAL ELECTION BALLOT	
Sept 14	Certification of general election ballot by SBOE of nominations filed in its office. §4-112(1)
Sept 15	Certification of general election ballot by CBOE of nominations and questions; CBOEs. §4-114

CANVASS OF GENERAL ELECTION RESULTS	
Nov 23	Recanvass of General Election returns to occur no later than Nov. 23. §9-208(1)
Nov 23	Verifiable Audit of Voting Systems to occur no later than Nov. 23. §9-211(1)
Dec 2	Certification and transmission of Canvass of General Election returns by County Board of Elections §9-214(1)
Dec 15	Last day for State Board of Canvassers meet to certify General Election. §9-216(2)

DESIGNATING PETITIONS FOR PRIMARY	
Mar 1	First day for signing designating petitions. §6-134(4)
Apr 4-7	Dates for filing designating petitions. §6-158(1)
Apr 11	Last day to authorize designations. §6-120(3)
Apr 11	Last day to accept or decline designations. §6-158(2)
Apr 15	Last day to fill a vacancy after a declination. §6-158(3)
Apr 19	Last day to file authorization of substitution after declination of a designation. §6-120(3)

PARTY NOMINATION OTHER THAN PRIMARY	
Feb 8 – Mar 1	Dates for holding state committee meeting to nominate candidates for statewide office. §6-104(6)
Mar 1	First day to hold a town caucus. §6-108
July 8	Last day to decline all party nominations after primary loss. § 6-146(6)
July 12	Last day to fill vacancy after declination by primary loser. § 6-158(3)
July 18	Last day to file authorization of substitution after declination by primary loser. § 6-120(3)
July 28	Last day for filing nominations made at a town or village caucus or by a party committee. §6-158(6)
July 28	Last day to file certificates of nomination to fill vacancies created pursuant to § 6-116, §6-104 & §6-158(6)
Aug 1	Last day to accept or decline a nomination for office made based on § 6-116 & §6-158(7)
Aug 1	Last day to file authorization of nomination made based on § 6-116. § 6-120(3)
Aug 5	Last day to fill a vacancy after a declination made based on § 6-116. § 6-158(8)

INDEPENDENT PETITIONS	
April 19	First day for signing nominating petitions. §6-138(4)
May 24-31	Dates for filing independent nominating petitions. §6-158(9)
June 3	Last day to accept or decline a nomination. §6-158(11)
June 6	Last day to fill vacancy after a declination. §6-158(12)
July 1	Last day to decline after acceptance if nominee loses party primary. §6-158(11)

OPPORTUNITY TO BALLOT PETITIONS	
Mar 22	First day for signing OTB petitions. §6-164
April 14	Last day to file OTB petitions. §6-158(4)
April 21	Last day to file an OTB petition if there has been a declination by a designated candidate. §6-158(4)

JUDICIAL DISTRICT CONVENTIONS	
Minutes of a convention must be filed within 72 hours of adjournment. §6-158(6)	
Aug 4 – 10	Dates for holding Judicial conventions. §6-158(5)
Aug 11	Last day to file certificates of nominations. §6-158(6)
Aug 15	Last day to decline nomination. §6-158(7)
Aug 19	Last day to fill vacancy after a declination. §6-158(8)

SIGNATURE REQUIREMENTS FOR DESIGNATING AND OPPORTUNITY TO BALLOT PETITIONS §6-136

5% of the active enrolled voters of the political party in the political unit or the following, whichever is less:

For any office to be filled by all the voters of:
The entire state 15,000
(with at least 100 or 5% of enrolled voters from each of one-half of the congressional-districts)
*New York City.....7,500
*Any county or borough of NYC.....4,000
*A municipal court district within NYC.....1,500
*Any city council district within NYC..... 900
Cities/counties having more than 250,000 inhabitants.....2,000
Cities/counties having more than 25,000 but not more than 250,000 inhabitants.....1,000
Any city, county, councilmanic or county legislative districts in any city other than NYC.....500
Any congressional district.....1,250
Any state senatorial district 1,000
Any assembly district.....500
Any county legislative district.....500

any political subdivision contained within another political subdivision, except as herein provided, requirement is not to exceed the number required for the larger subdivision; a political subdivision containing more than one assembly district, county or other political subdivision, requirement is not to exceed the aggregate of the signatures required for the subdivision or parts of subdivision so contained.

NOTE**: ***Section 1057-b of the New York City Charter supersedes New York Election Law signature requirements for Designating and OTB petitions and Independent nominating petitions with respect to certain NY City offices.

SIGNATURE REQUIREMENTS FOR INDEPENDENT NOMINATING PETITIONS §6-142

1% of the total number of votes excluding blank and void cast for the office of governor at the last gubernatorial election in the political unit for any office to be voted for by all the voters of:
the entire state.....45,000
(with at least 500 or 1% of enrolled voters from each of one-half of the congressional districts)

5% of the total number of votes excluding blank and void cast for the office of governor at the last gubernatorial election in the political unit except that not more than 3,500 signatures shall be required on a petition for an office to be filled in any political subdivision outside the City of New York, and not more than the following for any office to be voted for by all the voters of:
Any county or portion thereof outside NYC.....1,500
*New York City 7,500
*Any county or borough or any two counties or boroughs within New York City 4,000
Any municipal court district 3,000
*Any city council district within NYC 2,700
Any congressional district.....3,500
Any state senatorial district 3,000
Any assembly district.....1,500

Any political subdivision contained within another political subdivision, except as herein provided, requirement is not to exceed the number for the larger subdivision.

NOTE**: ***Section 1057-b of the New York City Charter supersedes New York Election Law signature requirements for Designating and OTB petitions and Independent nominating petitions with respect to certain NY City offices.

VOTER REGISTRATION FOR PRIMARY

Feb 21	**List of Registered Voters:** Such lists shall be published before the twenty-first day of February. § 5-604
June 3	**Mail Registration for Primary**: Last day to postmark application for primary; last day it must be received by board of elections is June 8. §5-210(3)
June 3	**In person registration for Primary:** Last day application must be received by board of elections to be eligible to vote in primary election. §§5-210, 5-211, 5-212
June 8	**Changes of address** for Primary received by this date must be processed. §5-208(3)

CHANGE OF ENROLLMENT

Feb 14	A change of enrollment rec'd by the BOE not later than Feb. 14th or after July 5th is effective immediately. Any change of enrollment made between Feb 15-July 5th, shall be effective July 5th. §5-304(3)

VOTER REGISTRATION FOR GENERAL

Oct 14	**Mail Registration for General:** Last day to postmark application for general election; it must also be received by board of elections by Oct 19. §5-210(3)
Oct 14	**In person registration for General:** Last day application must be received by board of elections to be eligible to vote in general election. If honorably discharged from the military or have become a naturalized citizen after October 14th, you may register in person at the county board of elections office up until October 29th. §§5-210, 5-211, 5-212
Oct 19	**Changes of address** for General received by this date must be processed. §5-208(3)

ABSENTEE VOTING FOR PRIMARY

June 13	Last day for board of elections to RECEIVE application, letter, telefax, other written instrument or absentee portal request for ballot. §8-400(2)(c).
June 27	Last day to apply in person for primary ballot. §8-400(2)(c)
June 28	Last day to postmark primary election ballot. Must be received by the county board no later than July 5th. §8-412(1)
June 28	Last day to deliver primary ballot in person to your county board or your poll site, by close of polls. §8-412(1)

MILITARY/SPECIAL FEDERAL VOTERS FOR PRIMARY

May 13	Deadline to transmit ballots to eligible Military/Special Federal/UOCAVA Voters. §10-108(1) & §11-204(4)
June 3	Last day for a board of elections to receive application for Military/Special Federal/UOCAVA absentee ballot for primary if not previously registered. §10-106(5) & §11-202(1)(a)
June 21	Last day for a board of elections to receive application for Military/Special Federal/UOCAVA absentee ballot for primary if already registered. §10-106(5) & §11-202(1)(b)
June 27	Last day to apply personally for Military ballot for primary if previously registered. §10-106(5)
June 28	Last day to postmark Military/Special Federal/ UOCAVA ballot for primary. Date by which it must be received by the board of elections is July 5th. §10-114(1) & §11-212

ABSENTEE VOTING FOR GENERAL ELECTION

Oct 24	Last day for board of elections to RECEIVE application, letter, telefax, other written instrument or absentee portal request for ballot. §8-400(2)(c)
Nov 7	Last day to apply in person for general election ballot. §8-400(2)(c)
Nov 8	Last day to postmark general election ballot. Must be received by the county board no later than Nov 15th. §8-412(1)
Nov 8	Last day to deliver general election ballot in person to your county board or your poll site, by close of polls on election day. §8-412(1)

MILITARY/SPECIAL FEDERAL VOTERS FOR GENERAL

Sept 23	Deadline to transmit ballots to eligible Military/Special Federal/UOCAVA voters. §10-108(1) & §11-204(4)
Oct 14	Last day for a board of elections to receive application for Special Federal/UOCAVA absentee ballot for general if not previously registered. §11-202(1)(a) & §10-106(5)
Oct 29	Last day for a board of elections to receive application for Military absentee ballot for general if not previously registered. §10-106(5)
Nov 1	Last day for a board of elections to receive application for Military/Special Federal absentee ballot for general if already registered. §10-106(5) & §11-202(1)(b)
Nov 7	Last day to apply personally for a Military absentee ballot for general if previously registered. §10-106(5)
Nov 8	Last day to postmark Military/Special Federal/UOCAVA ballot for general. Date by which it must be received by the board of elections is Nov. 21st. §10-114(1) & §11-212

VACANCY IN OFFICE

Aug 8	A vacancy occurring three (3) months before a General Election in any year in any office are authorized to be filed at a General Election. §6-158(14)

REFERENDUMS/PROPOSITIONS/PROPOSALS

Aug 8	For any election conducted by a BOE, the clerk of such subdivision shall provide the BOE with a certified text copy of any proposal, proposition, or referendum at least three (3) months before the General Election. §4-108

CAMPAIGN FINANCIAL DISCLOSURE

PRIMARY ELECTION §14-108(1)	
32 Day Pre-Primary	May 27
11 Day Pre-Primary	June 17
10 Day Post-Primary	July 15 9 NYCRR 6200.2(a)
24 Hour Notice §14-108(2)	June 14 through June 27

GENERAL ELECTION §14-108(1)	
32 Day Pre-General	October 7
11 Day Pre-General	October 28
27 Day Post-General	December 5
24 Hour Notice §14-108(2)	October 25 through November 7

Periodic Reports §14-108(1)
January 18th
July 15th

Additional Independent Expenditure Reporting	
24 Hour Notice §14-107(4) (a) (ii); (b)	Primary: May 29 through June 27
	General: October 9 through November 7
Weekly Notice	Refer to §14-107(4)(a)(i); (b)

CONTRIBUTION LIMITS FOR LOCAL OFFICES

Apr 15	Last day to calculate and post local limits to CBOE website and send to SBOE. §14-114(11)

Designation of Polling Places

March 15	Last day to designate polling places for each election district for ensuing year §4-104
May 1	Last day to designate early voting sites for the general election. 9 NYCRR 6211.1(a)
May 1	Last day to file early voting Communication Plan with SBOE. 9 NYCRR 6211.7(c)
May 13	Last day to designate early voting sites for primaries and special elections. 9 NYCRR 6211.1(a)

Revised: February 15, 2022

***** Please be aware that since this is a re-districting year this calendar is subject to change by the Legislature and should be used advisedly. *****