

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF STEUBEN

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

Index No. E2022-0116CV

Petitioners,

-against-

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

Respondents.

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**MEMORANDUM OF LAW IN SUPPORT
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* Petitioners understand that this Court has not yet ruled on Petitioners' Motion For Leave To Amend The Petition. Given the necessarily streamlined nature of these proceedings, however, Petitioners file this combined Memorandum in support of their Petition and proposed Amended Petition.

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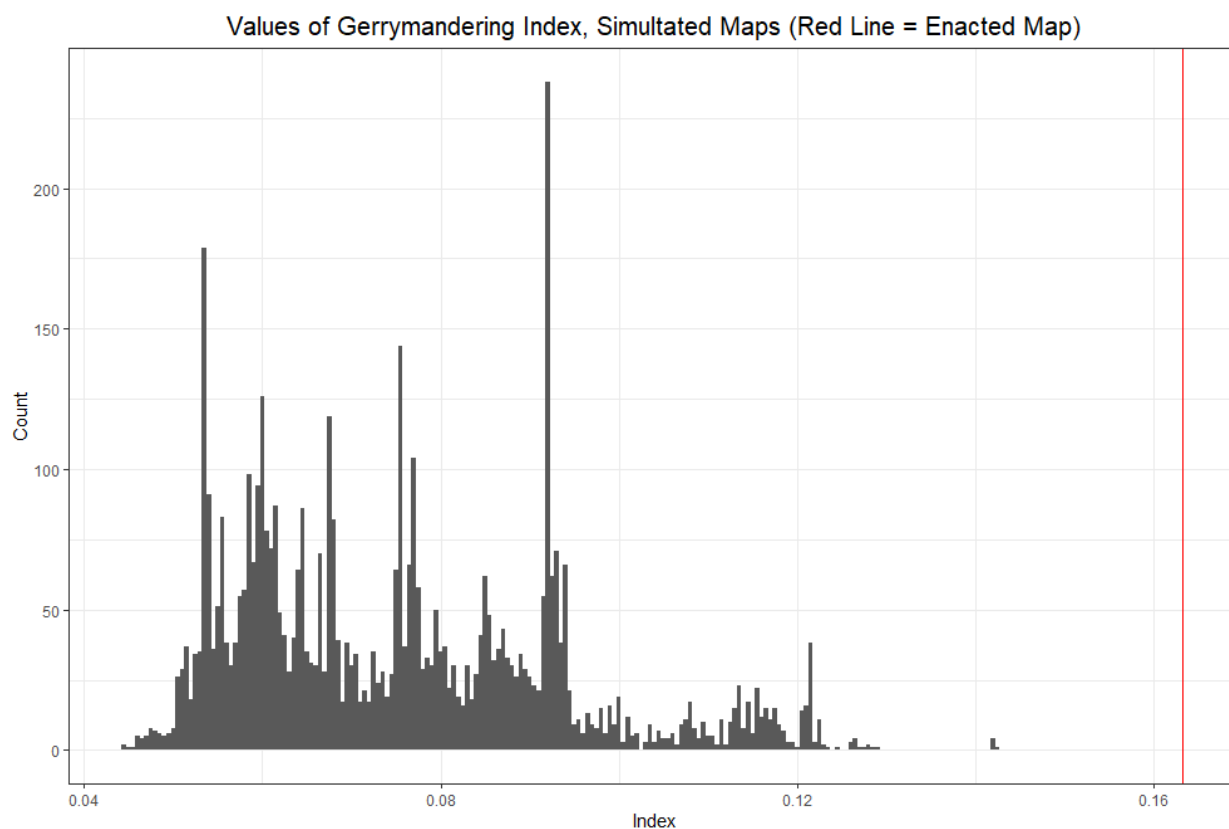
PRELIMINARY STATEMENT

In 2014, the People of New York amended their Constitution to provide for an exclusive process for adopting redistricting maps, while also prohibiting drawing maps “for the purpose of favoring or disfavoring incumbents or other particular candidates or political parties.” N.Y. Const. art. III, § 4(c)(5). But in the first redistricting cycle after 2014, the Democrats who dominate the New York Legislature and control the Governor’s Office ignored these reforms and purported to enact congressional (“2022 Congressional Map”) and state Senate (“2022 Senate Map”) maps outside of the constitutionally prescribed process, and which embody a flagrant partisan gerrymander. This was, of course, no accident. Governor Hochul promised to “use [her] influence to help Democrats expand the House majority through the redistricting process” and to help the Democratic Party “regain its position that it once had when [she] was growing up.”¹ And Democratic Congressman Sean Patrick Maloney, Chair of the Democratic Congressional Campaign Committee, explained that Democrats in New York see these maps as “restitution” for alleged “years” of gerrymandering in other States.²

¹ Katie Glueck & Luis Ferré-Sadurní, *Interview with Kathy Hochul: “I Feel a Heavy Weight of Responsibility”*, N.Y. Times (Aug. 24, 2021), <https://www.nytimes.com/2021/08/25/nyregion/kathy-hochul-interview.html> (all websites last visited on Feb. 14, 2022).

² Nat’l Republican Redistricting PAC (@GOPRedistrict), Twitter (Feb. 9, 2022, 3:19 PM), <https://twitter.com/gopredistrict/status/1491507079479181312?s=10>.

There could be no honest argument that these maps comply with New York’s constitutional prohibition against partisan gerrymandering. Mr. Sean Trende—a renowned redistricting expert who was also recently appointed by the Virginia Supreme Court to serve as a special master for its redistricting process³—compared these maps to 5,000 computer-generated maps.⁴ Mr. Trende’s report concludes that the 2022 Congressional Map (as pictured below) and 2022 Senate Map are so obviously partisan gerrymandered that they favor Democratic interests *more than any of these 5,000 computer-generated maps*, all drawn without partisan considerations.⁵



³ Redistricting Appointment Order, *In Re: Decennial Redistricting to The Constitution of Virginia, art. II, §§ 6 to 6-A, and Virginia Code § 30-399* (Va. Nov. 19, 2021), https://www.va.courts.gov/courts/scv/districting/redistricting_appointment_order_2021_1119.pdf.

⁴ Exhibit A, Expert Report Of Mr. Sean P. Trende (“Trende.Rep.”) (Feb. 14, 2021), at 10–24.

⁵ Trende.Rep.14, 20.

Unsurprisingly, numerous public commentators and advocacy groups—many of whom are otherwise sympathetic to the Democratic Party—rightly condemned the 2022 Congressional Map, in particular, as an egregious partisan gerrymander. *See* Petition, NYSCEF.Doc.Nos.1, 14.

When *Rucho v. Common Cause*, 139 S. Ct. 2484 (2019), held that federal courts have no authority to strike down maps as partisan gerrymanders, it made clear that States have ample authority to ban such practices if their citizenry so desires. *Id.* at 2507–08. Since then, state Supreme Courts across the Nation have struck down partisan-gerrymandered maps based on their State’s anti-partisan-gerrymandering constitutional provisions—including, most recently, the Supreme Court of Ohio and the Supreme Court of North Carolina.

This Court should follow that established path here and invalidate both the 2022 Congressional Map and the 2022 Senate Map on two separate and independent bases. First, the Legislature lacked the constitutional authority to enact any redistricting maps because it failed to follow the Constitution’s *exclusive* process enshrined in the People’s 2014 amendments—thus the 2022 Congressional Map and the 2022 Senate Map are void *ab initio*. With these maps off the table, the only current, validly enacted or adopted maps in New York are the maps from 2012. But these maps cannot govern New York’s upcoming elections, as both are unconstitutionally malapportioned in light of the 2020 census, and the 2012 congressional map does not contain the correct number of seats. Accordingly, this Court should expeditiously adopt new maps to cure the legal infirmities that now infect the 2012 Congressional and Senate Maps. Second, if this Court concludes that the Legislature had the authority to adopt the 2022 maps, this Court should invalidate these maps because they are flagrant, unconstitutional partisan gerrymanders.

BACKGROUND

A. The Redistricting Process After The 2014 Constitutional Reforms

After each federal decennial census, the New York Constitution requires the State to redraw its Senate and congressional districts to adjust for population changes. More specifically, Article III, Sections 4 and 5 of the New York Constitution mandate that the State's congressional and Senate districts be redrawn so that each district is contiguous; contains an equal number of inhabitants, to the extent possible; and is as compact as possible. N.Y. Const. art. III, §§ 4, 5.

Before 2014, the New York Legislature repeatedly enacted partisan gerrymandered maps. NYSCEF.Doc.No.1¶¶ 32–42. But New York courts appeared powerless to stop this partisan gerrymandering because they did not interpret the then-applicable constitutional provisions as providing any basis for challenging partisan gerrymandering. *See, e.g., Bay Ridge Cmty. Council, Inc. v. Carey*, 103 A.D.2d 280, 284 (2d Dep't 1984), *aff'd* 66 N.Y.2d 657 (1985) (order).

In 2014, New Yorkers constitutionalized an exclusive procedure for redistricting and a prohibition on partisan gerrymandering. Now, the New York Constitution vests primary redistricting responsibility in a newly created Independent Redistricting Commission ("IRC"), N.Y. Const. art. III, § 5-b, and establishes numerous procedural safeguards, *id.* §§ 4(c)(5), 5-b(a)–(b), (f), (g). The IRC must submit to the Legislature an initial set of maps and the necessary implementing legislation before January 15 of the second year after the census, after which the Legislature votes on the maps and implementing legislation as provided, without any amendment. N.Y. Const. art. III, § 4(b). If the Legislature fails to adopt this first set of maps and implementing legislation, or if the Governor vetoes adopted implementing legislation, then the redistricting process reverts to the IRC. N.Y. Const. art. III, § 4(b). The IRC must then submit a second set of maps and implementing legislation to the Legislature, subject to the requirements outlined above, within 15 days of notification of the first rejection and no later than February 28. N.Y. Const. art.

III, § 4(b). The Legislature then votes on the second set of proposed maps and implementing legislation, without any amendment. N.Y. Const. art. III, § 4(b). If (and only if) the Legislature fails to adopt the IRC’s second set of maps and implementing legislation, or if the Governor vetoes the second adopted implementing legislation, can the Legislature amend the IRC’s proposed maps and enact its own maps. N.Y. Const. art. III, § 4(b); *see also* N.Y. Legis. Law § 93(1). Further, Article III, Section 4(c) also now prohibits the IRC and the Legislature from drawing districts “to discourage competition or for the purpose of favoring or disfavoring incumbents or other particular candidates or political parties.” N.Y. Const. art. III, § 4(c)(5).

In 2021, the Legislature proposed a constitutional amendment that would have gutted the 2014 amendments’ reforms, including allowing the Legislature to introduce its own implementing legislation “with any amendments . . . deem[ed] necessary,” *2021 Statewide Ballot Proposals, New York State Board of Elections*,⁶ if the IRC fails to approve a plan by the required deadline. The People decisively voted this measure down. Yet, within days of that rejection, the Legislature and Governor ignored the will of the People and, in direct violation of the Constitution, enacted a statute that largely achieves the same result as the failed amendment, providing that if the IRC “does not vote on any redistricting plan or plans, for any reason, by the date required for submission of such plan,” then the Legislature must introduce such implementing legislation “with any amendments . . . deem[ed] necessary.” L.2021, c. 633, § 1.

B. The Court-Adopted 2012 Congressional Map And The 2012 Senate Map Are Unconstitutional Due To Population Changes

After the 2010 decennial census, the Legislature reapportioned New York’s state legislative districts in 2012, 2011–2012 N.Y. Reg. Sess. Leg. Bills S.6696 and A.9525 (as

⁶ <https://www.elections.ny.gov/2021BallotProposals.html>.

technically amended by S.6755 and A.9584), but could not agree on new congressional districts. A panel of three federal judges appointed a federal magistrate judge, Roanne Mann, to propose a new congressional map for New York. On March 19, 2012, the judicial panel imposed its congressional map, which was largely the same as the map issued by Judge Mann, establishing New York's then-27 congressional districts. *Favors v. Cuomo*, No. 11-CV-5632, 2012 WL 928223 (E.D.N.Y. Mar. 19, 2012). Since then, New York experienced population shifts that caused its districts to become unconstitutionally malapportioned. *See infra* Part I.C.

C. The Legislature Violates The 2014 Amendments In Its Effort To Adopt Replacement Congressional And Senate Maps

1. The IRC Does Not Take Constitutionally Mandatory Action Permitting The Legislature To Enact Replacement Maps

To begin preparations for the post-2020 decennial-census redistricting, the Legislature appointed the members of the IRC. *See* N.Y. Const. art. III, § 5-b(a)–(b). Democratic leaders in the Legislature appointed the “Democratic Caucus” of the IRC; Republican leaders in the Legislature selected the “Republican Caucus.” On June 20, 2021, the IRC began a series of nine public meetings across the State about their newly released draft maps and the redistricting process. N.Y. Const. art. III, § 4(c). Republican members hoped to submit a single bipartisan set of draft maps, but the Democratic commissioners refused to meet over the weekend before the IRC released its draft maps. *See* Rebecca C. Lewis & Zach Williams, *Takeaways From New York's (Competing!) Redistricting Draft Maps*, City & State N.Y. (Sept. 15, 2021).⁷ After the public-comment period ended, the IRC began preparing a single, consensus set of maps for the Legislature's consideration. The commissioners had agreed upon a procedure through which the

⁷ <https://www.cityandstateny.com/policy/2021/09/new-yorks-first-draft-2022-redistricting-maps-have-been-released/185374/>.

IRC would review preliminary maps prepared by two third-party redistricting organizations. Despite that agreed-upon procedure, on the afternoon of December 22, 2021, the Democratic Caucus announced through Commissioner David Imamura that it would no longer negotiate bipartisan maps but would instead only negotiate on the latest iteration of its unexpectedly released maps from the day prior. Testimony of Jack Martins at 9:16–9:49, Virtual Public Meeting of the NYIRC, Jan. 3, 2022.⁸

On January 3, 2022, when the IRC met to vote on maps to send to the Legislature, the Democratic Caucus again refused to negotiate with the full IRC by neither discussing the bipartisan maps nor agreeing to any concessions. With each of two redistricting plans receiving five votes, the IRC delivered two sets of plans to the Legislature. The Legislature rejected both plans out-of-hand, without considering any of the public's input, the IRC's negotiations and reflections on the public's testimony, bipartisan priorities, or the other considerations that the People incorporated into the Constitution. 2021–2022 N.Y. Reg. Sess. Leg. Bills A.8587, A.8588, A.8589, A.8590, S.7631, S.7632, S.7633, S.7634. The IRC then had until January 25 to submit a revised plan under the Constitution. N.Y. Const. art. III, § 4(b). The full IRC met to discuss a single plan for its final submission to the Legislature, but, while the Republican Caucus attempted to restart negotiations on the previously negotiated bipartisan maps, the Democratic members refused to meet for discussion and instead wanted to re-submit virtually the same plan that the Legislature had rejected. Given this impasse, the IRC failed to submit revised maps to the Legislature.

⁸ <https://totalwebcasting.com/view/?func=VOFF&id=nysirc&date=2022-01-03&seq=1>.

2. The Legislature Purports To Adopt Replacement Maps, While Engaging In Obvious, Egregious Partisan Gerrymandering

Despite the IRC’s failure to vote on and present a second set of maps, the Legislature proceeded to craft its own unconstitutional Senate and congressional maps, ignoring the New York Constitution’s mandatory, exclusive redistricting process under Article III, Section 4. Democratic leaders pushed through legislation enacting their own new congressional map over the course of only a few days, releasing the Legislature’s proposed map on Sunday evening, January 30, without a single public hearing. Affidavit of Senate Minority Leader Robert G. Ort (‘‘Ortt Aff.’’), ¶¶ 10–14 (Feb. 14, 2022). The Democratic leaders then hastily assembled and pushed through legislation to enact their own Senate districts, releasing this map two days later, on February 1, 2022. *Id.* On February 2, 2022, the Democrats in the Assembly and Senate adopted the unconstitutional 2022 Congressional Map, despite every Republican in the Assembly and Senate voting against the map. *See* 2021–2022 N.Y. Reg. Sess. Leg. Bills S.8196 and A.9039-A (as technically amended by A.9167). The following day, legislative Democrats enacted the 2022 Senate Map on a vote of 118–29 in the Assembly and 43–20 (a straight party line) in the Senate. *See* 2021–2022 N.Y. Reg. Sess. Leg. Bills A.9040-A and A.9168. On February 3, 2022, Governor Hochul signed the congressional and Senate maps into law. 2021–2022 N.Y. Reg. Sess. Leg. Bills S.8196, A.9039-A, A.9040-A, and A.9168. These unconstitutional, partisan-gerrymandered maps harm voters all over the state of New York, including Petitioners, by diluting the power of their votes on the basis of politics, while diminishing the effects of their political-action efforts. Affidavit of Lawrence Garvey ¶¶ 5–6 (Feb. 14, 2022).⁹

⁹ Petitioners need only demonstrate the standing of one Petitioner—at most, *see* N.Y. Const. art. III, § 5 (providing that ‘‘any citizen’’ may bring redistricting claims to ‘‘the supreme court’’)—to bring their claims, *Humane Soc. of U.S. v. Empire State Dev. Corp.*, 53 A.D.3d 1013, 1017 &

STANDARD OF REVIEW

Courts must interpret the Constitution in the same manner as “the language of a statute,” looking for “the intention of the People” and giving to “the language used its ordinary meaning.” *Matter of Sherrill v. O’Brien*, 188 N.Y. 185, 207 (1907); *see Majewski v. Broadalbin-Perth Cent. Sch. Dist.*, 91 N.Y.2d 577, 583 (1998). Courts may also consider “the apparent objectives of the [constitutional] provision in which the questioned phrase appears,” as well as the “circumstances and practices which existed at the time of the passage of the constitutional provision.” *N.Y. Pub. Interest Rsch. Grp., Inc. v. Steingut*, 40 N.Y.2d 250, 258 (1976). When a party challenges the constitutionality of a statute, the courts’ “role is to examine and interpret the constitutional and statutory language, and to determine . . . whether the legislative enactment violates the explicit constitutional provision at issue.” *White v. Cuomo*, 181 A.D.3d 76, 80 (3d Dep’t 2020).

ARGUMENT

I. The 2022 Congressional And Senate Maps Are Procedurally Unconstitutional, And The 2012 Congressional And Senate Maps Are Malapportioned

A. Under The 2014 Amendments, The Constitution Now Provides “The” Redistricting Process That “Shall Govern Redistricting In This State”

Under the 2014 amendments, the New York Constitution now establishes an exclusive process for redistricting. At the first step, the IRC—after holding required public meetings across the State and releasing draft plans and data to the electors for public comment, N.Y. Const. art. III, § 4(c)—must prepare and submit to the Legislature “a redistricting plan to establish senate . . . and congressional districts,” which the Legislature must vote upon “without amendment.” *Id.* § 4(b). If the Legislature does not enact the initial maps, it must notify the IRC “that such legislation has

n.2 (3d Dep’t 2008). Given the press of time, Petitioners have submitted an affidavit for one Petitioner, Affidavit of Lawrence Garvey, which establishes standing. Should the Court require affidavits from all or more Petitioners, Petitioners are happy to provide them promptly.

been disapproved,” and the Constitution then provides the IRC with 15 days from disapproval to “prepare and submit to the legislature a second redistricting plan and the necessary implementing legislation for such plan.” *Id.* The Legislature then must, again, vote on these second-round maps “without amendment.” *Id.* Only if these second-round maps fail to garner sufficient votes in the Legislature, or if the Governor vetoes them, does the responsibility fall to “each house of the Legislature [to] introduce” their own maps and “implementing legislation with any amendments each house of the legislature deems necessary.” *Id.* Thus, the Constitution requires that the Legislature receive and vote upon two sets of maps *before* it may enact its own redistricting legislation. These provisions establish “[t]he process for redistricting congressional and state legislative districts,” which process “*shall govern* redistricting in this state.” *Id.* § 4(e) (emphases added).

The plain and ordinary meaning of Article III, Section 4, *see Sherrill*, 188 N.Y. at 207, is that the Legislature may *only* adopt redistricting maps through the “process” articulated in Article III, Section 4. The Constitution plainly states that all the procedures outlined in Article III, Sections 4, 5, and 5-b “*shall govern* redistricting in this state.” N.Y. Const. art. III, § 4(e) (emphasis added). The word “shall” in the law generally “commands an action” and provides “no discretion.” *Brusco v. Braun*, 84 N.Y.2d 674, 680 (1994). This is especially true when related sections provide permissive, or “may,” clauses, showing a distinctive contrast between mandatory and permissive directions within the same legal framework. *People v. Golo*, 26 N.Y.3d 358, 362–63 (2015). Within Article III, Section 4(b)—another part of the same 2014 amendments—the People provided that “[t]he 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.*” N.Y. Const. art. III, § 4(b) (emphases

added). On the other hand, the Constitution *requires* that the IRC procedures outlined in Article III, Section 4—including the IRC’s two opportunities to present its maps to the Legislature, N.Y. Const. art. III, § 4(b)—“*shall govern* redistricting in this state,” *id.* § 4(e) (emphasis added). Thus, the plain language of Article III, Section 4 does not provide the Legislature with any “discretion” to vary from those requirements, *Brusco*, 84 N.Y.2d at 680, as the Legislature unconstitutionally did here.

The Constitution’s use of the definite article “the” underscores the exclusive nature of this process. Courts must interpret words according to proper grammatical and usage rules, and “the” is a “function word . . . indicat[ing] that a following noun or noun equivalent is definite or has been previously specified by context.” *Nielsen v. Preap*, 139 S. Ct. 954, 965 (2019); *see also Work v. U.S. ex rel. McAlester-Edwards Coal Co.*, 262 U.S. 200, 208 (1923). New York courts have also long understood that the definite article “the” evinces the intent to restrict meaning to a specific referent. *Shaffer v. Mason*, 29 How. Pr. 55, 1865 WL 3674 (N.Y. Sup. Ct. 1865) (“If any significancy or effect is to be given to the amendment by inserting the definite article ‘the,’ the insertion of that word was intended to limit or define the general signification of the word”); *see also In re Leonard’s Will*, 73 N.Y.S.2d 770, 772 (Queens Cty. Sup. Ct. 1947) (“Moreover the use of the definite article ‘the’ qualifies the word ‘children’ and limits its meaning”). Because Article III, Section 4(e) notes that the process for redistricting after the 2014 amendments—including requiring the Legislature to accept and vote on at least two rounds of maps from the IRC, N.Y. Const. art. III, § 4(b)—is “[t]he process for redistricting . . . in this state,” the Constitution establishes a single, exclusive process for adopting redistricting maps. *Id.* § 4(e) (emphasis added).

This reading of Article III, Section 4 follows from the People’s purpose for voting for the 2014 constitutional amendments. *Sherrill*, 188 N.Y. at 207. The People intended those

amendments to remove the Legislature’s complete and exclusive partisan control over the redistricting process. N.Y. Const. art. III, § 4(b). The 2014 amendments created an exclusive process that limited the Legislature’s redistricting authority, allowing it to enact its own maps only after considering and rejecting two sets of IRC maps. N.Y. Const. art. III, § 4(b). The People believed that the IRC’s primary involvement in the mapdrawing process would result in less partisanship in redistricting. *Supra* pp. 4–5. The Legislature maintains throughout this process the final up-or-down vote on IRC-proposed maps and final say on redistricting if the IRC’s two submissions fail to garner sufficient votes in the Legislature, N.Y. Const. art. III, § 4(b); *see also* N.Y. Legis. Law § 93(1), so the Legislature has every incentive to use its appointment powers, *see* N.Y. Const. art. III, § 5-b(a)–(b), to appoint commissioners who will follow and complete the process.

The Legislature’s unconstitutional 2021 *statutory* amendment does not empower it to ignore this exclusive, *constitutionally mandated* process. The Constitution “is the supreme law of the state,” *Matter of New York Juvenile Asylum*, 172 N.Y. 50, 57 (1902), and the Legislature “lacks the authority to override a constitutional barrier by passing a law specifically to negate” a constitutional requirement, *City of N.Y. v. N.Y. State Div. of Hum. Rts.*, 93 N.Y.2d 768, 774 (1999). Nevertheless, the Legislature purported to enact legislation in 2021 providing that, “if the commission does not vote on any redistricting plan or plans, for any reason, by the date required for submission . . . each house shall introduce such implementing legislation with any amendments each house deems necessary.” L.2021, c. 633, § 1. The Constitution does not permit the Legislature to act in absence of the IRC’s submission of second-round maps, N.Y. Const. art. III, § 4(b), and the Legislature cannot “override [the] constitutional barrier by passing a law,” *City of N.Y.*, 93 N.Y.2d at 774. Statutory and constitutional history preceding this statutory amendment

further stresses the unconstitutionality of L.2021, c. 633, § 1. *See Steingut*, 40 N.Y.2d at 258; *White*, 181 A.D.3d at 80. Notably and tellingly, this statutory amendment directly followed a failed constitutional amendment that the People rejected. That failed amendment sought to empower the Legislature to enact its own redistricting maps if “the redistricting commission fails to vote on a redistricting plan and implementing legislation by the required deadline.” *2021 Statewide Ballot Proposals*, *New York State Board of Elections*.¹⁰ The Legislature’s subsequent, ineffectual attempt to do much the same thing via *statutory* amendment cannot alter or remove requirements that the *Constitution* imposes upon it. *City of N.Y.*, 93 N.Y.2d at 774. Thus, both the plain text of Article III, Section 4 and the relevant history of 2021 Ballot Proposal 1 confirm that “the N.Y. Constitution prohibited the Legislature from enacting” L.2021, c. 633, § 1, given that it “violates the explicit constitutional provision at issue,” *White*, 181 A.D.3d at 80.

B. The 2022 Congressional Map And 2022 Senate Map Are Unconstitutional For Failure To Follow This Exclusive Process

When the legislative “process” for enacting a statute is “clearly inconsistent with the intent of the drafters of the [] amendment to the N.Y. Constitution,” *Delgado v. State*, 194 A.D.3d 98, 104 n.3 (3d Dep’t 2021), any law enacted by following that process is void, *Petition of Orans*, 257 N.Y.S.2d 839, 859–60 (N.Y. Cty. Sup. Ct. 1965), *aff’d sub nom In re Orans*, 15 N.Y.2d 339 (1965); *see also Robinson v. Robins Dry Dock Repair Co.*, 204 A.D. 578, 583 (2d Dep’t 1923) (a procedurally improper law “is wholly void, and in legal contemplation is as inoperative as if it had never been passed”). Thus, where “[t]he Constitution prescribes the respective powers of the Executive and the Legislative Branches as to how a passed bill becomes a law,” the Legislature is

¹⁰ <https://www.elections.ny.gov/2021BallotProposals.html>.

“not allowed” to circumvent those procedures. *King v. Cuomo*, 81 N.Y.2d 247, 250, 252–53 (1993); *see also People v. Devlin*, 33 N.Y. 269, 277–78 (1865).

Here, the Legislature unlawfully circumvented the Constitution’s exclusive process for redistricting, rendering the 2022 Congressional and Senate Maps *ultra vires* and void. After the Legislature alerted the IRC of its rejection of the IRC’s first set of maps on January 10, 2022, *see* Transcript at 18–21, Session, New York State Assembly (Jan. 10, 2022);¹¹ Transcript at 70:8–79:16, Regular Session, New York Senate (Jan. 10, 2022),¹² the IRC had 15 days to submit second plans for the Legislature’s consideration, yet it did not do so, Transcript at 6, Session, New York State Assembly (Feb. 2, 2022). Nevertheless, the Legislature authorized the New York State Legislative Task Force on Demographic Research and Reapportionment (“LATFOR”) to create the Legislature’s maps, Assembly Speaker Carl E. Heastie, News Release, *Speaker Heastie Announces Assemblymember Zebrowski Appointed Temporary Co-Chair of LATFOR* (Jan. 18, 2022);¹³ *see* 2021–2022 N.Y. Reg. Sess. Leg. Bills S.8196, A.9039-A, A.9040-A, and A.9168, without waiting for the necessary preceding events under the Constitution. The Legislature enacting its own maps outside of Article III, Section 4’s mandatory procedures, N.Y. Const. art. III, § 4(b), (e); *King*, 81 N.Y.2d at 250, 252–53, renders the maps wholly void, *Robinson*, 204 A.D. at 583, requiring this Court to invalidate them, *see* N.Y. Legis. Law § 93(4).

C. The 2012 Congressional And Senate Maps Are No Longer Constitutional Due To Subsequent Population Changes

Article III, Section 4(c)(2)’s equal-population principle, N.Y. Const. art. III, § 4(c)(2), is a “pre-eminen[t]” and “overriding” concern for the legality of enacted maps in New York, *see*

¹¹ <https://www.nyasembly.gov/av/session/>.

¹² <https://legislation.nysenate.gov/pdf/transcripts/2022-01-10T15:51/>.

¹³ <https://www.nyasembly.gov/Press/?sec=story&story=100542>.

Schneider v. Rockefeller, 31 N.Y.2d 420, 426–27, 430 (1972). For congressional maps, the Constitution requires “strict” or “maximum population equality,” *see id.* at 427–28; non-congressional districts have more “flexibility” for some reasonably tolerable deviation, *Franklin v. Krause*, 32 N.Y.2d 234, 242 (1973), although any such map with a “total population deviation in excess of 10% between the [] district with the largest population and the district with the smallest population,” is *prima facie* unconstitutional, *Carey*, 103 A.D.2d at 283.

Here, the 2012 Congressional and Senate Maps are plainly unconstitutional, as they are malapportioned under Article III, Section 4(c)(2), and this Court should invalidate those maps.

The 2012 Congressional Map is nowhere near the “strict” or “maximum population equality” principle. *Schneider*, 31 N.Y.2d at 427–28. None of the 27 districts from this map is within even 1,000 residents of the population goal of 776,971 persons per district. *Trende Rep.*24. Just looking to the population of the 2012 congressional districts that Petitioners reside in, 2012 Congressional District 10 has a population 26,832 people over the population goal (+3.5% variance), whereas 2012 Congressional District 22 has a population 80,361 residents below the goal (-10.3%). *Id.* Moreover, the 2012 Congressional Map provides for 27 congressional districts, but New York now only receives 26 congressional seats, U.S. Census Bureau, 2020 Census: Apportionment of the U.S. House of Representatives (April 26, 2021),¹⁴ and so the State “cannot operate under [this] existing congressional districting plan,” *Favors*, 2012 WL 928223, at *1.

Similarly malapportioned is the 2012 Senate Map, with districts’ populations now varying well beyond the 10% threshold for *prima facie* unconstitutionality. *Carey*, 103 A.D.2d at 283. Given subsequent population shifts, there is a greater than 30% variance between the largest and smallest districts—multiples of that 10% threshold. Currently, 2012 Senate District 25 has 57,419

¹⁴ <https://www.census.gov/library/visualizations/2021/dec/2020-apportionment-map.html>.

people over the population goal (+17.9% variance), whereas 2012 Senate District 51 is 45,131 below the population goal (-14.1%), for a total population deviation of approximately 32%. *Trende.Rep.25*. Even just among the districts that Petitioners reside in, the variance is well beyond even arguably acceptable levels. 2012 Senate District 27, where Petitioner Stephen Evans resides, has a population 38,992 above the goal (+12.2%), whereas 2012 Senate District 57, where Petitioners Fanton, Frantz, Nephew, and Rowley reside, has a population 42,639 below the goal (-13.3%), for a total deviation of 25.5%. *Id.* Thus, the 2012 Senate map is also plainly unconstitutional.

D. This Court Should Adopt New Maps Or, In The Alternative, Simply Enjoin All Of The Maps And Allow A Federal Court To Draw New Maps

Given that the congressional and Senate maps from both 2022 and 2012 are unconstitutional for the above reasons, this Court should enjoin all those maps and adopt its own, constitutional maps, as the Constitution explicitly provides. Article III, Section 4 explicitly allows a court to “*order the adoption of, or changes to, a redistricting plan as a remedy for a violation of law*” and notes that redistricting plans only remain in effect if they are not “*modified pursuant to court order.*” N.Y. Const. art. III, § 4(e) (emphasis added). Moreover, New York courts have long been “empowered to take appropriate action in order to insure that no further elections are conducted under an invalid plan.” *Harradine v. Bd. of Sup’rs of Orleans Cty.*, 68 A.D.2d 298, 302–03 (4th Dep’t 1979). Given that there is nothing the Legislature can do to “correct” its circumvention of “[t]he process for redistricting” in this State, N.Y. Const. art. III, § 4(e), the 2022 maps are “invalid in whole,” and the Legislature has no authority to adopt replacement maps, *id.* § 5. Accordingly, this Court can and should enjoin the 2022 and 2012 maps and set an expedited briefing schedule for submission of proposed remedial maps.

Alternatively, if the Court did not wish to draw its own maps for Congress and Senate, it could simply enjoin the enacted 2022 maps and prior 2012 maps and allow a federal district court to draw new maps, as occurred for the 2012 congressional map. There, a federal court addressed the Legislature’s failure to “delineate[] congressional districts for the state,” which left New York voters “without a congressional redistricting plan that conforms to the requirements of federal law,” ultimately implementing its own plan for New York’s congressional districts. *Favors* 2012 WL 928223, at *1.

II. Separate From Their Procedural Invalidity, The 2022 Congressional And Senate Maps Are Blatant, Obvious Partisan Gerrymanders, In Violation Of Article III, Section 4(c) Of The Constitution

A. Article III, Section 4(c) Prohibits Partisan Gerrymandering

Section 4(c)(5) prohibits drawing districts “to discourage competition or for the purpose of favoring or disfavoring incumbents or other particular candidates or political parties.” N.Y. Const. art. III, § 4(c)(5). Section 4(c)(5)’s plain text, *Sherrill*, 188 N.Y. at 207; *Majewski*, 91 N.Y.2d at 583, straightforwardly refers to a map drawer’s purpose, stating that district lines may not “be drawn” with the “*purpose* of favoring or disfavoring incumbents or other particular candidates or political parties,” N.Y. Const. art. III, § 4(c)(5) (emphasis added), *see People v. Smith*, 79 N.Y.2d 309, 314 (1992); *see also PURPOSE*, Black’s Law Dictionary (11th ed. 2019); “Purpose, n.,” Oxford English Dictionary Online, (Dec. 2021).¹⁵ Section 4(c)(5)’s pairing of the passive-voice verb “be drawn” with the adverbial infinitive “to discourage” likewise refers to the “motive or purpose” of the map drawers, especially in context here. The Chicago Manual Of Style §§ 5.112, 5.107 (15th ed. 2003); *see Sassi v. Mobile Life Support Servs., Inc.*, 37 N.Y.3d 236, 241 (2021); *accord Sherrill*, 188 N.Y. at 207. The history of partisan-gerrymandering litigation in this State

¹⁵ Accessed at www.oed.com/view/Entry/154972.

prior to 2014 further supports this plain-text interpretation of Section 4(c)(5), *see Steingut*, 40 N.Y.2d at 258, as the People adopted Section 4(c)(5) specifically to overturn certain courts’ holdings that they had no constitutional authority to strike down maps drawn with partisan purpose, *see Carey*, 103 A.D.2d at 284. Finally, the State itself has recognized that Section 4(c)(5) prohibits redistricting with an impermissible partisan purpose, explaining in an amicus brief to the U.S. Supreme Court in *Rucho*, 139 S. Ct. 2484, that Section 4(c)(5) “expressly bar[s] state officials from drawing district lines *for the purpose of favoring or disfavoring a political party*,” Amicus Br. for States of N.Y., *et al.* at 18, *Rucho v. Common Cause*, 139 S. Ct. 2484 (2019) (No. 18-422) (emphasis added).

Multiple state Supreme Courts—applying their own state constitutions’ anti-partisan-gerrymandering provisions—have *struck down* redistricting maps as unlawfully partisan, after considering several factors indicative of partisan intent. *See League of Women Voters of Ohio v. Ohio Redistricting Comm’n*, ___ N.E.3d ___, 2022 WL 110261, at *24 (Ohio 2022); *Harper v. Hall*, ___ S.E.2d ___, 2022 WL 343025, at *2 (N.C. 2022); *League of Women Voters v. Commonwealth*, 178 A.3d 737, 808, 825 (Pa. 2018); *League of Women Voters of Fla. v. Detzner*, 172 So. 3d 363, 387 (Fla. 2015). Further, multiple federal courts have also struck down redistricting maps on partisan-gerrymandering grounds after looking to similar factors evidencing partisan intent, *see, e.g., Ohio A. Philip Randolph Inst. v. Householder*, 373 F. Supp. 3d 978, 1094–96 (S.D. Ohio 2019), *vacated and remanded*, 140 S. Ct. 102 (2019); *Common Cause v. Rucho*, 318 F. Supp. 3d 777, 861–62 (M.D.N.C. 2018), *vacated and remanded*, 139 S. Ct. 2484 (2019); *Whitford v. Gill*, 218 F. Supp. 3d 837, 887–90 (W.D. Wis. 2016), *vacated and remanded*, 138 S. Ct. 1916 (2018), prior to the U.S. Supreme Court’s decision in *Rucho* declaring partisan-gerrymandering claims to be strictly an issue for the States to decide, 139 S. Ct. at 2508.

These state Supreme Courts and federal courts generally considered three factors when determining whether the redistricting maps at issue were drawn with impermissible partisan intent.

First, these state Supreme Courts and federal courts considered whether the “map-drawing process” itself was partisan. *See League of Women Voters*, 2022 WL 110261 at *24–25; *Detzner*, 172 So. 3d at 379–86, 388–89, 392–93; *Householder*, 373 F. Supp. 3d at 1096. For example, these courts often determined that the process itself was partisan—and, therefore, that the map drawers acted with impermissible partisan intent—when it was “directed and controlled by one political party’s legislative leaders,” *League of Women Voters*, 2022 WL 110261 at *24–25; *see also Householder*, 373 F. Supp. 3d at 1093–96 (concluding that a map was drawn with partisan intent where one party controlled the map-drawing process); *Common Cause*, 318 F. Supp. 3d at 861–64 (same); *Whitford*, 218 F. Supp. 3d at 887–90 (same); *League of Women Voters*, 178 A.3d at 817 (same); *Detzner*, 172 So. 3d at 390–93 (same). Other evidence indicating a partisan map-drawing process includes “correspondence between those responsible for the map drawing, floor speeches discussing the redistricting legislation and other contemporaneous statements, and testimony explaining ‘[t]he historical background of the decision,’ including the ‘specific sequence of events leading up to the challenged decisions.’” *Householder*, 373 F. Supp. 3d at 1096 (quoting *Vill. of Arlington Heights v. Metro. Housing Dev. Corp.*, 429 U.S. 252, 266 (1977) (brackets in original)); *see also Detzner*, 172 So. 3d at 379–86, 388–89, 392–93.

Second, these courts concluded that map drawers harbored partisan intent after considering the overall partisan impact or effect of the map—that is, whether the map “diminish[es] or dilut[es]” a “voter’s voting power on the basis of his or her [political] views,” *e.g.*, *Harper*, 2022 WL 343025 at *2; *League of Women Voters*, 178 A.3d at 804—including as measured by the latest social science. For example, and most recently, the Supreme Court of Ohio struck down

Ohio’s congressional redistricting map as a partisan gerrymander after considering, among other statistical evidence, an expert report that had “generate[d] 5,000 possible district plans, none of which favored a party as strongly as the plan adopted by the [map drawers].” *League of Women Voters*, 2022 WL 110261 at *23, *26; *see also League of Women Voters*, 178 A.3d at 818 (“two sets of 500 computer-simulated Pennsylvania redistricting plans”).

Third, these courts found that map drawers drew their maps with partisan intent after considering whether specific district lines subordinated traditional redistricting criteria for partisanship reasons. *League of Women Voters*, 178 A.3d at 816–19, 20–21; *see League of Women Voters*, 2022 WL 110261 at *26; *Harper*, 2022WL343025 at *2–3; *Detzner*, 172 So. 3d at 386.

B. The 2022 Congressional Map And The 2022 Senate Map Are Clear Partisan Gerrymanders That Violate Article III, Section 4(c)

Here, the 2022 Congressional Map and 2022 Senate Map are unconstitutional partisan gerrymanders because the Legislature drew these maps with impermissible partisan intent.

1. The 2022 Congressional Map

a. The Map-Drawing Process Was Itself Partisan

The process that the Legislature and the Governor used to draft and enact the 2022 Congressional Map was itself entirely partisan, demonstrating that these state actors acted with impermissible partisan intent. *See League of Women Voters*, 2022 WL 110261 at *24–25; *Detzner*, 172 So. 3d at 379–86, 388–89, 392–93; *Householder*, 373 F. Supp. 3d at 1096; *Common Cause*, 318 F. Supp. 3d at 868–70; *Whitford*, 218 F. Supp. 3d at 890–96.

Democrats hastily drew the 2022 Congressional Map behind closed doors, without receiving or even allowing input from Republicans, and without holding a single public hearing. Ortt Aff. ¶¶ 10–14; Transcript at 10–12, Session, New York State Assembly (Feb. 2, 2022). As one Republican Assemblymember noted poignantly during the debates over the maps in the

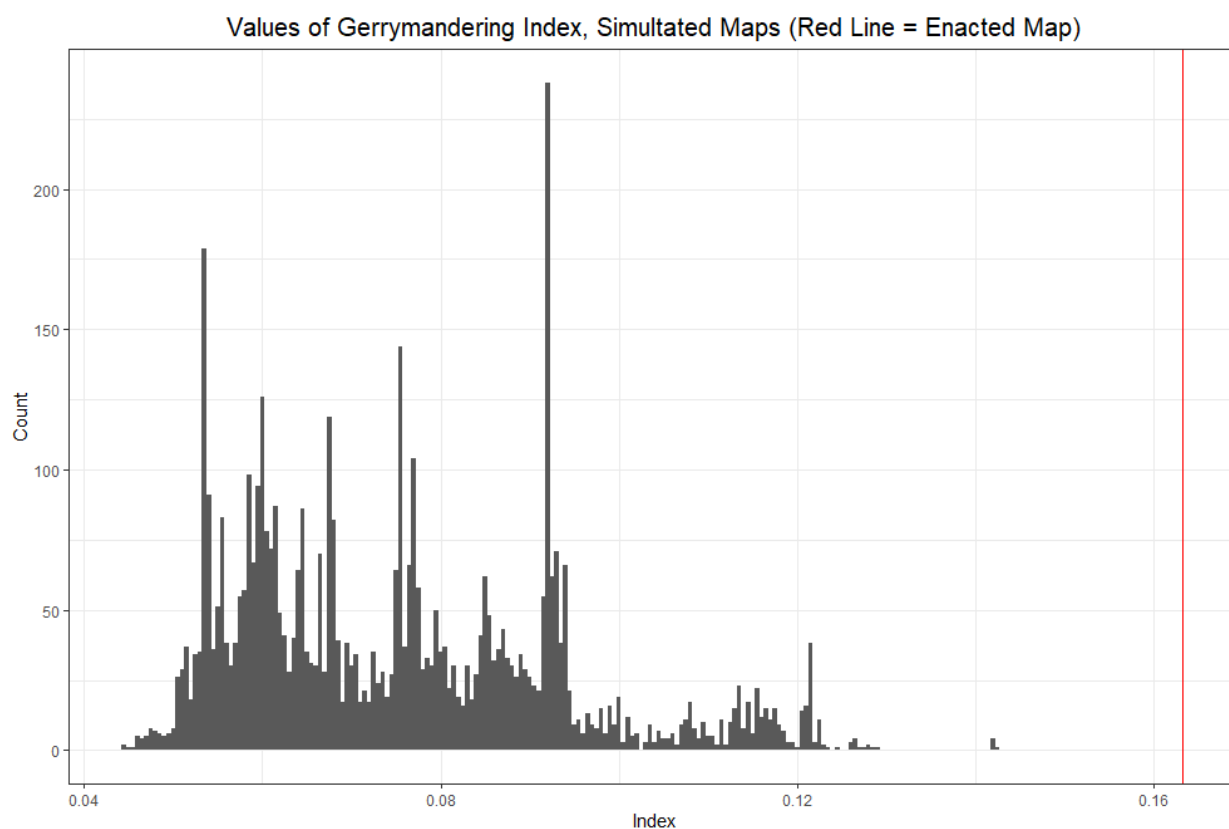
Legislature, “without any meeting, without any input from any Republican members, [the Democratic members] just went ahead and came up with their own map.” Transcript at 10, Session, New York State Assembly (Feb. 2, 2022). Further, the Democrats in the Legislature passed their single-party-drawn map—and the Democratic Governor signed it into law—despite *every Republican in the Assembly and Senate voting against it*. See 2021–2022 N.Y. Reg. Sess. Leg. Bills S.8196 and A.9039-A (as technically amended by A.9167). Thus, like many prior maps struck down by courts as partisan gerrymanders in the past, the 2022 Congressional Map was a plan devised by a single party, purposefully drawn for that party’s own political ends. *Householder*, 373 F. Supp. 3d at 1093–96; *Common Cause*, 318 F. Supp. 3d at 861–64; *Whitford*, 218 F. Supp. 3d at 887–90; *League of Women Voters*, 178 A.3d at 817; *Detzner*, 172 So. 3d at 390–93.

Finally, Governor Kathy Hochul’s promise reveals the partisanship inherent in the process of drawing the 2022 Congressional Map. See *Householder*, 373 F. Supp. 3d at 1096; *Common Cause*, 318 F. Supp. 3d at 869; see *Detzner*, 172 So. 3d at 379–86, 388–89, 392–93. Governor Kathy Hochul promised to “*use [her] influence to help Democrats expand the House majority through the redistricting process*,” thus helping the Democratic Party “*regain its position that it once had when [she] was growing up*.” Glueck & Ferré-Sadurní, *supra* (emphases added).

b. Statistical Evidence Shows That The Map Is Starkly Partisan

The expert report of Mr. Sean Trende puts the extreme partisan effects of the 2022 Congressional Map into clear relief. Mr. Trende analyzed 5,000 computer-generated New York congressional maps that were designed specifically to follow New York’s redistricting requirements *without* aiming to increase partisan advantage. Trende.Rep.11–13. Using the 5,000 simulated maps, Mr. Trende calculated a “gerrymandering index,” which shows the expected percentage of Democratic vote shares ranging from the most heavily Democratic district to the

least. *Id.* at 12–13. The index accounts for deviations in the simulated maps, and, when comparing the results of the simulated maps with those of the 2022 Congressional Map, the simulated maps had a Gerrymandering Index of around 7.5%, while the 2022 Congressional Map had an index of 17%—almost six deviations from the mean. *Id.* at 13–14. Based on this data, Mr. Trende concluded that the 2022 Congressional Map was *more* biased in favor of New York Democrats than *all these 5,000 apolitical maps*, demonstrating the remarkable success of the Legislature and Governor’s partisan gerrymander here. *Id.* at 14. Mr. Trende thus concluded that it is “implausible, if not impossible” that the 2022 Congressional Map “was drawn without a heavy reliance upon political data and was likely drawn to favor or disfavor a political party.” *Id.*



Trende.Rep.14.

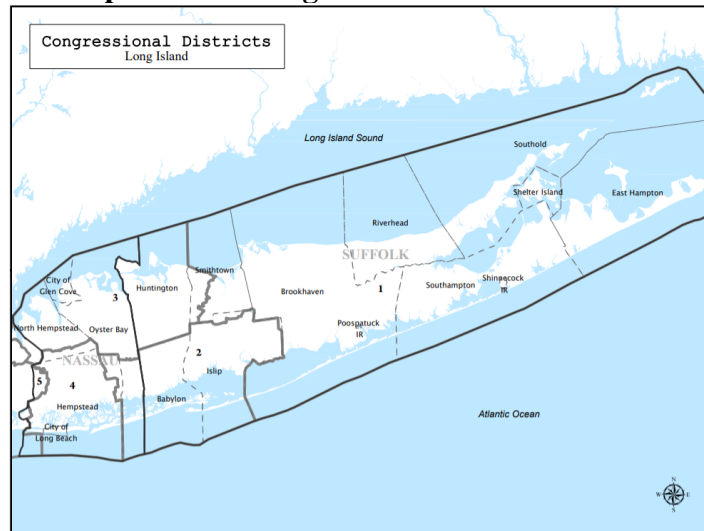
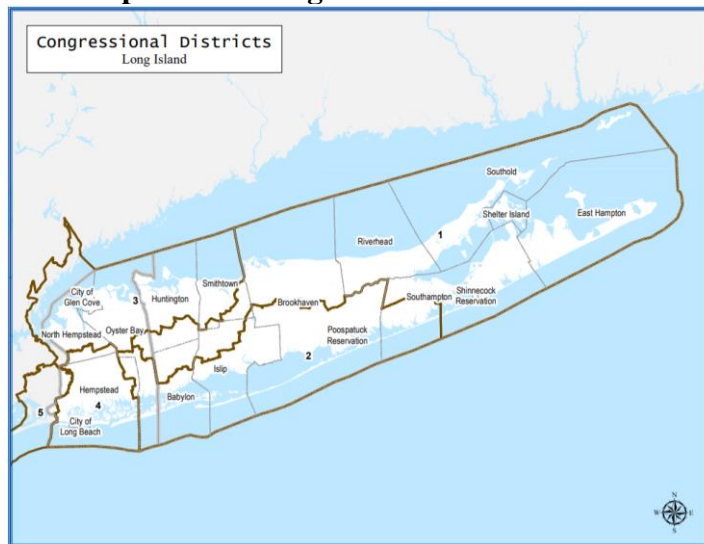
Additionally, Mr. Trende analyzed other data points to bolster his conclusion that the 2022 Congressional Map was drawn to favor the Democratic Party. Specifically, he generated a dotplot

to compare the partisanship of the 2022 Congressional Map with the simulated maps. *Id.* at 14–15. This allowed him to discover “DNA of a gerrymander”: the Legislature not only packed votes from the Republican Party into as few districts as possible, but also spread the remainder of these voters over as many districts as possible to reduce their political effectiveness. *Id.* at 16. He also examined the Polsby-Popper score and county splits for comparing the compactness of the simulated maps with that of the 2022 Congressional Map, confirming these conclusions. *Id.* at 17–18.

c. Multiple Specific Lines In The Map Subordinate Traditional Redistricting For No Coherent Purpose Other Than Politics

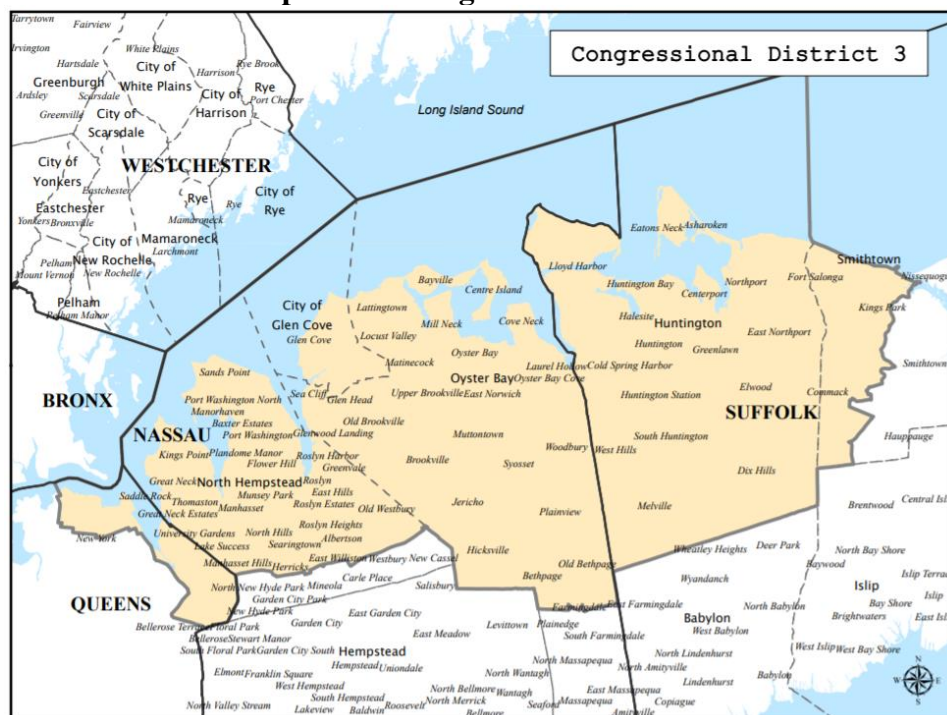
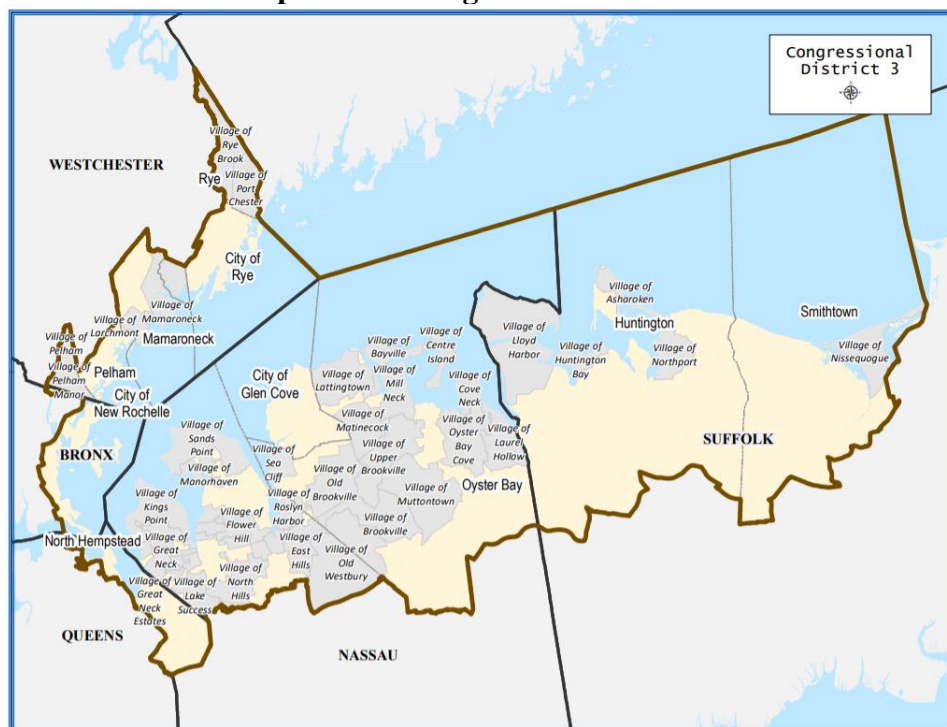
Multiple specific lines in the 2022 Congressional Map subordinate traditional redistricting criteria for no honest reason other than to achieve a partisan advantage for Democrats. Indeed, taken together, these specific changes show that the Legislature cynically drew the 2022 Congressional Map specifically to flip four congressional districts from Republican districts to Democratic districts, so that the Democrats may gain four additional seats in Congress. Petitioners outline these specific changes immediately below, in light of the fulsome discussion found in the Expert Report of Mr. LaVigna. *See* Exhibit B, Expert Report of Claude A. LaVigna (“LaVigna.Rep.”) (Feb. 14, 2022).

Districts 1 & 2 in the 2022 Congressional Map are far different from those found in the 2012 court-drawn map, swapping Republican voters for Democratic voters with obvious gerrymandering intent. The 2022 map places areas with high concentrations of Republican voters into new District 2, while moving solidly Democratic communities into District 1, shifting District 1 from strong Republican to Democratic-leaning, unnecessarily sprawling across two counties and splitting several towns. LaVigna.Rep.3–4.

Map of Prior Congressional Districts 1 & 2¹⁶**Map of New Congressional Districts 1 & 2**

District 3, a previously compact district, now reaches from Suffolk County all the way into Westchester County—capturing overwhelmingly Democratic-voting towns along the shore in Westchester County and lumping together disparate, unconnected communities on Long Island in Nassau and Suffolk Counties. *Id.* at 4.

¹⁶ All maps come from the LATFOR government website, <https://www.latfor.state.ny.us/maps/>.

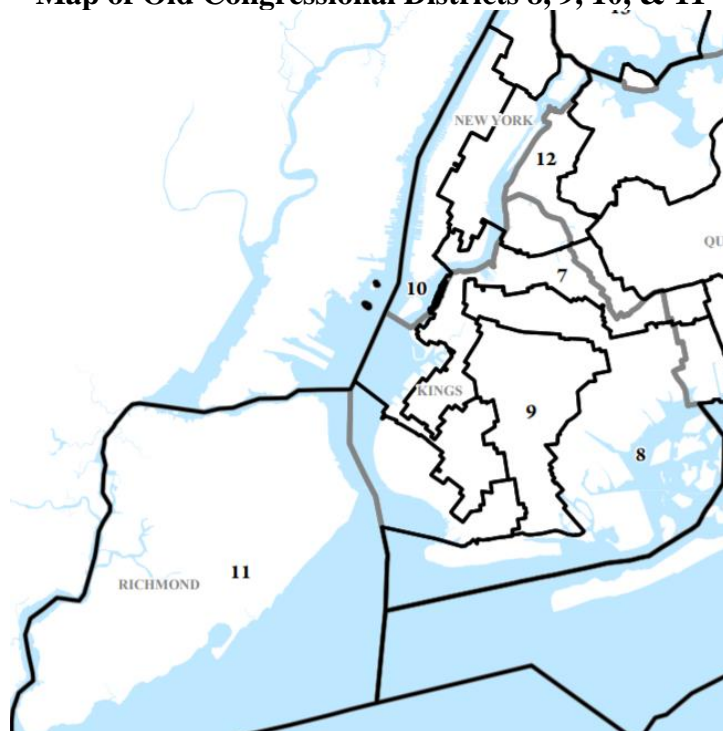
Map of Old Congressional District 3**Map of New Congressional District 3**

Districts 8, 9, 10, & 11 are blatant gerrymanders, with bizarre, roving boundaries crossing multiple bodies of water and snaking between each other for no discernible reason besides partisan advantage. LaVigna.Rep.4. These shifts place additional Democratic voters into District 11,

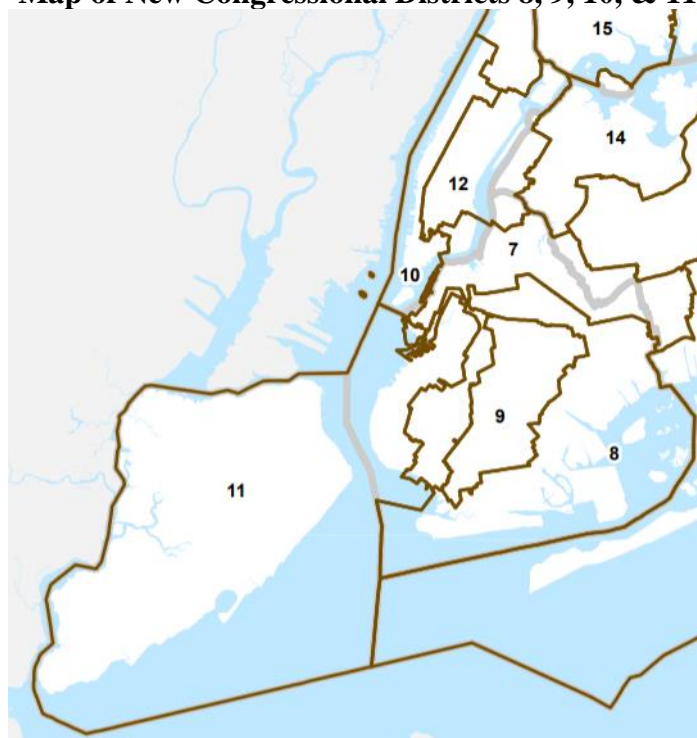
changing that district from strong Republican to Democratic and splitting up established communities of interest in Brooklyn, dividing closely knit Orthodox Jewish and Russian communities with strong social and cultural ties, “cracking” these conservative, Republican-leaning voters by spreading them across multiple districts. *Id.*

The reconfiguration of Districts 10 and 11 also splits an established Asian community in District 10, moving half into District 11, in order to unseat incumbent Republican Congresswoman Nicole Malliotakis from Congressional District 11. LaVigna.Rep.4. In particular, it separates the Asian American, Pacific Islander, and Latino communities in Sunset Park—communities that have formed the backbone of this district for nearly 30 years—from their related communities of interest in northern Brooklyn and Manhattan’s Lower East side. *Id.*

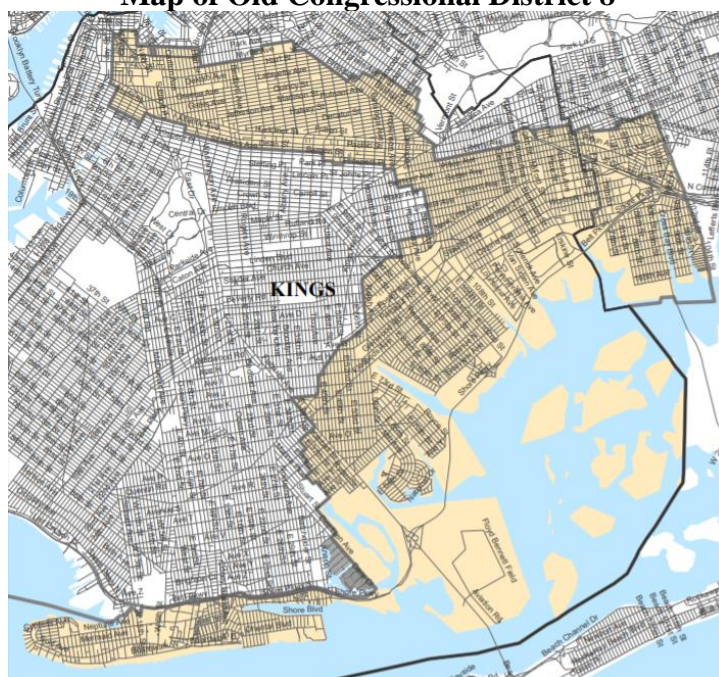
Map of Old Congressional Districts 8, 9, 10, & 11



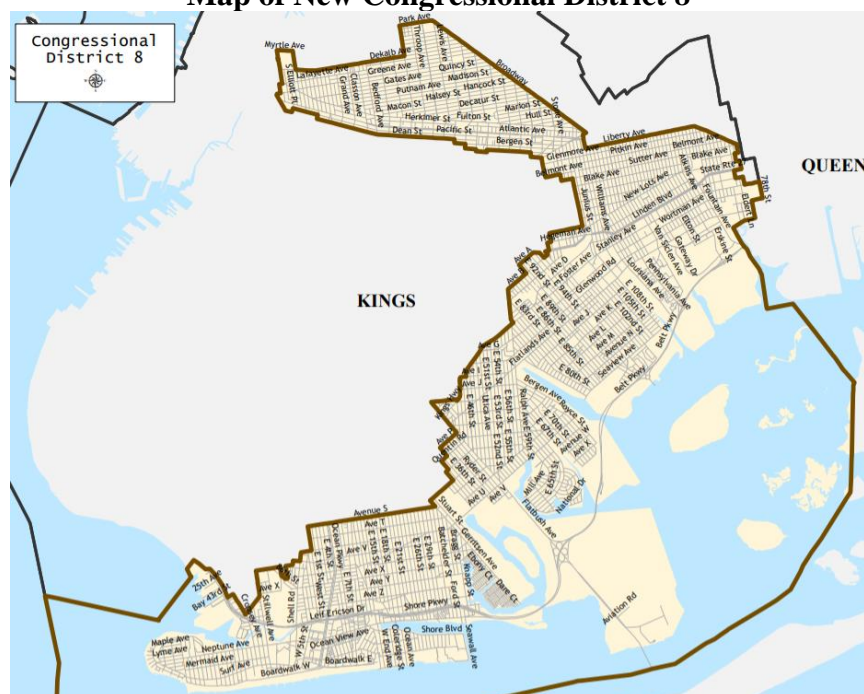
Map of New Congressional Districts 8, 9, 10, & 11



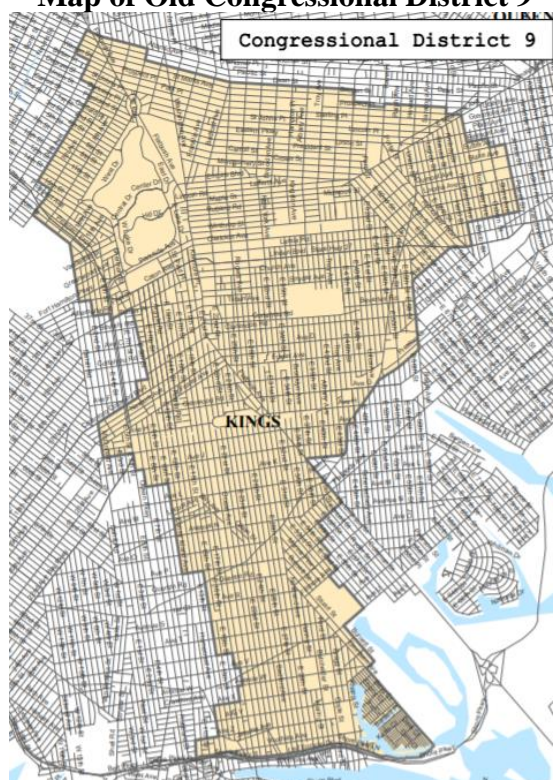
Map of Old Congressional District 8



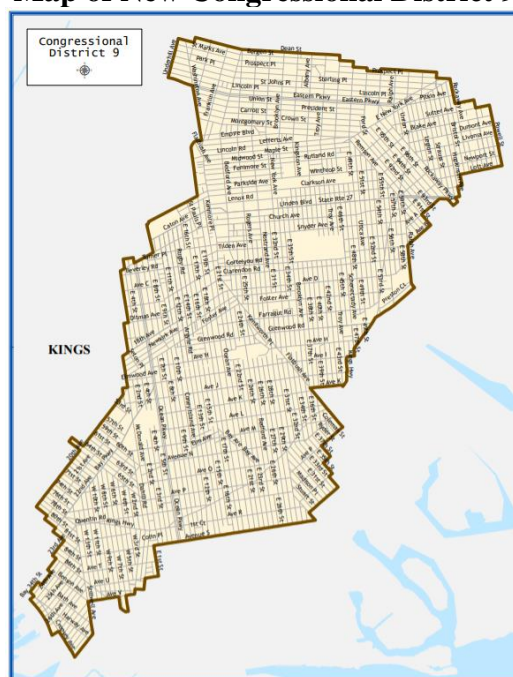
Map of New Congressional District 8



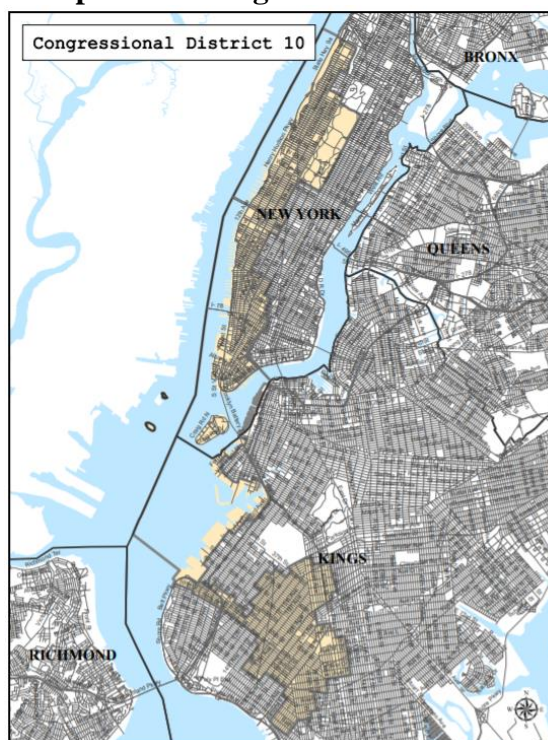
Map of Old Congressional District 9



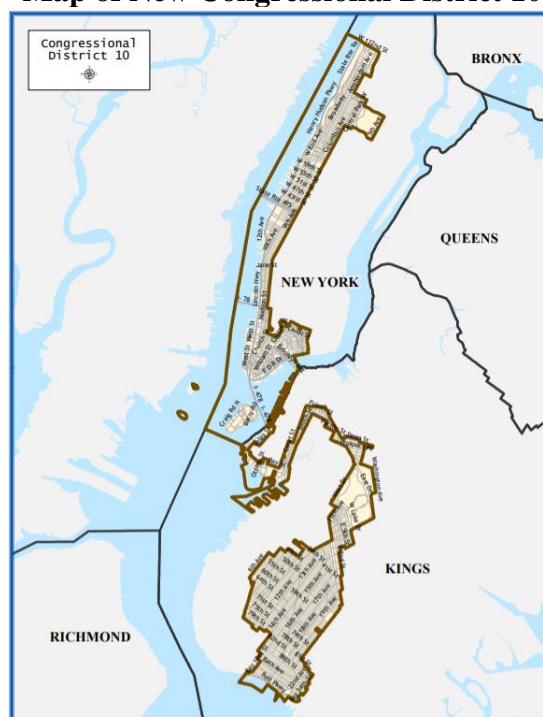
Map of New Congressional District 9



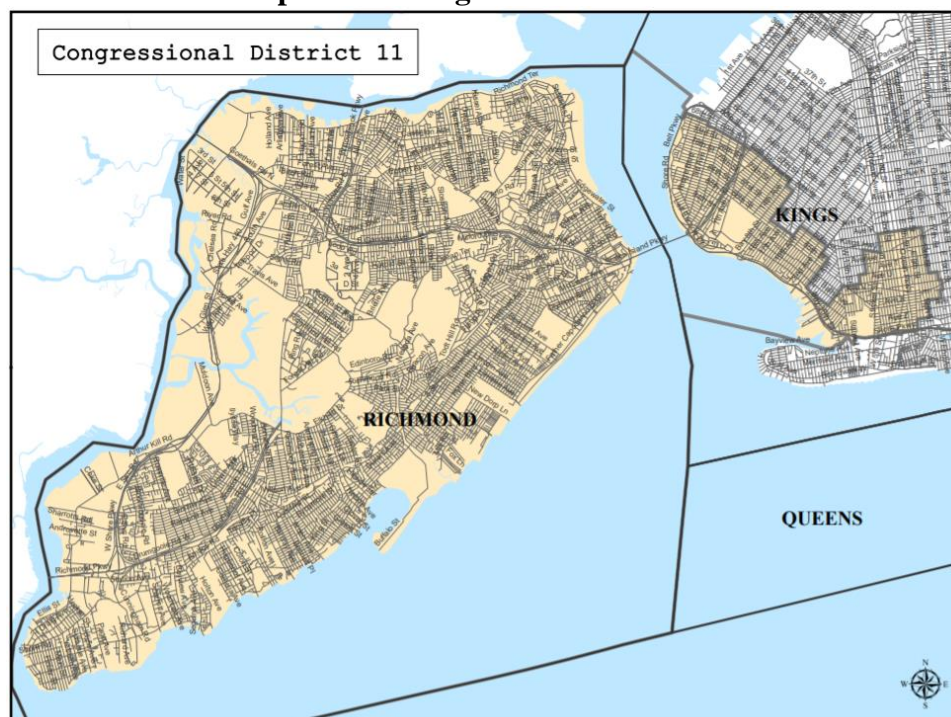
Map of Old Congressional District 10



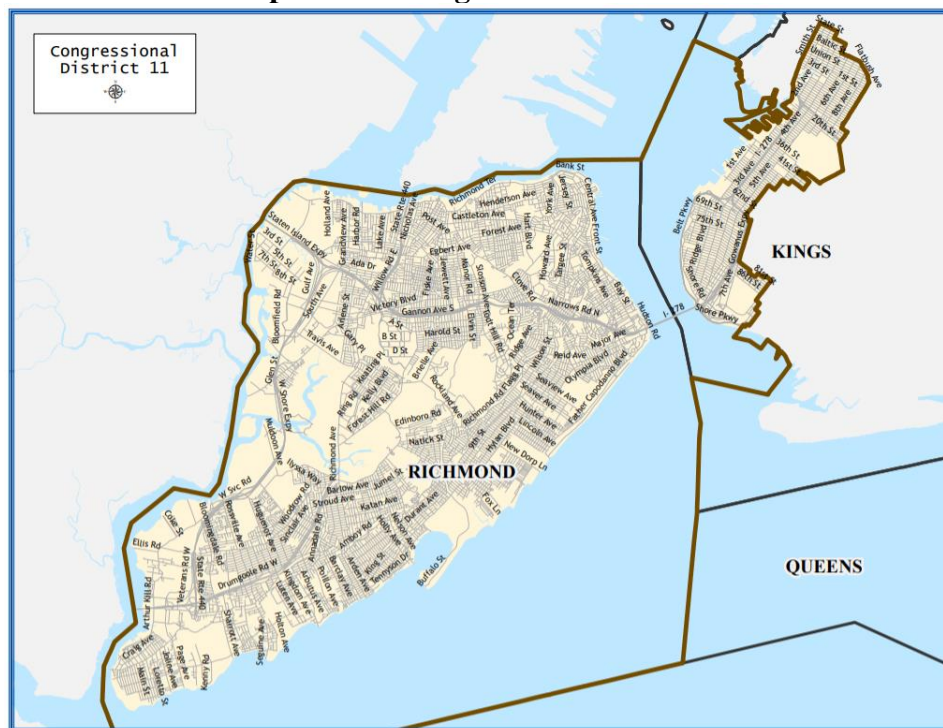
Map of New Congressional District 10



Map of Old Congressional District 11

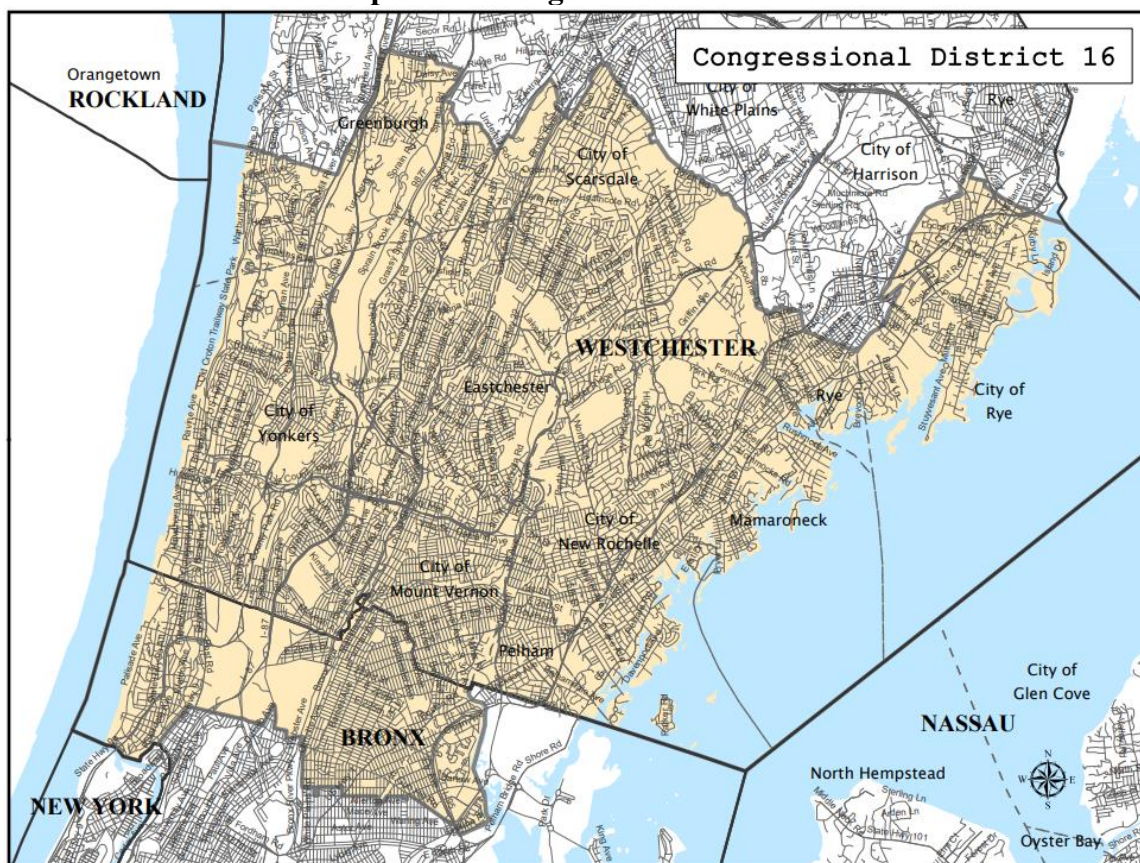


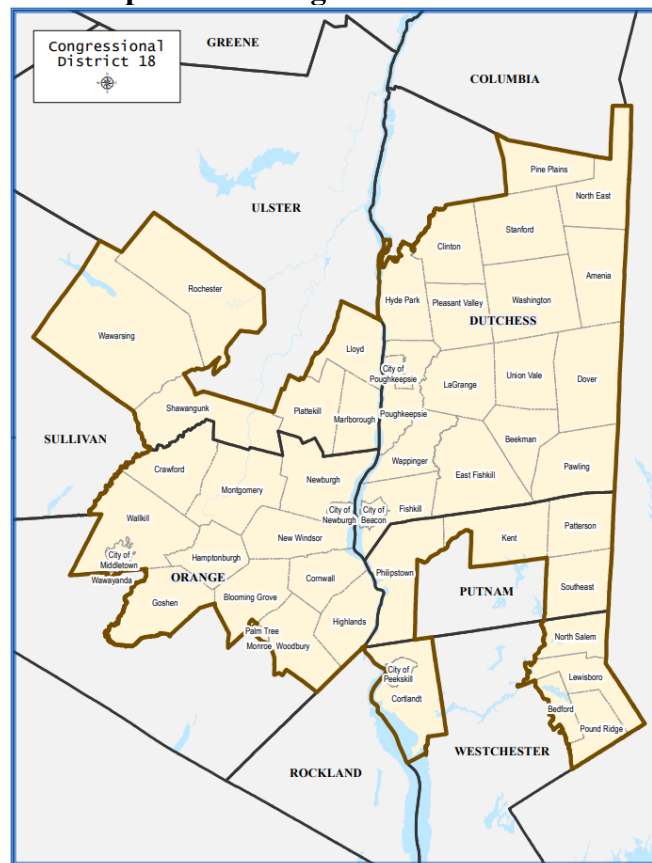
Map of New Congressional District 11



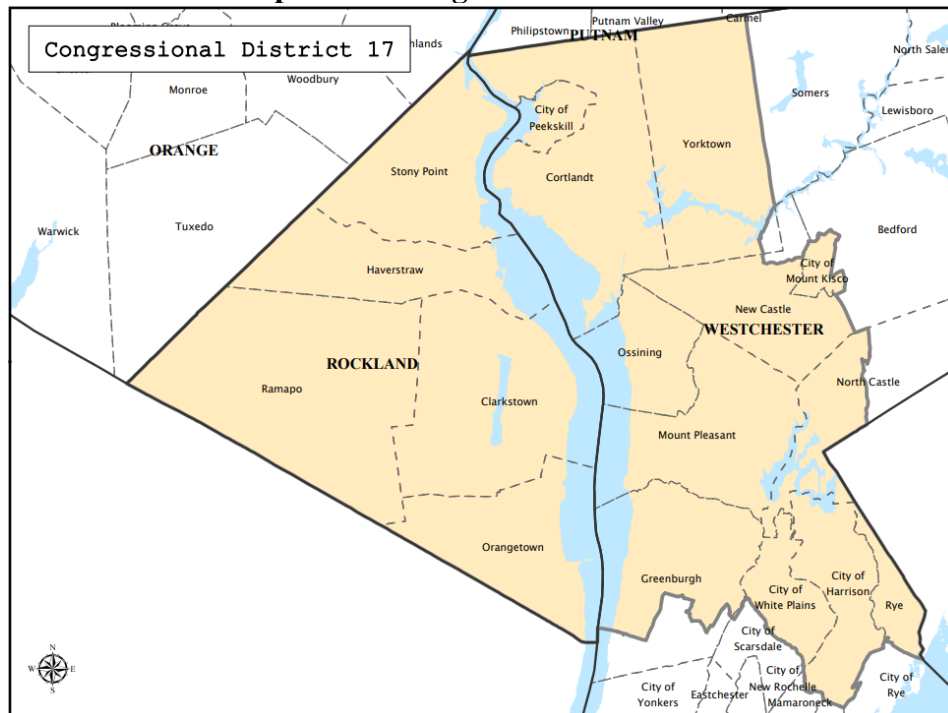
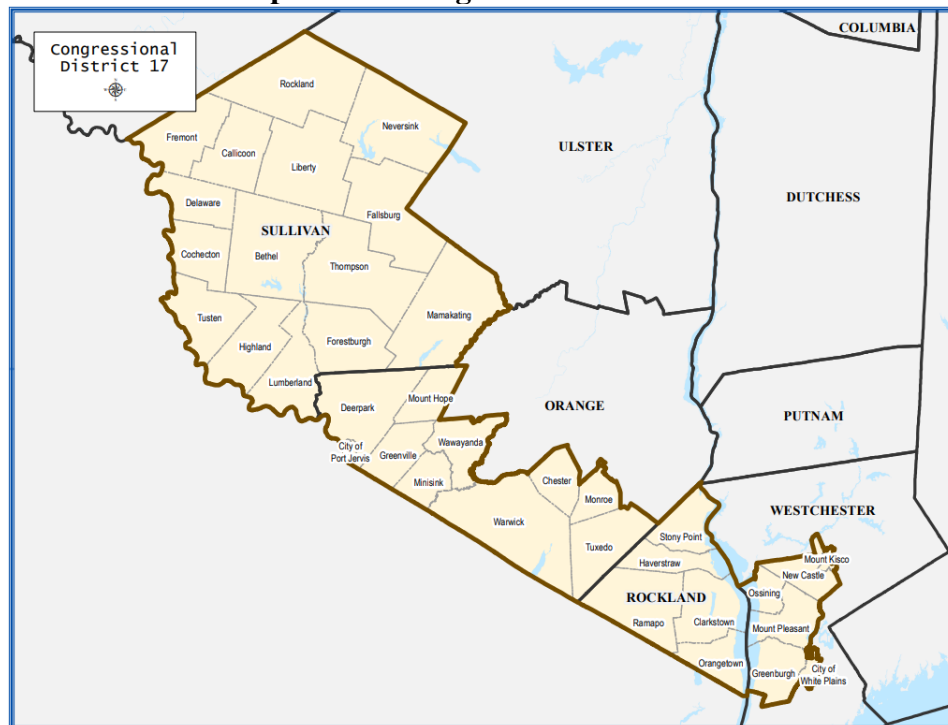
Districts 16 & 18. District 16 now stretches from the Bronx through Westchester County into Putnam County, “cracking” rural and suburban Republican communities out of District 18. *Id.* at 5. These strongly Republican areas are now awkwardly connected to geographically distanced, highly populated Democratic communities, neutralizing Republican votes. *Id.* District 18 is now oddly shaped, stretching around the Republican-voting areas that were scooped into Congressional District 16. *Id.* This shores up Democrats’ chances in District 18 and protects incumbent Congressman Sean Maloney. As a result of this gamesmanship, Congressional District 16 moves only somewhat from very strong Democratic to still-strong Democratic, whereas District 18 shifts from Republican-leaning to Democratic-leaning. *Id.*

Map of Old Congressional District 16



Map of New Congressional District 18

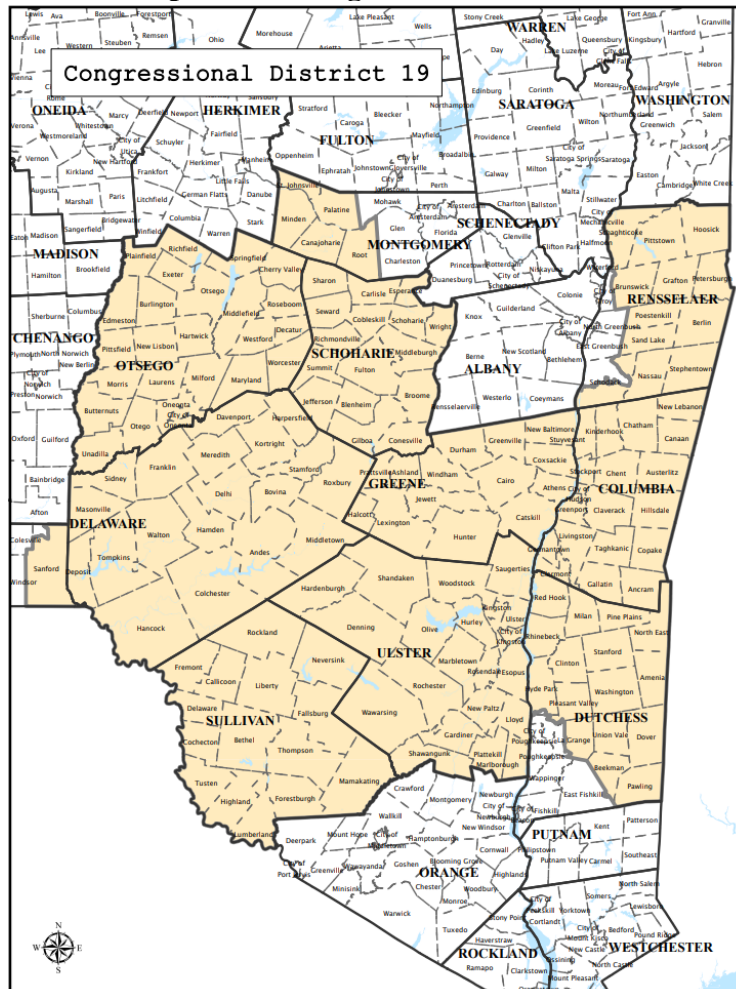
District 17. District 17 is stretched to allow strong Democratic-voting communities to negate rural Republican areas, while splitting the conservative Jewish communities and spreading Republican voters among multiple districts to decrease their voting power without jeopardizing any Democratic districts. *Id.* District 17 now reaches from Sullivan County through Orange and Rockland Counties, finally crossing the river to connect with Democratic strongholds in Westchester County. *Id.* The district combines the Orthodox communities in Sullivan and Rockland counties but excludes the Kiryas Joel Jewish community in Orange County. *Id.*

Map of Old Congressional District 17**Map of New Congressional District 17**

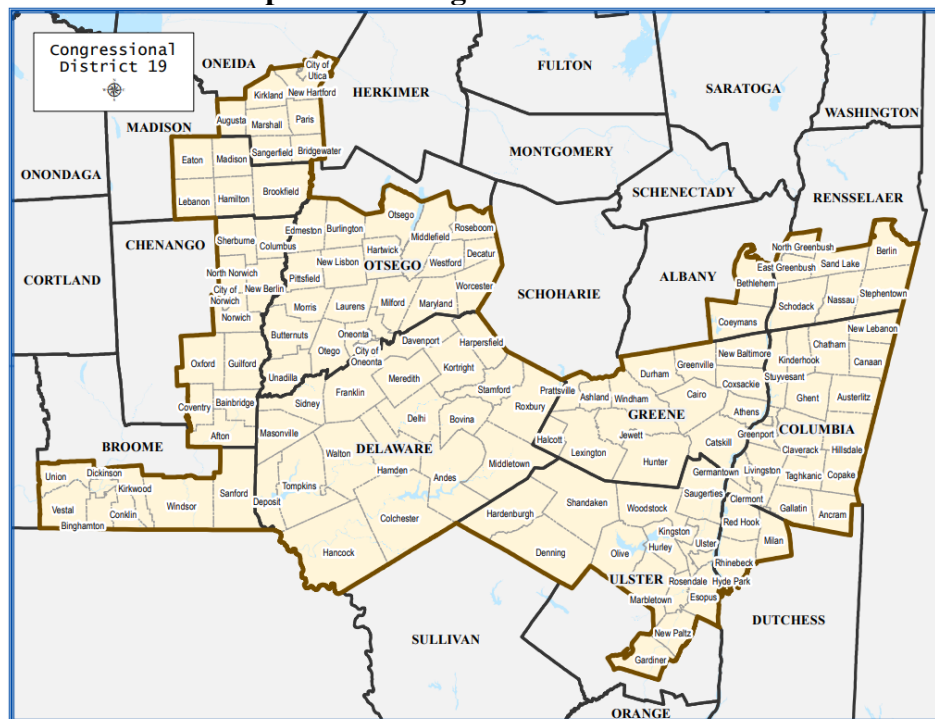
District 19. District 19 strengthened the Democratic Party's political interests, with its four reaching corners showing how the Legislature shopped for Democratic voters to turn the district

from Republican-leaning to a Democratic-advantage district. *Id.* at 6. The new District 19 connects Republican communities in Columbia and Greene counties with Democratic communities in Albany, Ulster, Oneida, and Broome Counties, adding Democratic voters and a new county split. *Id.* These targeted choices flipped District 19 into a Democratic-advantage district. *Id.*

Map of Old Congressional District 19



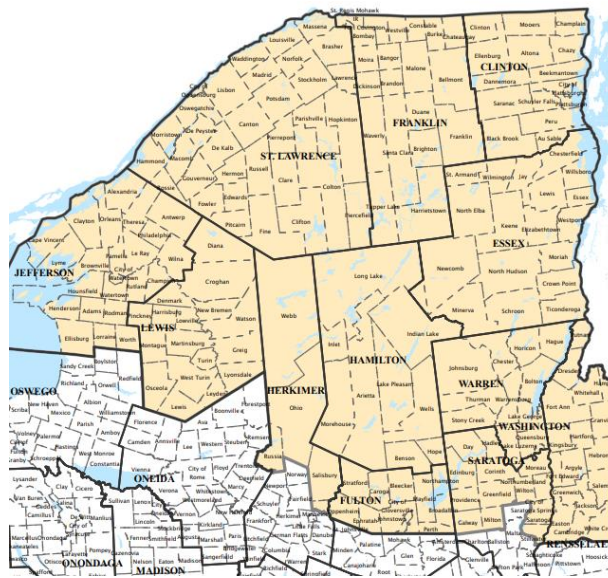
Map of New Congressional District 19



District 21. The Legislature gerrymandered District 21 by packing it with additional Republican voters. New District 21 replaces Saratoga, Schenectady, and part of Warren with large portions of Oneida, Herkimer, and Montgomery Counties, and all of Schoharie County, thereby packing additional Republican voters into this single district and eliminating their ability to make surrounding districts more competitive. *Id.*

Map of Old Congressional District 21

Congressional District 21



Map of New Congressional District 21

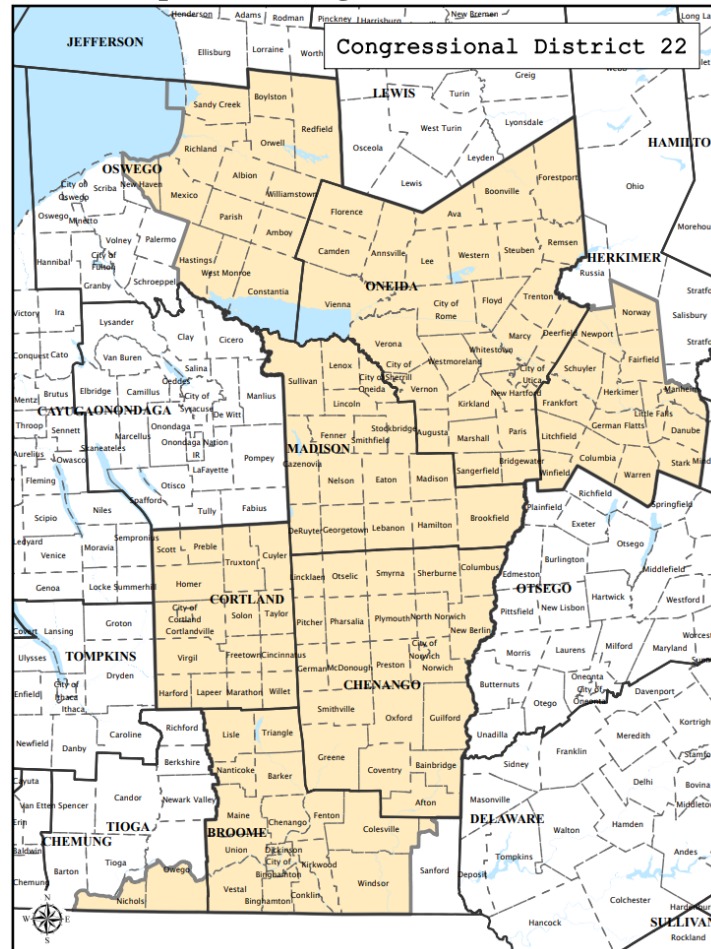
Congressional District 21



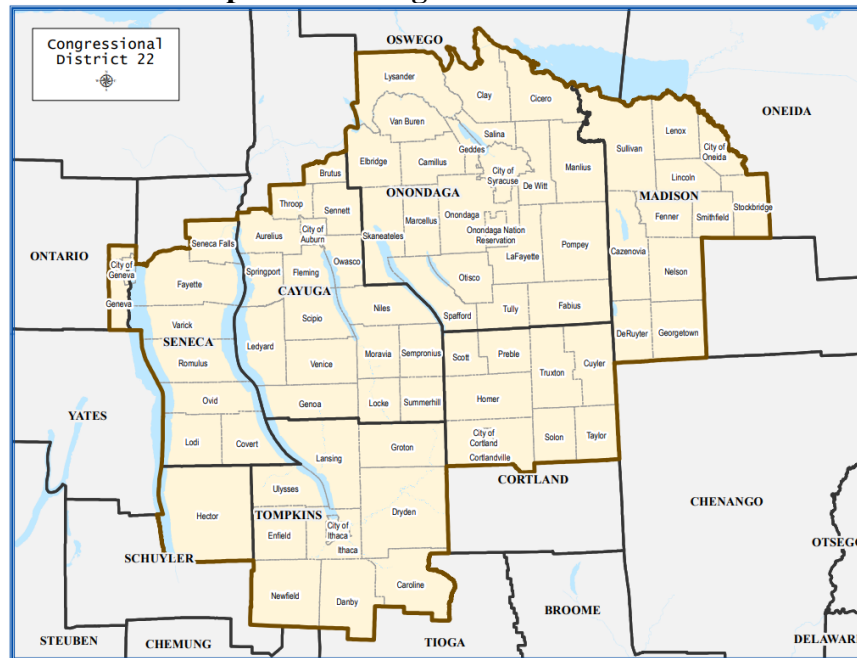
District 22. In District 22, the Legislature removed Republican areas and replaced them with Tompkins County, flipping the district from a competitive Republican district to a strong

Democratic one. *Id.* As a result, District 22 underwent a massive political swing, benefitting Democratic candidates. *Id.*

Map of Old Congressional District 22

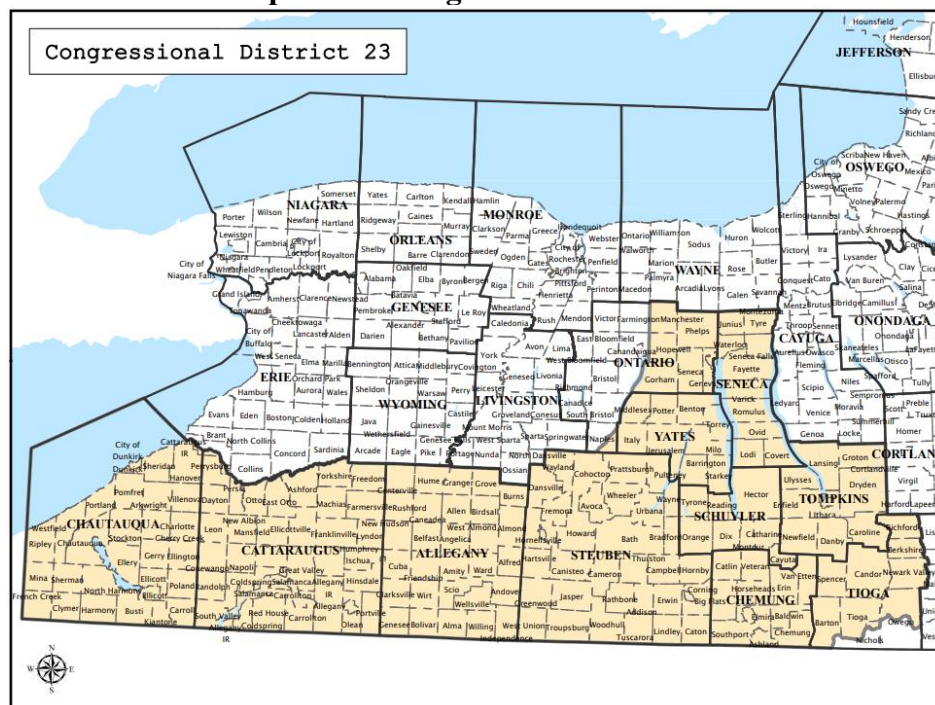


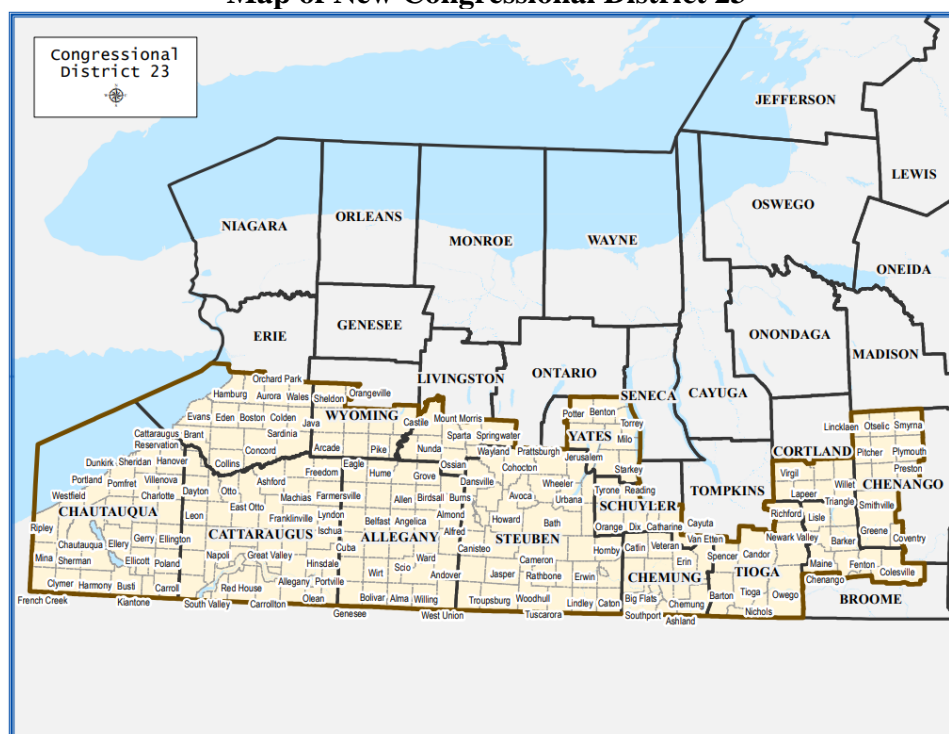
Map of New Congressional District 22



District 23. The Legislature gerrymandered District 23 by “packing” Republican voters into this district for partisan gain. The new District connects southern Erie County towns with far-away rural areas around Binghamton and removes heavily Democratic areas to District 22. *Id.*

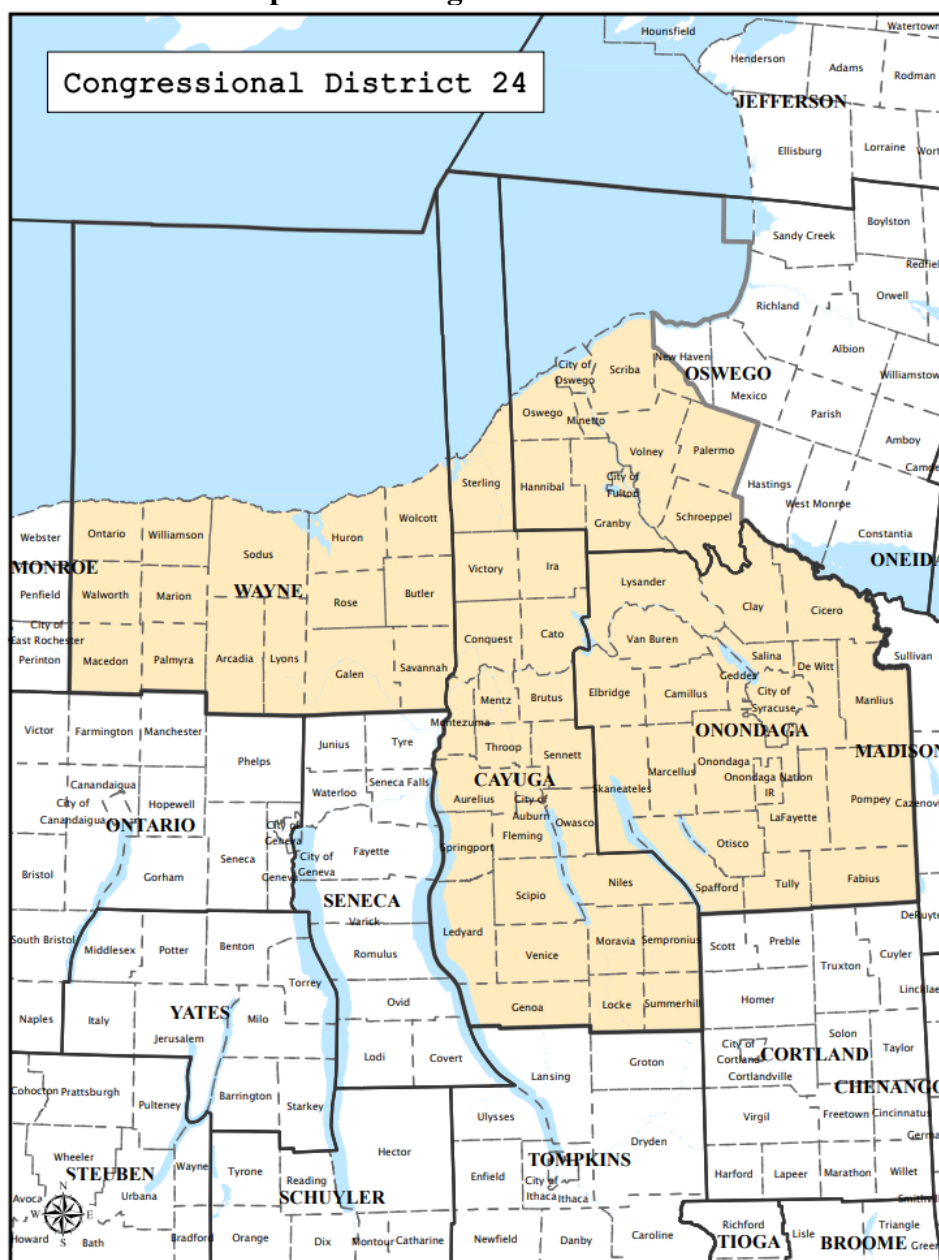
Map of Old Congressional District 23



Map of New Congressional District 23

District 24 now connects Republican communities in Niagara and Erie Counties with faraway Jefferson County, while avoiding certain portions of Monroe and Ontario Counties. *Id.* at 6–7. It now stretches across four media markets, connecting numerous areas over more than 250 miles with little in common, shifting from highly competitive Democratic to very strong Republican, protecting numerous surrounding districts from any serious Republican challenge. *Id.*

Map of Old Congressional District 24



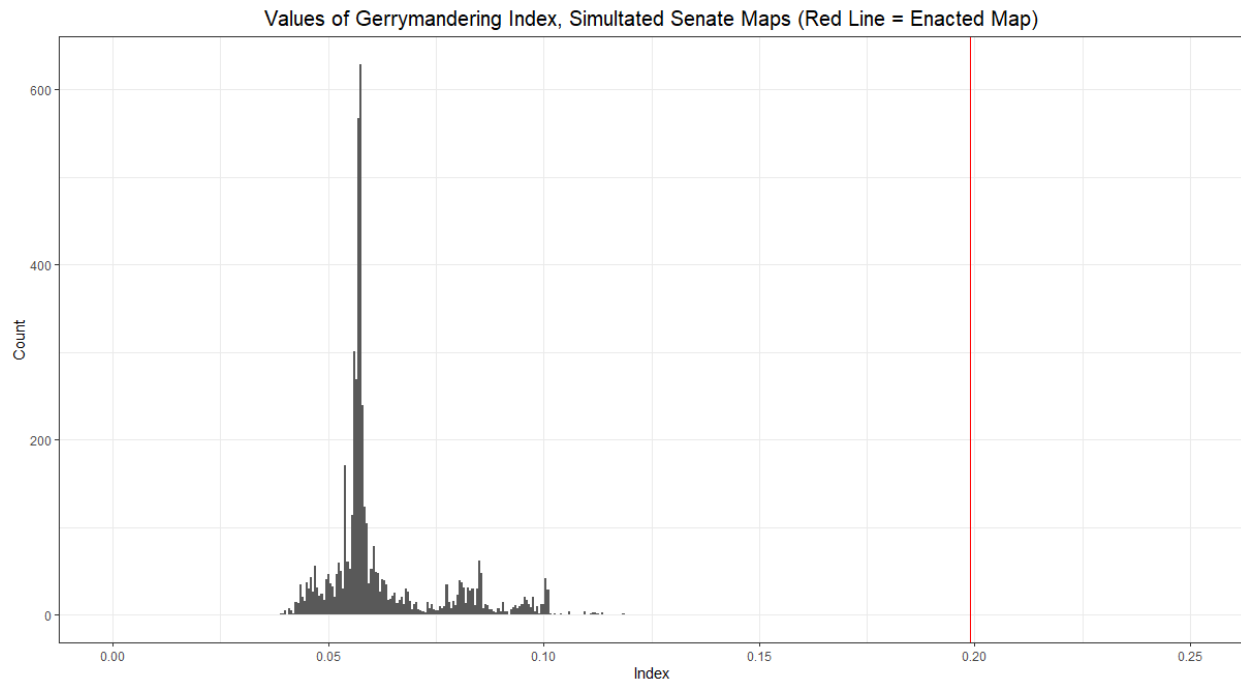
This map displays the 17th Congressional District of New York State, highlighted in blue. The district is situated in the western part of the state, primarily within Orleans, Wayne, and Livingston counties. Key locations within the district include the City of Rochester, which is divided by the district boundary, and the City of Tonawanda. Surrounding areas include the Buffalo metropolitan area to the west and south, and the Niagara River region to the east. The map also shows the borders of neighboring states: Ohio to the west, Pennsylvania to the south, and Vermont to the east. Major water bodies like Lake Erie and Lake Ontario are also depicted.

a. The Map-Drawing Process Was Itself Partisan

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b. Statistical Evidence Shows That The Map Has An Extreme Partisan Effect

The inevitable partisan result of the 2022 Senate Map provides further evidence of the Legislature’s unconstitutional partisan intent, ensuring that the Democratic Party in New York will secure an outsized number of Senate seats compared to their political support in this State. Mr. Trende’s expert report also stresses the extreme partisan effects of the 2022 Senate Map. Here too, he analyzed 5,000 computer-generated New York Senate maps, designed specifically in line with New York’s redistricting requirements without aiming to increase partisan advantage. Trende.Rep.19–20. And, here too, based on the data points of the Gerrymandering Index, as well as a dotplot and Polsby-Popper scores, Mr. Trende concluded that the 2022 Senate Map was more biased in favor of New York Democrats than all 5,000 apolitical maps, demonstrating the remarkable success of the Legislature and Governor’s cynical gerrymandering. *Id.* at 19–23. As a result, the 2022 Senate Map “*is an extreme outlier* when compared to what we would expect from a map drawn without respect to politics,” and so was overwhelmingly likely “drawn with[] a heavy reliance on political data.” *Id.* at 19 (emphasis added).



Trende.Rep.20.

c. Multiple Specific Lines In The Map Subordinate Traditional Redistricting For No Coherent Purpose Other Than Politics

Senate District 2 is on the northwestern portion of Long Island and has historically been a strongly Republican district. LaVigna Rep.7. Republican voters who had been in Senate District 1 in the 2012 Senate Map are now in Senate District 2 in the 2022 Senate Map, thereby making new Senate District 1 more favorable for a Democratic candidate. *See id.*

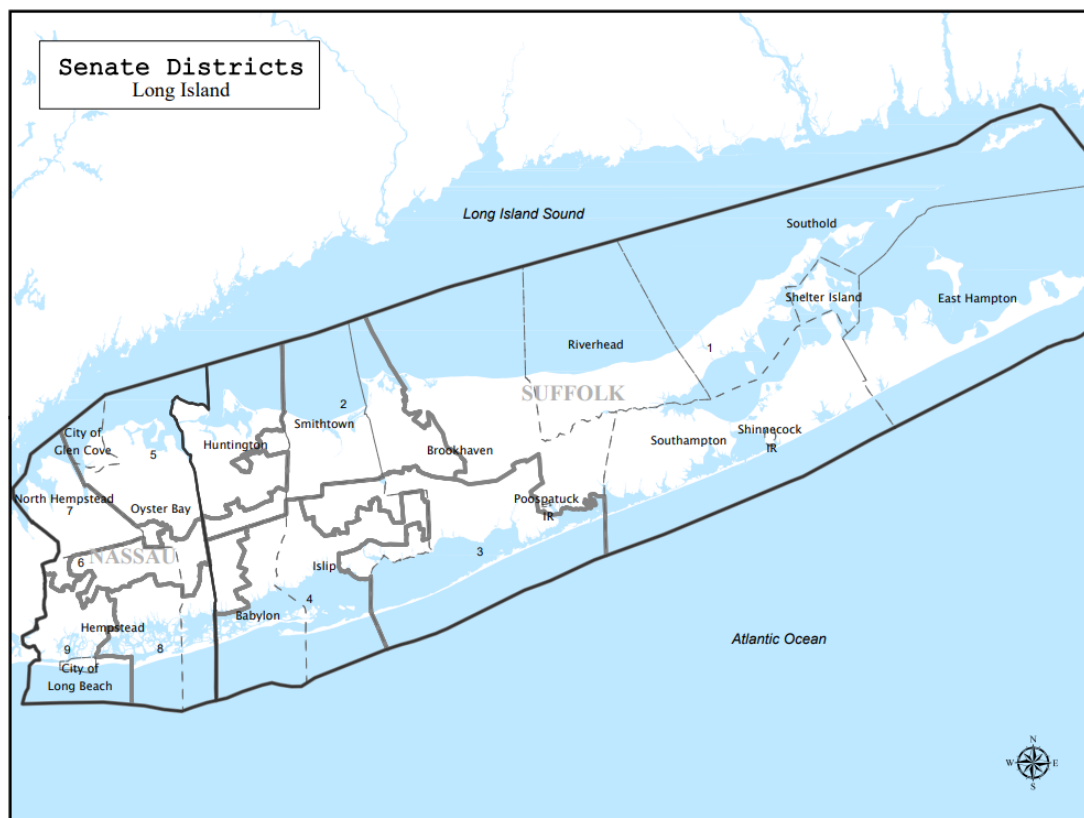
Senate District 4 is on the southwestern portion of Long Island (generally Suffolk and Nassau Counties) and has historically been a somewhat-reliable Republican district. *Id.* In the 2022 Senate Map, the district now encompasses the communities that previously made Senate District 3 competitive. *Id.* As a result of these changes, the Republican incumbents who currently represent Senate Districts 3 and 4 are now all located in the new Senate District 4, which also opens a seat in new Senate District 3. *See id.*

Senate District 5 is on the northwestern portion of Long Island and has historically been a swing district. *Id.* In the 2022 Senate Map, the district excludes the Town of Oyster Bay and adds very Democratic regions that are not communities of interest. *Id.* Here, the Legislature combined areas that had been in different Senate districts for decades, and that are not communities of interest, to turn a swing district into a strongly Democrat-favoring district. *See id.* (further discussing the map's changes to these districts).

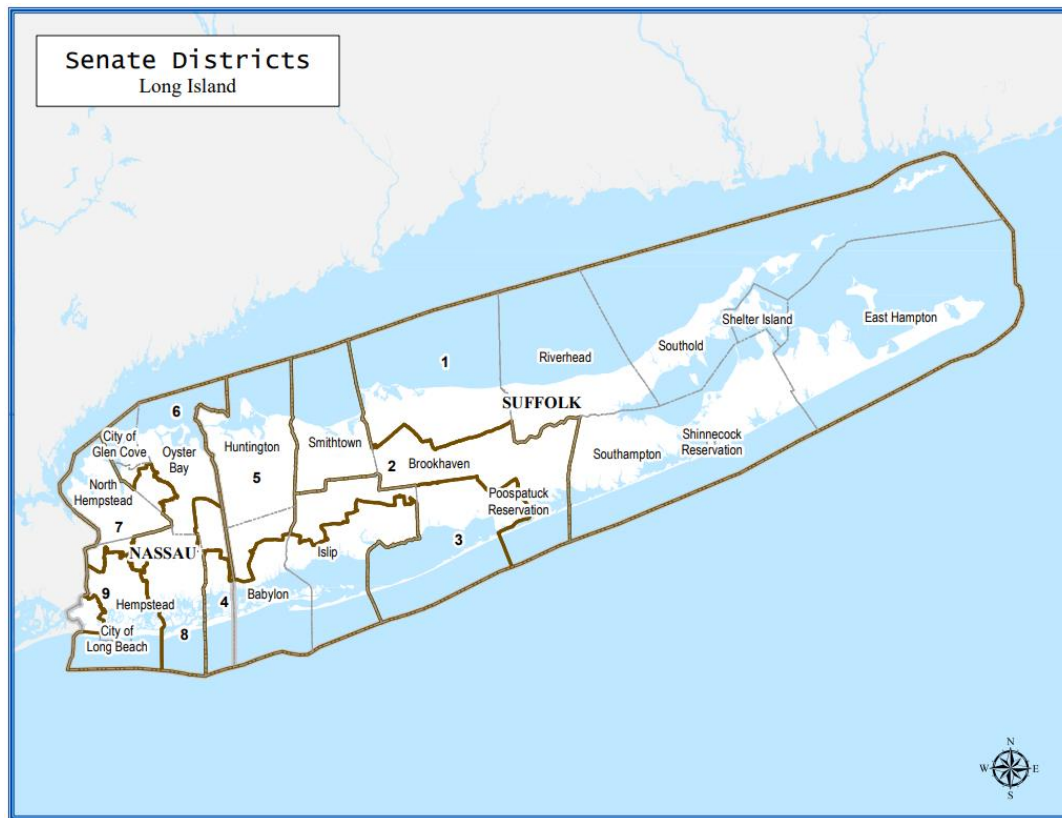
Senate District 6 is on the western end of Long Island and has also historically been a swing district. *Id.* Just as in new Senate District 5, the Legislature combined areas that had been in different Senate districts for decades, and that are not communities of interest, to turn a swing district into a strongly Democrat-favoring district. *See id.*

Senate District 9 is on the southwestern end of Long Island and previously contained Republican-voting, heavily Orthodox Jewish communities known as the Five Towns. *Id.* at 8. In the 2022 Senate Map, those communities have been moved to a heavily Democratic district in Queens, breaking the Nassau-Queens border unlike in the 2012 Senate Map. *Id.* As a result of these changes, Senate District 9 is now more favorable for a Democratic candidate. *See id.*

Map of Old Senate Districts on Long Island



Map of New Senate Districts on Long Island

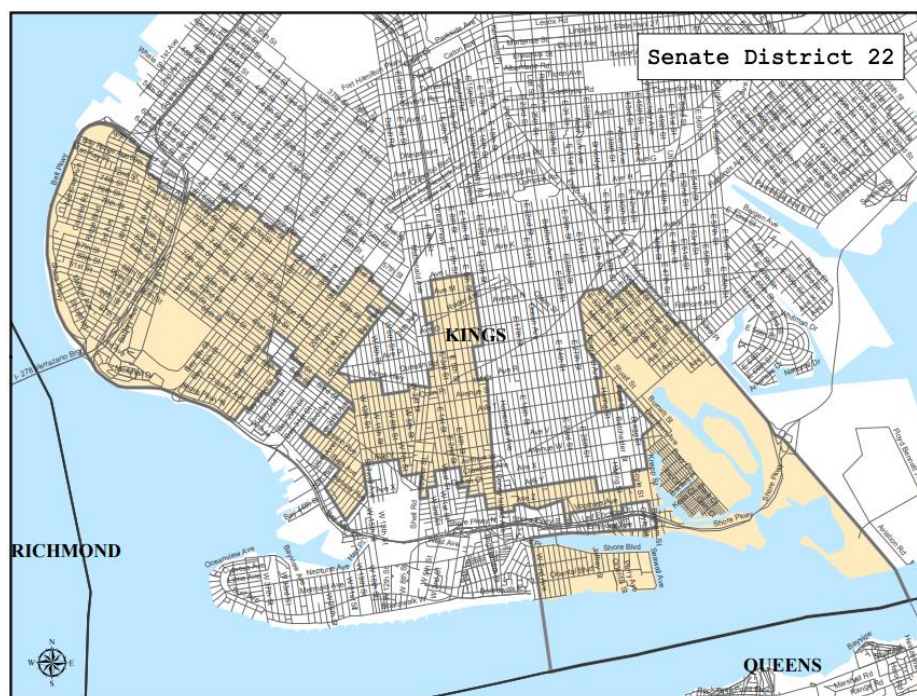


Senate District 10 is located in Queens. Previously compactly located in Queens County, Senate District 10 now extends across the county line and contains the heavily Orthodox Jewish and Republican-leaning Five Towns community in Nassau County, which was removed from Senate District 9, breaking the Nassau County-Queens County border and combining two unrelated communities, thereby diluting the voting power of Republicans in the new district without at all risking that seat for Democrats. *See id.* (further discussing the map's changes to these districts).

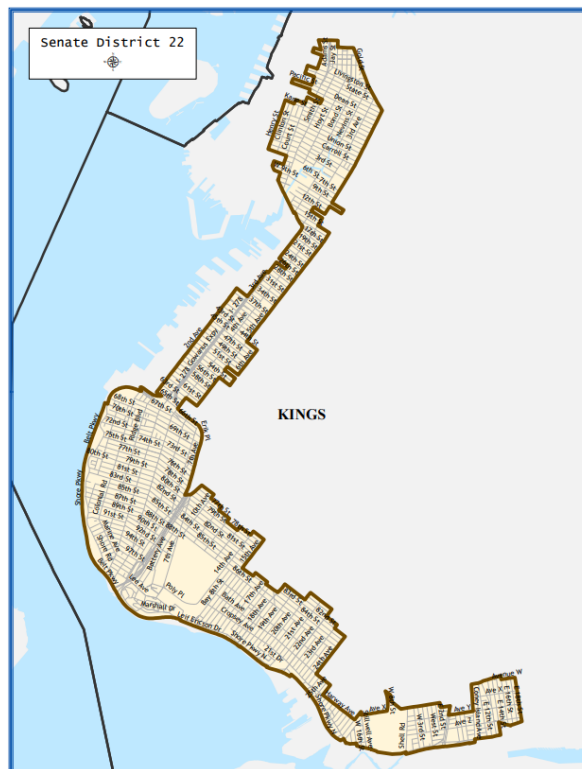
Senate District 22 is located in Brooklyn. Previously spread throughout the borough, the new District 22 now awkwardly extends from southern Brooklyn northeastward into communities

in northern Brooklyn that share little in common. *Id.* This new line drawing separates Brooklyn's Russian and Orthodox Jewish community of interest between multiple Senate districts. *See id.*

Map of Old Senate District 22



Map of New Senate District 22



Senate District 40 is north of New York City. In the 2022 Senate Map, Republican-leaning towns in Dutchess County and swing towns in northern Westchester County were removed from what had been Senate District 40. *See id.* (further discussing the map's changes to these districts).

Senate District 41 is also north of New York City. By removing Republican-leaning Orange County towns from the previous Senate District 39 in its new incarnation as Senate District 41, and placing them in new Senate District 44, the Legislature moved Democratic-leaning communities to the new Senate District 41, shifting the district from Republican to Democratic and making it a safe seat for the Democratic incumbent. *Id.* at 8–9.

Senate District 42 is also north of New York City. In the 2022 Senate Map, a thin finger stretches southward from the district to include the city of White Plains—this converted a swing

district that had been represented by Republicans for most of the last decade into a strong Democratic district. *See id.* at 8.

Map of New Senate District 42



Senate District 44 spans parts of Ulster, Orange, Delaware, and Broome Counties. In the 2012 Senate map, it contained parts of Ulster County that generally vote Democratic. In the 2022 Senate Map, the Legislature gerrymandered new Senate District 44 by packing it with Republican voters. *Id.* at 9. The Democratic-voting parts of Ulster County have been removed from Senate District 44, and the Republican-performing Orange County towns of Montgomery, Crawford,

Chester, and Monroe from the previous Senate District 39 are now in the new Senate District 44. *See id.*

Senate District 46 is in the Albany region. In the 2012 Senate Map, the district contained the City of Albany and the Albany County river cities that face it across the Hudson River, which have much in common. *Id.* at 9. In the 2022 Senate Map, the City of Albany and the Albany County river cities are disconnected and Senate District 46 is combined with areas in Saratoga County with which it has little in common, to create a safe Democratic district. *See id.*

Senate District 48 most closely approximates Senate District 46 in the 2012 Senate Map. *Id.* In the 2022 Senate Map, Republican-performing areas in the northern reaches of the previous district—Montgomery County and portions of Schenectady County—have been replaced with more Democratic areas in Ulster, Dutchess, and Columbia Counties. *Id.* New Senate District 48 is now a somewhat strong Democratic district, flipping from a lean-Republican district. *See id.*

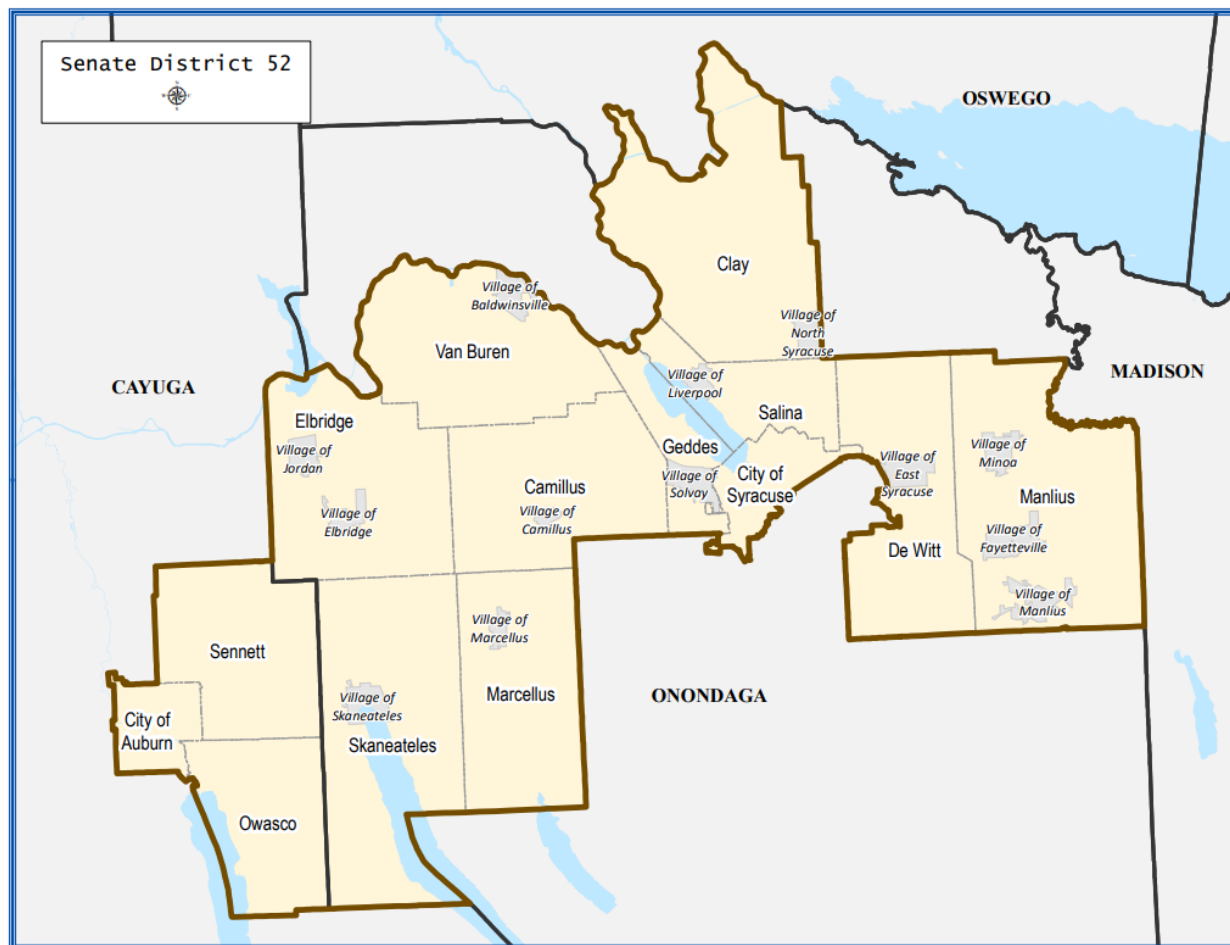
Senate District 51 now lumps two Senators into the same district, Republican James Tedisco of the 2012 Senate District 49 and Republican Peter Oberacker of the 2012 Senate District 51. The Democratic leaders in the Legislature drew this district specifically to disfavor or remove one of these two incumbent Republican Senators. *See id.*

Senate District 52 is a Syracuse-region district that somewhat approximates 2012 Senate District 50. *Id.* In the 2022 Senate Map, a large portion of the City of Syracuse has been added into a district otherwise based in the Onondaga County suburbs. *Id.* As a result, the Legislature flipped new Senate District 52 from a district that had elected a Republican for the majority of the last decade into a district favoring Democratic candidates. *See id.*

Map of Old Senate District 50



Map of New Senate District 52



Senate District 53 is an upstate district, comprising Tompkins County and parts of Cortland, Tioga, and Broome Counties. *Id.* at 10. In the 2022 Senate Map, the historically connected surrounding areas, including portions of Tompkins, Cortland, and Cayuga Counties, are separated from each other to now strongly favor Democrats. *Id.*

Senate District 54 in the 2022 Senate Map packs Republican voters together by combining Wayne County with other strongly Republican-performing areas in Genesee, Livingston, Ontario, and Cayuga Counties, making this district less competitive and extracting these strong Republican areas from their previous districts, which also included swing areas, thereby decreasing competition in neighboring districts. *Id.*

Senate District 56 (which most closely resembles District 55 in the 2012 Senate map), was represented by a Republican State Senator until his recent retirement. *Id.* at 10; Rich Funke, N.Y. Senate.¹⁷ In the 2022 Senate Map, the Legislature added a large portion of the heavily Democratic City of Rochester to the district, making it strongly Democratic. *Id.*

Senate District 57, just as in 2022 Senate District 56, incorporates a substantial portion of the Democratic City of Rochester creating an uncompetitive, strong Democratic district. *Id.*

Senate District 58 in the 2022 Senate Map packs in a large number of Republican voters from surrounding districts in the 2012 Senate map, decreasing competitiveness in the surrounding districts. *Id.*

Senate District 60 was previously a competitive swing district, but now the district breaks the Erie-Niagara County border, pulling in the heavily Democratic City of Niagara Falls and removing competitive and Republican-voting communities. *Id.* As a result of these changes, the district changed from one that leaned Democratic to one that is now solidly Democratic, reducing realistic competition there. *Id.*

Senate District 62 is now packed with Republicans. *Id.* In the 2022 Senate Map, the Legislature removed the City of Niagara Falls, and added reliably Republican towns to the east, to make this a heavily Republican district with little to no competitiveness. *Id.*

Finally, Senate District 63 in the 2022 Senate Map is an amalgamation of several disparate areas that are not communities of interest. *Id.* at 11. As a result, new Senate District 63 is overwhelmingly Democratic, with no real risk of the Democrats losing that Senate seat. *Id.*

¹⁷ <https://www.nysenate.gov/senators/rich-funke>.

C. Per Article III, Section 5, This Court Should Remand To The Legislature To Correct These Maps' Legal Infirmities Under Article III, Section 4(c)

Section 5 provides that “[i]n the event that a court finds” that a redistricting map violates any provision of Article III of the Constitution—which includes Section 4(c)(5)—then “the legislature shall have a full and reasonable opportunity to correct the [map’s] legal infirmities.” N.Y. Const. art. III, § 5. Accordingly, if this Court rejects Petitioners’ procedural argument but adopts their substantive argument, it should permit the Legislature one opportunity to enact constitutional replacement maps.

III. This Court Should Pause Election-Related Deadlines

Given the press of time inherent in redistricting challenges, Petitioners respectfully request that this Court provide relief, at least on an interim basis, from the impending petition-signature deadlines for the 2022 primary elections. The Constitution already requires that cases challenging reapportionment such as this one be litigated in expedited proceedings, with the Court required to “render its decision within sixty days after a petition is filed,” N.Y. Const. art. III, § 5, *making clear that such cases must be resolved before the impending election cycle*. To that end, and most critically for present purposes, *New York’s election statutes provide that candidates seeking to be listed on the primary ballots may begin to obtain signatures on designating petitions on March 1, 2022*, N.Y. Election Law § 6-134(4), with all such designating petitions due to be filed between April 4 and 7, 2022, *id.* § 6-158(1). Given these imminent deadlines, beginning even before this Court’s return date for the Petitions, Petitioners respectfully urge this Court to stay these and other affected deadlines while it completes its fulsome review of the issues raised here, which interim orders would aid the Court in meeting its obligation to resolve the case before the impending election cycle. By way of example, just last week the Pennsylvania Supreme Court, “temporarily suspended” imminent election deadlines arising before the scheduled oral argument

in a statewide redistricting matter, “pending further Order of th[at] Court.” *Carter v. Chapman*, No. 7 MM 2022 (Pa. Sup. Ct. Feb. 9, 2022).¹⁸

CONCLUSION

For the reasons set forth above, Petitioners respectfully request that this Court: (1) declare unconstitutional the 2022 and 2012 congressional and Senate maps, and enjoin Respondents from conducting any elections under those maps; (2) declare unconstitutional the Legislature’s statutory amendment to Section 4(c) of the Redistricting Reform Act of 2012, L.2021, c. 633, § 1; (3) set an expedited briefing schedule for submission of proposed remedial maps or, alternatively, simply permit a federal court to adopt replacement maps; (4) if this Court rules in favor of Petitioners on their substantive claim alone, declare unconstitutional the 2022 Congressional and Senate Maps, enjoin Respondents from conducting any elections under those maps, and then allow the Legislature one opportunity to correct the maps’ constitutional infirmities; and (5) stay election-related deadlines pending resolution of this Petition.

¹⁸ <https://www.pacourts.us/assets/opinions/Supreme/out/7mm2022pco%20-%202-9-2022.pdf#search=%227%20mm%202022%22>.

Dated: New York, New York

February 14, 2022

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CERTIFICATION

I hereby certify that the foregoing memorandum of law complies with the bookmarking requirement and word count limitations set forth in the Parties stipulation for 10,000 words for Principal Briefs. *See* Petitioners' Letter To The Court (Feb. 14, 2022); 22 NYCRR 202.8-b(d). This memorandum of law contains 9,982 words, excluding parts of the document exempted by Rule 202.8-b(b).

Dated: New York, New York
February 14, 2022

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