

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF STEUBEN

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

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.

**MEMORANDUM OF LAW IN OPPOSITION TO ORDER TO SHOW CAUSE
WHY PETITIONERS SHOULD NOT BE GRANTED LEAVE
TO SUBMIT SUPPLEMENTAL BRIEFING ON THE TIMING OF REMEDY**

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Respondents Kathy Hochul, Governor of the State of New York, and Brian A. Benjamin, Lieutenant Governor and President of the Senate (collectively, “Executive Respondents”), respectfully submit this memorandum of law in opposition to Petitioners’ motion, brought by Order to Show Cause on March 13, 2022, NYSCEF 198 & 199, to submit additional briefing on the timing of remedy.

FACTS

On February 3, 2022, Petitioners commenced this special proceeding challenging the 2022 congressional maps under Article 4 of the Civil Practice Law and Rules (“CPLR”).

On February 8, 2022, Petitioners filed for leave to amend their petition, attaching a proposed amendment in which they added a challenge to the 2022 State Senate maps and prayer for relief “[s]uspending or enjoining the operation of any other state laws that would undermine this Court’s ability to offer effective and complete relief to Petitioners for the November 2022 elections and related primaries.” NYSCEF 18 at p. 82. In Petitioners’ accompanying memorandum of law, they sought to “pause election-related deadlines.” NYSCEF 25 at p. 56.

The Executive Respondents opposed this request on multiple bases, including federal and state case law forbidding the interference with the election process on the eve of its commencement. *See* NYSCEF 82 at p. 25-26.

On March 3, 2022, the parties appeared before the Court and argued, *inter alia*, Petitioners’ motion to amend, which the Court granted. However, upon issuing its decision that “a hearing will be necessary to be conducted to determine where the truth lies between the Petitioners’ experts and the Respondents’ experts,” the Court denied Petitioners’ request to interfere with the upcoming election. March 3, 2022 Transcript at 69:17-19. The Court specifically declined to suspend the election process for two reasons: (1) Petitioners’ “extremely high level of proof,” and (2) “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.” *Id.* at 70:1; 70:6-12. The Court thus held: “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.” *Id.* at 70: 12-15.

On Sunday, March 13, 2022, i.e., the day prior to the start of expert testimony, Petitioners filed the subject proposed Order to Show Cause seeking leave to file “supplemental briefing” and a five-paragraph memorandum of law. NYSCEF 198 & 199. The Court signed the Order to Show Cause on March 14, 2022. NYSCEF 203.

ARGUMENT

Petitioners cite no legal basis for their motion. In essence, they seek to reargue the Court’s denial of their request to interfere with the upcoming election cycle, yet Petitioners fail to “identify [their motion] specifically as such,” or attach the underlying papers, procedural flaws that may themselves justify denial. CPLR § 2221(d)(1). In any event, “[r]eargument is not designed to afford the unsuccessful party successive opportunities to reargue issues previously decided or to present arguments different from those originally asserted.” *William P. Pahl Equipment Corp. v. Kassis*, 182 A.D.2d 22, 27 (1st Dept 1992). Rather than demonstrating “that the Court overlooked, misapplied or misapprehended the relevant facts or law,” CPLR 2221(d)(2); *Loris v. S & W Realty Corp.*, 16 A.D.3d 729, 730 (3rd Dept 2005), Petitioners present a bare bones request to submit supplemental briefing to the Court. It should be denied.

Petitioners’ request is also improper given this Court’s inherent authority “to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and

for litigants.” *Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936). It was well within this Court’s discretion to decline to interfere with this years’ election process. Yet, in the midst of the trial, Petitioners seek to bog down the Court and parties with further arguments about a remedy to which they have not proven any entitlement, and which the Court already rightly concluded “would more likely than not leave New York State without any duly elected Congressional delegates.” March 3 Transcript at 70:6-12. “Courts have an inherent power over the control of their calendars and the disposition of business before them, including the order in which disposition will be made of that business.” *Hart v. Am. Airlines, Inc.*, 31 A.D.2d 896, 896 (1st Dept 1969). Petitioners should not be permitted to interrupt that authority

Finally, Petitioners’ desire to brief this Court on the viability of holding a special election in 2023 is utterly irrelevant to the Court’s decision not to interfere in this years’ election cycle. Based on the political calendar, the election cycle is already underway. As the Court made clear, its determination of “the more prudent course” was based upon the importance of ensuring that New Yorkers’ fundamental right to vote, and in no way contingent upon other events.

CONCLUSION

Accordingly, Petitioners’ request for permission to submit supplemental briefing should be denied.

March 15, 2022
Rochester, New York

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