

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 OF PETITIONERS' MOTION FOR LEAVE
TO SUBMIT SUPPLEMENTAL BRIEFING ON TIMING AND SCOPE OF REMEDY**

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Petitioners Tim Harkenrider, Guy C. Brought, Lawrence Canning, Patricia Clarino, George Dooher, Jr., Stephen Evans, Linda Fanton, Jerry Fishman, Jay Frantz, Lawrence Garvey, Alan Nephew, Susan Rowley, Josephine Thomas, and Marianne Volante (collectively, “Petitioners”) submit this Memorandum Of Law in support of their Order To Show Cause to submit supplemental briefing on the timing and scope of any remedy this Court might order on the Amended Petition.

In their Amended Petition, Petitioners requested that this Court “[s]uspend[] or enjoin[] 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 No.18 at 82 ¶ F. In briefing in support of the Amended Petition, Petitioners explained that—as an interim matter and while this Court considers the Amended Petition—this Court should stay or suspend the deadlines in “New York’s election statutes provid[ing] that candidates seeking to be listed on the primary ballots may begin to obtain signatures on designating petitions on March 1, 2022,” and the filing deadline of April 7, 2022, for all such designating petitions, in order to avoid confusion and wasted efforts in campaigning in unconstitutional districts. NYSCEF No.25 at 56–57 (emphasis omitted). At the March 3 Hearing, this Court indicated that it was not inclined to provide Petitioners such interim relief while it considers the Amended Petition, leaving open the question of what the Court would do if it ultimately found the 2022 congressional and Senate maps unconstitutional. Mar. 3, 2022 Transcript of Special Proceedings (“Hr’g Tr.”) at 69:24–70:15. This Court also suggested that one possible approach would be to order special elections under constitutional replacement maps in 2023. Hr’g Tr. at 70:12–15. Petitioners respectfully submit that in light of this Court’s initial indications and the April 4, 2022, constitutional deadline for the Court’s ultimate decision, *see* N.Y. Const. art. III, § 5, the Court should permit the parties to submit supplemental briefing on the following two questions:

1) Whether, assuming the Court finds the 2022 congressional and/or State Senate maps unconstitutional, the United States Constitution and New York Constitution would permit this Court to order special elections in 2023 under replacement, constitutional maps? *See* U.S. Const. art. I, § 2 (“The House of Representatives *shall* be composed of Members *chosen every second Year* by the People of the several States.” (emphases added)); 2 U.S.C. § 7 (establishing the time for electing Representative as the “Tuesday next after the 1st Monday in November, in *every even numbered year*” (emphasis added)); *U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779, 821 (1995) (noting that the Framers of the Constitution “call[ed] for the Members of the House of Representatives to be chosen every second Year by the People of the several States.” (citation omitted)); N.Y. Const. art. III, § 2 (noting state Senate members “shall be chosen for two years”);

2) Alternatively, whether, assuming the Court finds the 2022 congressional and/or State Senate maps unconstitutional, (a) this Court should use its constitutional authority to grant relief that would permit constitutional maps for the November 2022 elections and related primaries?; (b) assuming this Court imposes constitutional replacement maps for the November 2022 elections and related primaries, what are the election deadlines that this Court should order that would govern the 2022 elections, consistent with the time needed to create and adopt remedial maps, the practicalities of election administration, and the requirements of federal law? *See* 52 U.S.C. § 20302(a)(8)(A); *see also* Fed. Voting Assistance Program, *Primary Elections By State and Territory* (2022), available at <https://www.fvap.gov/guide/appendix/state-elections> (noting that 20 States hold primaries in August or later); *State Senate districts will also face legal challenge in New York*, Spectrum News 1 (Feb. 9, 2022), available at: <https://spectrumlocalnews.com/nys/central-ny/ny-state-of-politics/2022/02/09/state-senate-districts-will-also-face-legal-challenge-in->

new-york (Respondent Senate Majority Leader Andrea Stewart Cousins noting that the Legislature “can be nimble should [it] have to be” regarding election deadlines).

For the reasons set forth above, Petitioners respectfully request that this Court grant their Motion For Leave To Submit Supplemental Briefing On The Timing And Scope Of Remedy this Court may grant under the Petition.

Dated: New York, New York

March 13, 2022

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Respectfully submitted,

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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 Rule 202.8-b of the Uniform Rules of Supreme and County Courts. *See* 22 NYCRR § 202.8-b. This memorandum of law contains 1,080 words, excluding parts of the document exempted by Rule 202.8-b(b).

Dated: New York, New York
March 13, 2022

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