

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF ALBANY

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Anthony S. Hoffmann; Marco Carrión; Courtney Gibbons;  
Lauren Foley; Mary Kain; Kevin Meggett; Clinton Miller;  
Seth Pearce; Verity Van Tassel Richards; and Nancy Van  
Tassel,

Index No. 904972-22

Petitioners,

For an Order and Judgment Pursuant to Article 78 of the  
New York Civil Practice Law and Rules,

-against-

The New York State Independent Redistricting  
Commission; Independent Redistricting Commission  
Chairperson David Imamura; Independent Redistricting  
Commissioner Ross Brady; Independent Redistricting  
Commissioner John Conway III; Independent Redistricting  
Commissioner Ivelisse Cuevas-Molina; Independent  
Redistricting Commissioner Elaine Frazier; Independent  
Redistricting Commissioner Lisa Harris; Independent  
Redistricting Commissioner Charles Nesbitt; and  
Independent Redistricting Commissioner Willis H.  
Stephens,

Respondents.

-and-

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,

Intervenor-Respondents.

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**PETITIONERS' MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR LEAVE  
TO FILE SECOND AMENDED VERIFIED PETITION**

Petitioners submit this memorandum of law in support of their motion for leave to file a Second Amended Verified Petition.

Petitioners in Article 78 proceedings may file amended petitions with leave of the court. *See* CPLR § 7804(d) (“The court may permit such other pleadings as are authorized in an action upon such terms as it may specify.”); *Hendricks v. Annucci*, 116 N.Y.S.3d 443, 444–45 (3d Dep’t 2020). Similarly, after a special proceeding has commenced, new parties may be added with leave of the court. *See* CPLR § 401 (“After a proceeding is commenced, no party shall be joined . . . except by leave of court.”); *Barrett v. Dutchess Cnty. Leg.*, 831 N.Y.S.2d 540, 543 (2d Dep’t 2007). “Leave to amend should be freely given absent prejudice or surprise resulting directly from the delay.” *Danise v. Agway Energy Prods.*, 680 N.Y.S.2d 723, 725 (3d Dep’t 1998); *see also Greece Town Mall, L.P. v. State*, 105 A.D.3d 1298, 1300 (3d Dep’t 2013) (“Leave to amend a pleading should be freely granted as long as the amendment does not plainly lack merit and no prejudice will befall the opposing party.”).

Leave to amend should be granted here. The Second Amended Verified Petition differs in only one respect from Petitioners’ Amended Verified Petition filed on August 4, 2022: The Second Amended Verified Petition adds as a Respondent Independent Redistricting Commissioner John Flateau. At the time Petitioners commenced this action, Commissioner Flateau had resigned from the Commission. He has since been reappointed. *See* Affirmation of Richard A. Medina in Support of Motion for Leave to Amend Petition (“Medina Aff.”) ¶ 3. Petitioners’ motion is timely, made within days of learning that Commissioner Flateau re-joined the Independent Redistricting Commission.

Neither Respondents, nor Intervenors, nor Commissioner Flateau will be prejudiced by the proposed amendment. The substance of the proposed Second Amended Petition is identical to that

of the Amended Petition. Allowing the proposed amendment will require nothing of the existing Respondents or Intervenors. This matter will proceed as originally scheduled without any disruption, except that Commissioner Flateau will be added as a party. Counsel for Respondents Imamura, Cuevas-Molina, and Frazier have represented that, contingent upon approval from the Attorney General, they would represent Commissioner Flateau in this action. *See* Medina Aff. ¶ 7. Petitioners' proposed Order to Show Cause provides that the dates and deadlines currently in place in this action will remain unchanged, and the papers already filed in this action relating to the Amended Petition will be deemed to apply to the Second Amended Petition.

Further, each of the Commissioners named as Respondents in this action have already agreed to stipulate to substantially the same relief sought here. *See* Medina Aff. ¶ 9 & Ex. 1.<sup>1</sup> Petitioners and Respondents sought to accomplish adding Commissioner Flateau as a party through a Stipulation and Order in an attempt to maintain the current schedule and facilitate the expeditious resolution of this matter. Only Intervenor-Respondents have declined to join that stipulation, thereby necessitating the instant motion. *Id.* ¶ 12-13. Intervenor-Respondents should not be allowed to unnecessarily delay the resolution of this action. It is therefore imperative that the Court order an immediate response to the Order to Show Cause and move expeditiously to resolve this motion, so that the current schedule can be maintained. Specifically, Petitioners submit that the existing September 9 return date and oral argument scheduled for September 12 should remain on the calendar.

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<sup>1</sup> Additionally, Respondents Imamura, Cuevas-Molina, and Frazier have indicated that they consent to the relief sought in this motion. Medina Aff. ¶ 16. Petitioners have attempted to obtain consent to this motion from Respondents Brady, Conway, Harris, Nesbitt, and Stephens, but as of this filing have not yet been able to reach their counsel.

Finally, Petitioners understand that the final Commissioner—Commissioner Eugene Benger—intended to resign from his office today. Once his successor is appointed, Petitioners intend to add them as a Respondent.

For the reasons set forth above, Petitioners respectfully request that this Court grant their request for leave to file their proposed Second Amended Verified Petition.

Dated: September 2, 2022

DREYER BOYAJIAN LLP

/s/ James R. Peluso

James R. Peluso  
75 Columbia Street  
Albany, New York 12210  
Tel.: (518) 463-7784  
jpeluso@dblawnny.com

ELIAS LAW GROUP LLP

/s/ Richard A. Medina

Aria C. Branch\*  
Harleen K. Gambhir\*  
Richard A. Medina  
Aaron M. Mukerjee  
10 G Street NE, Suite 600  
Washington, D.C. 20002  
Tel.: (202) 968-4490  
abranh@elias.law  
hgambhir@elias.law  
rmedina@elias.law  
amukerjee@elias.law

*\*Admitted pro hac vice*

**CERTIFICATION OF WORD COUNT**

I hereby certify that the word count of this memorandum of law complies with the word limits of 22 New York Codes, Rules and Regulations § 202.8-b(a). According to the word-processing system used to prepare this memorandum of law, the total word count for all printed text exclusive of the material omitted under 22 N.Y.C.R.R. § 202.8-b(b) is 680 words.

Dated: September 2, 2022

/s/ Richard A. Medina  
Richard A. Medina