

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ALBANY

-----X
 ANTHONY S. HOFFMAN, ET AL.

Plaintiff(s)/Petitioner(s),

Index No. 904976-22

- against -

THE NYS INDEPENDENT
 REDISTRICTING COMMISSION, ET AL.

Defendant(s)/Respondent(s).

-----X
NOTICE TO COUNTY CLERK – CPLR § 8019(c)

By order dated September 1, 2022, and entered on September 2, 2022, the Court directed the County Clerk to make an entry on the docket of this matter. As required by CPLR § 8019 (c), notice of the order is hereby given to the County Clerk with the request that the County Clerk make such entry.

Dated: 09/07/2022

Bennet J. Moskowitz (Name)

Troutman Pepper, et al. (Firm)

875 Third Avenue (Address)

New York, NY 10022

(212) 704-6000 (Phone)

(212) 704-6288 (Fax)

Bennet.Moskowitz@troutman.com (E-Mail)

Attorney(s) for Intervenors

[THE ORDER MUST ACCOMPANY THIS NOTICE AS A SINGLE PDF]

3.19/12

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ALBANY

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

Index No. 904972-22

Petitioners,

-against-

NOTICE OF ENTRY

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
Fantan; Jerry Fishman; Jay Frantz; Lawrence Garvey; Alan
Nephew; Susan Rowley; Josephine Thomas; and Marianne
Violante,

Intervenors-Respondents.

-----X

PLEASE TAKE NOTICE that a Decision And Order, NYSCEF No.140, a copy of which
is attached as **Exhibit A**, was duly signed in this special proceeding by the Hon. Pèter A. Lynch,
J.S.C., on September 1, 2022, and duly entered in the Office of the Clerk of Albany County on
September 2, 2022.

Dated: New York, New York
September 2, 2022

TROUTMAN PEPPER HAMILTON
SANDERS LLP

By: 

Bennet J. Moskowitz, Reg. No. 4693842
875 Third Avenue
New York, New York 10022
(212) 704-6000
bennet.moskowitz@troutman.com

Misha Tseytlin, Reg. No. 4642609
227 W. Monroe St.
Suite 3900
Chicago, IL 60606
(608) 999-1240
misha.tseytlin@troutman.com

TO: All Counsel of Record via NYSCEF

Exhibit A

THE STATE OF NEW YORK
SUPREME COURT

COUNTY OF ALBANY

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

Petitioners,

DECISION AND ORDER
Index No. 904972-22
RJI No. 01-22-ST2408
(Hon. Lynch, J.)

-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.

INTRODUCTION

This is an Article 78 proceeding in the form of mandamus (CPLR § 7803(1)) to compel Respondents to prepare and submit to the Legislature a second redistricting plan corresponding to the 2020 census in accord with Article III, Sections 4 and 5(b) of the New York Constitution. Any such plan, if adopted by the Legislature would be effective following the 2022 election.

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's, moved to intervene in this proceeding.¹ Intervenors were the successful Petitioners in Matter of Harkenrider v. Hochul, 204 A.D. 3d 1366 [4th Dept. 2022], modified 2022 N.Y. LEXIS 874 [2022].

In Harkenrider v. Hochul, the Court held that that the 2022 congressional redistricting map adopted by the Legislature was unconstitutional and remitted the matter to Supreme Court (McAllister, J.), which, in turn, by Decision and Order dated May 20, 2022, corrected by Decision and Order dated June 2, 2022, certified the 2022 Congressional Maps prepared by the Special Master "as being the official approved 2022 Congressional map...."² Intervenors claim that limiting the 2022 Congressional Map to the 2022 election, would undermine the integrity of the relief granted in Harkenrider v. Hochul.

MOTION TO INTERVENE

Movants seek to intervene as a matter of right, or by permission of the Court. CPLR §1012 Intervention as of right..., provides, inter alia:

(a) "Intervention as of right. Upon timely motion, any person shall be permitted to intervene in any action:

2. when the representation of the person's interest by the parties is or may be inadequate and the person is or may be bound by the judgment"

Since Respondents, Independent Redistricting Commissioners: Ross Brady; John Conway III; Lisa Harris; Charles Nesbitt and Willis H. Stephens, filed a motion to dismiss the Petition on essentially the same grounds as the Intervenors, the Court cannot readily determine whether Intervenor's interests would not be adequately protected.³ Since permissive intervention is

¹ NYSCEF Doc. No. 74.

² See Harkenrifer et al v. Hochul et al, Supreme Court, Steuben County Index No. E2022-0116CV – NYSCEF Doc. No. 670 @ p. 5 and NYSCEF doc. No. 696.

³ NYSCEF Doc. Nos. 106-111.

appropriate, however, it is not necessary to determine whether intervention by right has been established.

CPLR §1013 Intervention by permission, provides:

“Upon timely motion, any person may be permitted to intervene in any action when a statute of the state confers a right to intervene in the discretion of the court, or when the person’s claim or defense and the main action have a common question of law or fact. In exercising its discretion, the court shall consider whether the intervention will unduly delay the determination of the action or prejudice the substantial rights of any party.” (Emphasis added)

Here, Intervenors claim that the 2022 Congressional Map adopted by the Court in Harkenrider v. Hochul remains in full force and effect until a new redistricting plan is adopted following the 2030 census. In stark contrast, Petitioners contend that the 2022 Congressional Map should be limited to the 2022 election, and the IRC should be compelled to submit a second redistricting plan based on the 2020 census to the Legislature for consideration. In such event, the Legislature would have to vote to approve or disapprove. If disapproved, the Legislature would then be able to propose and adopt its own redistricting plan for successive elections after 2022. In fine, the common question of law is whether the IRC has authority to propose a second redistricting plan to the Legislature in the first instance.

Since Intervenors are ready to file a motion to dismiss the Petition herein, intervention will not unduly delay the determination of the action.⁴ Intervention will not prejudice the rights of any party since the disputed issue has already been squarely raised by the pending motion to dismiss.⁵

⁴ NYSCEF Doc. Nos. 69 and 70.

⁵ NYSCEF Doc. Nos. 106-111.

CONCLUSION

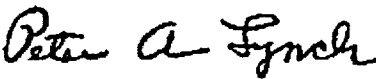
For the reasons more fully stated above, Intervenor's motion for permission to intervene is granted, and it is further,

ORDERED, that Interveners are granted leave to file the documents attached to the Affirmation of Bennet Moskowitz In Support Of Motion For Leave To Intervene, and it is further,

ORDERED, that the caption shall be amended to add 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's, as Intervenor-Respondents.

This memorandum constitutes both the decision and order of the Court.⁶

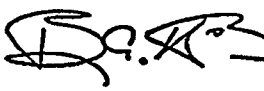
Dated: Albany, New York
September 1, 2022



PETER A. LYNCH, J.S.C

PAPERS CONSIDERED:

All e-filed pleadings, with exhibits.



09/02/2022

To: TROUTMAN PEPPER HAMILTON SANDERS LLP
By: Bennet J. Moskowitz
Attorneys for Intervenor-Respondents
875 Third Avenue
New York, New York 10022

TIMOTHY HILL
MESSINA PERILLO HILL, LLP
Attorneys for Respondents
Ross Brady, John Conway III, Lisa Harris,
Charles Nesbitt and Willis H. Stephens
285 W. Main Street, Suite 203
Sayville, New York 11782

⁶ Compliance with CPLR R 2220 is required.

Jeremy H. Ershow
Allison N. Douglis
JENNER & BLOCK LLP
1155 Avenue of the Americas
New York, NY 10036

-and-

Jessica Ring Amunson
Sam Hirsch
JENNER & BLOCK LLP
1099 New York Avenue, NW
Suite 900
Washington, DC 20001
Attorneys for
Respondents David Imamura,
Ivelisse Cuevas-Molina, and Elaine Frazier

ELIAS LAW GROUP LLP
Aria C. Branch, Esq.
Harleen K. Gambhir
Aaron M. Mukerjee
Attorneys for Petitioner
10 G St NE, Ste 600
Washington, DC 20002

DREYER BOYAJIAN LLP
James R. Peluso, Esq.
Attorneys for Petitioner
75 Columbia Street
Albany, NY 12210

EMERY CELLI BRINCKERHOFF & ABADY, LLP
Matthew D. Brinckerhoff, Esq.
Andrew G. Celli, Esq.
Attorneys for Petitioner
600 Fifth Avenue, 10th Floor
New York, NY 10020

Jonathan P. Hawley, Esq.
Attorneys for Petitioner
1700 Seventh Avenue, Suite 2100
Seattle, Washington 98101