

THE STATE OF NEW YORK
SUPREME COURT

COUNTY OF ALBANY

Anthony S. Hoffman; Courtney Gibbons;
Lauren Foley; Seth Pearce; and Nancy
Van Tassel,

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 timely prepare and submit to the legislature a second redistricting plan and the necessary implementing legislation for such plan in accord with Article III, Sections 4 and 5(b) of the New York Constitution, to ensure that a lawful congressional plan is in place following the 2022 elections, for the next successive elections.

Petitioner seeks to amend the Petition and leave to effect service on respondents Conway and Harris pursuant to CPLR § 308(5).¹ By the proposed amendment, Petitioner seeks to add new Petitioners Marco Carrión, Mary Kain, Kevin Meggett, Reverend Clinton Miller, and Verity Van Tassel Richards, and to limit the requested relief to compel the IRC to submit a second set of congressional district plan for consideration by the Legislature.²

STATEMENT OF FACTS

NY Const. Article III, Section 4 (b) provides, inter alia:

“The independent redistricting commission established pursuant to section five-b of this article shall **prepare a redistricting plan to establish senate, assembly, and congressional districts every ten years commencing in two thousand twenty-one**, and shall submit to the legislature such plan and the implementing legislation therefore on or before January first or as soon as practicable thereafter but no later than January fifteenth in the year ending in two beginning in two thousand twenty-two. The 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. The implementing legislation shall be voted upon, without amendment, by the senate or the assembly and if approved by the first house voting upon it, such legislation shall be delivered to the other house immediately to be voted upon without amendment. If approved by both houses, such legislation shall be presented to the governor for action. If either house shall fail to approve the legislation implementing the first redistricting plan, or the governor shall veto such legislation and the legislature shall fail to override such veto, each house or the governor if he or she vetoes it, shall notify the commission that such legislation has been disapproved. **Within fifteen days of such notification and in no case later than February twenty-eighth, the redistricting commission shall prepare and submit to the legislature a second redistricting plan and the necessary implementing legislation for such plan.** Such legislation shall be voted upon, without amendment, by the senate or the assembly and, if approved by the first house voting upon it, such legislation shall be delivered to the other house immediately to be voted upon without

¹ NYSCEF Doc Nos. 1, 23, 34, 39.

² NYSCEF Doc No. 23 - Mukherjee Aff. ¶ 30-31; see also NYSCEF No. 38 -redline of Petition delineating the amendments.

amendment. If approved by both houses, such legislation shall be presented to the governor for action.

In Matter of Harkenrider v. Hochul, 2022 N.Y. LEXIS 874, p. 4-5 [2022], the Court held,

“The Constitution now requires that the IRC — a bipartisan commission working under a constitutionally mandated timeline — is charged with the obligation of drawing a set of redistricting maps that, with appropriate implementing legislation, must be submitted to the legislature for a vote, without amendment (*see NY Const. art III, § 4 [b]; § 5-b [a]*). If this first set of maps is rejected, **the IRC is required to prepare a second set** that, again, would be subject to an up or down vote by the legislature, without amendment (*see NY Const. art III, § 4 [b]*).” (Emphasis added)

The Court noted,

“As a result of their disagreements, the IRC submitted, as a first set of maps, two proposed redistricting plans to the legislature — maps from each party delegation — as is constitutionally permitted if a single consensus map fails to garner sufficient votes (*see NY Const. art III, § 5-b [g]*). The legislature voted on this first set of plans without amendment as required by the Constitution and rejected both plans. The legislature notified the IRC of that rejection, **triggering the IRC's obligation to compose — within 15 days — a second redistricting plan for the legislature's review** (*see NY Const. art III § 4 [b]*). On January 24, 2022 — the day before the 15-day deadline but more than one month before the February 28, 2022 deadline—**the IRC announced that it was deadlocked and, as a result, would not present a second plan to the legislature.**” (Id. @ 6-7; emphasis added)

Without question, the record supports Petitioner’s claim that the IRC failed to submit a second redistricting plan in time for the 2022 elections.

Petitioner has personally served the Petition on 6 of the 8 Commissioners.³ Despite numerous attempts, Petitioner has not been able to serve Commissioners Conway and Harris.⁴

³ NYSCEF Doc No. 23 - Mukherjee Aff. ¶ 3, 7-21.

⁴ NYSCEF Doc No. 23 - Mukherjee Aff. ¶ 22-25; NYSCEF Doc. Nos. 31-33.

Petitioner even e-mail Commissioners Conway and Harris at their official IRC e-mail account to inquire if they would accept service via e-mail but received no response.⁵

To the limited extent that Respondents have appeared, they do not oppose the motions.⁶

STATEMENT OF LAW

CPLR R 3025 (b) provides:

“Amendments and Supplemental Pleadings by Leave. A party may amend his or her pleading or supplement it by setting forth additional or subsequent transactions or occurrences, at any time by leave of court or by stipulation of all parties. **Leave shall be freely given** upon such terms as may be just including the granting of costs and continuances. Any motion to amend or supplement pleadings shall be accompanied by the proposed amended or supplemental pleading clearly showing the changes or additions to be made to the pleading.” (emphasis added)

(see Moon v. Clear Channel Communs., Inc., 307 A.D.2d 628, 629 [3d Dept. 2003], where the Court held,

“As we have previously explained, “leave to amend a complaint rests within the trial court's discretion and should be freely granted in the absence of prejudice or surprise resulting from the delay except in situations where the proposed amendment is wholly devoid of merit”.” (emphasis added)).

Petitioner has demonstrated the proposed amendments have merit, since they have added Petitioners who were engaged in the underlying redistricting process and have narrowed the scope of their focus to redistricting for congressional districts only.

Motion Granted. The caption of the action shall be amended to add Marco Carrión, Mary Kain, Kevin Meggett, Reverend Clinton Miller, and Verity Van Tassel Richards, as a named Petitioners.

⁵ NYSCEF Doc No. 23 - Mukherjee Aff. ¶ 23 and 25.

⁶ NYSCEF Doc. No. 42.

CPLR § 308 (5) provides:

“Personal service upon a natural person shall be made by any of the following methods:

in such manner as the court, upon motion without notice, directs, if service is impracticable under paragraphs one, two and four of this section.”

The record evidences a good faith effort to serve Commissioners Conway and Harris. The Court notes that other Commissioners have cooperated with Petitioner’s service efforts and accepted service via electronic means.⁷ It is inexplicable that Commissioners Conway and Harris have not acted in a responsible manner to cooperate with the service process, for undue delay undermines the integrity of the redistricting process. Petitioner’s application to serve Commissioner’s Conway and Harris in accord with CPLR 308 (5) is granted, and such service may be made by e-mail to their official IRC account (See Safadjou v Mohammadi, 105 A.D.3d 1423 [4th Dept. 2013]).

CONCLUSION

For the reasons more fully stated above, Petitioner’s motions for leave to amend the Petition is Granted, and it is further,

ORDERED, that Petitioner’s motion to allow alternate service in accord with CPLR 308 (5) is granted, and Petitioner authorized to serve Commissioners Conway and Harris by e-mail to their official IRC e-mail account, and it is further,

ORDERED, that the caption shall be amended to add Marco Carrión, Mary Kain, Kevin Meggett, Reverend Clinton Miller, and Verity Van Tassel Richards, as a named Petitioners.

⁷ NYSCEF Doc No. 23 - Mukherjee Aff. ¶ 12, 21.

This memorandum constitutes both the decision and order of the Court.⁸

Dated: Albany, New York

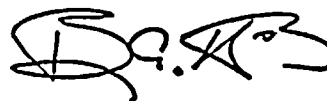
August 1, 2022



PETER A. LYNCH, J.S.C

PAPERS CONSIDERED:

All e-filed pleadings, with exhibits.



08/02/2022

To: ELIAS LAW GROUP LLP
Aria C. Branch, Esq.⁹
Harleen K. Gambhir¹⁰
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.¹¹
Attorneys for Petitioner
1700 Seventh Avenue, Suite 2100
Seattle, Washington 98101

⁸ Compliance with CPLR R 2220 is required.

⁹ Subject to Pro hac Vice Order

¹⁰ Subject to Pro hac Vice Order

¹¹ Subject to Pro hac Vice Order