

At IAS Part __ of the Supreme Court of the State of New York, held in and for the County of Steuben, at the Courthouse located at 3 East Pulteney Square Bath, NY 14810, on the 7th day of February, 2022.

PRESENT: _____
HON. PATRICK F. McALLISTER, J.S.C.

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
VOLANTE,

Index No. E2022-0116CV

ORDER TO SHOW CAUSE

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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WHEREAS, on February 3, 2022, Petitioner Tim Harkenrider, an elector of the state of New York, residing at 22 Spruce Street, Canisteo, NY 14823, in Steuben County, within Congressional District 23, and the other Petitioners, all of whom are New York residents, by their undersigned counsel, pursuant to Article III, section 5 of the New York Constitution, Unconsolidated Laws § 4221 (L 1911, ch. 773, § 1), and CPLR § 3001, commenced this CPLR Art. 4 special proceeding by filing a Petition to challenge an apportionment; and

WHEREAS, Article III, section 5 of the New York Constitution provides: “An apportionment by the legislature, or other body, shall be subject to review by the supreme court, at the suit of any citizen, under such reasonable regulations as the legislature may prescribe; *and any court before which a cause may be pending involving an apportionment, shall give precedence thereto over all other causes and proceedings*, and if said court be not in session it shall convene promptly for the disposition of the same. *The court shall render its decision within sixty days after a petition is filed.* In any judicial proceeding relating to redistricting of congressional or state legislative districts, any law establishing congressional or state legislative districts found to violate the provisions of this article shall be invalid in whole or in part. In the event that a court finds such a violation, the legislature shall have a full and reasonable opportunity to correct the law’s legal infirmities.” (emphases added); and

WHEREAS, Unconsolidated Laws § 4221 provides: “An apportionment by the legislature shall be subject to review by the supreme court at the suit of any citizen, upon the petition of any citizen to the supreme court where any such petitioner resides and upon such service thereof upon the attorney-general, the president of the senate, the speaker of the assembly and the governor, as a justice of the supreme court may direct”; and

WHEREAS, various New York State political calendar deadlines are forthcoming; and

WHEREAS, pursuant to CPLR § 403(d), “[t]he court may grant an order to show cause to be served, in lieu of a notice of petition at a time and in a manner specified therein.”

UPON reading the Petition dated February 3, 2022, and the Affirmation of Bennet J. Moskowitz dated February 3, 2022, and the exhibits annexed thereto; and all of the pleadings and proceedings heretofore had herein;

LET Respondents or their counsel show cause before this Court, at IAS Part __, Room ____, at the Courthouse located at 3 East Pulteney Square Bath, NY 14810, on the 24th day of February, 2022, at 9:30 a.m., or as soon thereafter as counsel can be heard, why Judgment should not be made and entered pursuant to CPLR § 411 and CPLR § 3001:

A. Declaring pursuant to CPLR § 3001 that:

i) the 2022 congressional map constitutes an unconstitutional map enacted without complying with the mandatory constitutional procedures for redistricting in Article III, Section 4(b) of the New York Constitution;

ii) the prior congressional map, court-adopted after the 2010 decennial census, is the only validly enacted map currently in existence, but is now unconstitutionally malapportioned, failing to comply with the mandatory constitutional requirements that each district contain an equal number of inhabitants, found in Article III, Section 4(c)(2) of the New York Constitution;

iii) the 2022 congressional map, apart and aside from procedural deficiencies, constitutes an unconstitutional partisan and incumbency-favoring/disfavoring gerrymander, in violation of Article III, Section 4(c)(5) of the New York Constitution and New York Legislative Law § 93(2)(e); and

iv) the 2012 congressional districts are unconstitutional in light of the population shifts identified in the 2020 census.

B. Enjoining Respondents from conducting any elections under the post-2010 congressional map;

C. Enjoining Respondents from conducting any elections under the 2022 congressional map;

D. Adopting a new, legally compliant congressional map;

- E. Alternatively, and only if the Court does not agree with Petitioners' procedural claim, ordering the Legislature to attempt to cure the legal and constitutional infirmities in 2022 congressional map and adopt a lawful congressional map;
- F. Suspending 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;
- G. Awarding Petitioners all of their reasonable attorneys' fees and costs; and
- H. Awarding such other and further relief as this Court may deem just and proper.

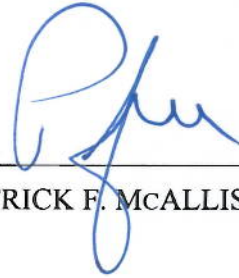
IT IS HEREBY ORDERED that answering papers, if any, shall be served by NYSCEF upon Petitioners' counsel at least seven days before the time at which the Petition shall be heard; and it is further

ORDERED that reply papers, if any, shall be served by NYSCEF upon Respondents' counsel at least one day before the time at which the Petition shall be heard; and it is further

ORDERED that the parties shall confer within the next seven days on a schedule for expedited fact discovery and expert reports; and it is further

ORDERED that, sufficient cause appearing therefore, service of a copy of this Order and the Petition upon the Respondents and anyone else required to receive service pursuant to Unconsolidated Laws § 4221, in the same manner as a summons, on or before the 10th day of February, 2022, shall be deemed good and sufficient service. Affidavits or other proof of service shall be presented to this Court on or before the return date.

DATED: Bath, New York
February 7, 2022



HON. PATRICK F. McALLISTER, J.S.C.