

Bennet J. Moskowitz

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April 29, 2022

VIA NYSCEF

Honorable Patrick F. McAllister
Supreme Court, Steuben County
3 East Pulteney Square
Bath, New York 14810

Re: *Harkenrider, et al. v. Hochul, et al.*, Index No. E2022-0116CV (Sup. Ct. Steuben Cnty.)

Dear Justice McAllister:

Petitioners oppose the Senate Majority Leader’s extraordinary request, NYSCEF No.292, that this Court retroactively enlarge the already-lapsed April 22 deadline for submission of proposed congressional maps, a deadline that Petitioners and members of the public complied with. A motion for leave “to reargue ‘may be granted only upon a showing that the court overlooked or misapprehended the facts or the law, or for some reason mistakenly arrived at its earlier decision.’” *Smith v. City of Buffalo*, 997 N.Y.S.2d 563, 564 (4th Dep’t 2014); see CPLR 2221(d). Respondents have failed to show that this Court overlooked or misapprehended the facts or the law, or otherwise mistakenly arrived at its April 22 deadline for the submission of congressional maps on April 18. All “parties, any other interested parties, and any person seeking to participate as an intervenor or *amicus curiae*” were on notice as of April 18 that, if they wanted the Special Master and this Court to consider their proposed remedial maps, they had to “file and submit any propos[al] . . . to the court and Dr. Cervas for consideration by April 22, 2022.” NYSCEF No.258 at 2. Petitioners complied with this April 22 deadline under very significant time pressures, given that they were preparing for merits briefing and oral argument before the Appellate Division, as well as supplemental briefing and oral argument before the Court of Appeals, during the April 18–22 period. Respondents decided to sit on their hands, hoping that they would win on appeal. Counsel for one of the Respondents even told the Appellate Division, in response to a question as to whether the Legislature was working on remedial maps, that only after “see[ing] what the Court of Appeals does, [would] the Legislature [] react if it feels it needs to.” See Recording of Oral Argument at 43:13 - 43:53 (Apr. 20, 2022), <https://ad4.nycourts.gov/njs/term/argument/calendar?date=2022-04-20T00:00:00.000Z&venue=1>.

The Senate Majority Leader’s reliance on the Appellate Division’s April 21 Opinion, and the Court of Appeals’ April 27 Opinion is unavailing. NYSCEF No.292 at 1. While the Majority

Leader points to the Appellate Division's April 30 deadline, NYSCEF No.292 at 1, she confuses the deadline for the Legislature to attempt to cure its *substantive* constitutional violation as to the congressional map, with the time given for all parties (and non-parties) to submit remedial congressional maps for this Court's consideration, ***if a court-adopted map proves necessary***, including if Petitioners prevail on their constitutional procedure argument, which is a violation that the Legislature cannot cure, COA Majority Opinion, slip op. at 23, 30. While Respondents apparently assumed that they would prevail on the constitutional process argument on appeal, it was their own choice to gamble that this would occur, including by failing to take part in this Court's ongoing remedial proceedings until after the Court of Appeals ruled. Finally, while the Majority Leader states that the Court of Appeals "expressly directed that the parties shall be permitted to submit proposed remedial plans," NYSCEF No.292 at 1 n.1, the Court of Appeals actually "endorse[d]" the ongoing remedial process in this Court, and then extended that process to the state Senate map, COA Majority Opinion, slip op. at 31-32. The Court of Appeals, of course, gave no indication that it was changing the deadlines that this Court had already set for the submission of proposed congressional remedial maps.

Sincerely,



Bennet J. Moskowitz



Misha Tseytlin

cc: All Counsel Of Record (via NYSCEF and email)