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 VIOLANTE,

Index No. E2022-0116CV

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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REPLY MEMORANDUM OF LAW IN SUPPORT OF PETITIONERS' MOTION FOR LEAVE TO CONDUCT EXPEDITED DISCOVERY

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PRELIMINARY STATEMENT

In this special proceeding under Article 4 of the Civil Practice Law and Rules, Petitioners seek leave to conduct the standard discovery that plaintiffs asserting partisan-gerrymandering claims routinely obtain in cases across the country. Respondents' contrary arguments—which seek to hide from the world evidence of their unconstitutional actions—have no merit. Legislative privilege does not preclude this standard form of partisan-gerrymandering discovery, and the requested discovery is material and necessary to establishing Petitioners' claims and will not cause any undue delay or burden. Petitioners thus respectfully ask that this Court permit them to conduct the standard form of partisan-gerrymandering discovery, and to do so on an expedited basis.

ARGUMENT

I. This Court Should Permit Petitioners To Conduct Limited, Expedited Discovery

This Court should permit Petitioners to conduct limited, expedited discovery in this Article 4 special proceeding because Petitioners' need for such discovery far outweighs any opposing interests, and Petitioners only seek narrowly tailored discovery that is material and necessary to establishing their substantive gerrymandering claim. Petitioners' Memorandum In Support Of Their Proposed Order To Show Cause ("Mem."), NYSCEF No.48 at 5. Petitioners' requested discovery is directly related to Petitioners' substantive gerrymandering claim, as the disclosure of discovery would further clarify how the maps violate the constitutional standards—namely, whether Respondents acted with unconstitutional partisan intent, including by working with the Democratic IRC Commissioners, politicians, officials, or interest groups to create and enact these unconstitutional maps. Mem.5–6. The discovery that Petitioners seek is, again, standard in partisan-gerrymandering cases across the country. Mem.6–8. Finally, due to the exigent nature of this special proceeding, and with certain election deadlines fast approaching, Petitioners have demonstrated the need to expedite the discovery process. Mem.9.

Respondents, on the other hand, do not point to any case that would support denying the standard form of partisan-gerrymandering discovery. Instead, they raise four points to try to hide evidence of their unconstitutional actions, but each is wrong on the law and the facts.

A. Discovery Is Obviously Relevant To Petitioners' Substantive Partisan-Gerrymandering Claim, Which Is Why Such Discovery Is Standard In Materially Identical Partisan-Gerrymandering Cases Around The Country

Respondents argue that the discovery requests are not relevant to Petitioners' partisan-gerrymandering claim, but that is plainly wrong. As Petitioners explained, numerous courts across the country addressing partisan-gerrymandering claims that are no different from Petitioners' gerrymandering claim here have permitted plaintiffs to conduct discovery similar to Petitioners' requests in this case. Mem.6–7; *see Benisek v. Lamone*, 348 F. Supp. 3d 493, 509 (D. Md. 2018), *vacated and remanded sub nom*. *Rucho v. Common Cause*, 139 S. Ct. 2484 (2019); *Common Cause v. Rucho*, 279 F. Supp. 3d 587, 606, 652 (M.D.N.C. 2018), *vacated and remanded*, 138 S. Ct. 2679 (2018); *League of Women Voters of Pa. v. Pennsylvania*, 178 A.3d 737, 766–67 & n.38 (Pa. 2018); *League of Women Voters of Fla. v. Detzner*, 172 So. 3d 363, 391–92 (Fla. 2015); *see also* Order, *League of Women Voters of Ohio v. Ohio Redistricting Comm.*, No. 2021-1193 (Ohio Oct. 7, 2021).[1] These courts have found the requested discovery to be both "necessary and appropriate"—*i.e.*, relevant, to reveal unconstitutional partisan intent of the map drafters. *See League of Women Voters of Pa.*, 178 A.3d at 766–67 (citation omitted); *see also Detzner*, 172 So. 3d at 391–92.

Senate Majority Leader Andrea Stewart-Cousins' attempt to distinguish these cases fails. NYSCEF No.96 at 13–17. She argues primarily that some of these redistricting cases were "commenced long after the challenged apportionment plans were enacted" and the plaintiffs did not seek expedited process, while finally acknowledging that several cases "followed a more

[1] https://www.supremecourt.ohio.gov/rod/docs/pdf/0/2021/2021-ohio-3607.pdf.

expedited schedule." *Id.* at 14–15. That other plaintiffs waited *longer* to file their actions is not a plausible explanation why they obtained *more* discovery than should Petitioners, who have filed their petition within days of Respondents passing these maps. Also immaterial is whether the parties in the redistricting cases raised the issue of legislative privilege because, as discussed below, such privilege does not preclude disclosure in this case. *Infra* pp. 5–11.

The Senate Majority Leader also cites two cases for the proposition that "New York courts have resolved redistricting challenges in favor of the Legislature without resort to burdensome discovery." NYSCEF No.96 at 13. But these cases are easily distinguishable because the courts there denied the motion for discovery as moot *after* deciding the whole case. *See Bay Ridge Cmty. Council v. Carey*, 115 Misc. 2d 433, 446 (Sup. Ct. Kings Cnty. 1982); *see Schneider v. Rockefeller*, 38 A.D.2d 495, 502–03 (3d Dep't 1972). Here, the Court has not yet addressed or ruled on the merits of the Petition,[2] and Petitioners have a demonstrated need for "a more expedited schedule," NYSCEF No.96 at 15—the same type of schedule ordered in partisan-gerrymandering cases in other States, *see, e.g.*, Order, *League of Women Voters of Ohio*, No. 2021-1193.

Respondents' remaining arguments that the requested discovery is irrelevant and unnecessary are unavailing. To begin, Petitioners only seek discovery on matters involving factual disputes, not purely legal issues. Further, Petitioners' requested discovery is narrowly tailored to what courts consider the first of three factors establishing Petitioners' claims that the maps were drawn with impermissible intent—whether the "map-drawing process" itself was partisan. *See League of Women Voters of Ohio*, No. 2022-1193, 2022 WL 110261 at *24–25 (Ohio Jan. 12, 2022); *Detzner*, 172 So. 3d at 379–86, 388–89, 392–93; *Ohio A. Philip Randolph Inst. v.*

[2] As discussed in Petitioners' Reply Memorandum In Support Of Their Petition, the Senate Majority Leader's arguments regarding lack of standing and on the merits are without merit.

Householder, 373 F. Supp. 3d 978, 1096 (S.D. Ohio 2019), *vacated and remanded sub nom. Chabot v. Ohio A. Philip Randolph Inst.*, 140 S. Ct. 102 (2019). As these courts determined, discovery indicating impermissible partisan intent may include whether the map-drawing process was "directed and controlled by one political party's legislative leaders." *League of Women Voters of Ohio*, 2022 WL 110261, at *24–25; *see also Householder*, 373 F. Supp. 3d at 1093–96; *Common Cause*, 318 F. Supp. 3d at 861–64; *Whitford v. Gill*, 218 F. Supp. 3d 837, 887–90 (W.D. Wis. 2016), *vacated and remanded* 138 S. Ct. 1916 (2018); *League of Women Voters of Pa.*, 178 A.3d at 817; *Detzner*, 172 So. 3d at 390–93. Other discovery evidence that Petitioners seek includes "correspondence between those responsible for the map drawing, floor speeches discussing the redistricting legislation and other contemporaneous statements, and testimony explaining '[t]he historical background of the decision,' including the 'specific sequence of events leading up to the challenged decisions.'" *Householder*, 373 F. Supp. 3d at 1096 (quoting *Vill. of Arlington Heights v. Metro. Housing Dev. Corp.*, 429 U.S. 252, 266 (1977) (brackets in original)); *see also Detzner*, 172 So. 3d at 379–86, 388–89, 392–93. Thus, consistent with the discovery evidence sought in these redistricting cases, Petitioners' discovery requests are plainly relevant to their claims.

Respondents also contend that the proposed discovery is unnecessary because much of the requested information is open to the public. NYSCEF Nos.94 at 11–12; 96 at 8. However, as discussed, Petitioners' requested discovery seeks information uniquely in the possession of individual legislators, namely, information regarding the extent to which the map-drawing process was partisan. Petitioners are entitled to discover whether the legislators "directed and controlled" the map-drawing process similar to their acts in other partisan-gerrymandering cases, including drawing maps based upon partisan data, communicating with third parties about advancing partisan agendas, and undermining the constitutional process to advance their partisan agenda.

Finally, the Governor argues that the requested discovery is irrelevant because of the "absence of any factual allegations" as to their "involvement in the complained-of events." NYSCEF No.95 at 10. Yet, as alleged in the Petition, Governor Hochul openly expressed her intent to the press to use redistricting to empower the Democratic Party, NYSCEF No.1 ¶ 6 & n.5, which is more than sufficient to show the materiality and necessity of the information she possesses about whether the map was drawn in precisely the way she expected.

B. Legislative Privilege Does Not Bar The Discovery Here

Respondents' claim that legislative privilege precludes disclosure of Petitioners' requested discovery is wrong.

1. As an initial matter, Respondents do not properly articulate the New York Constitution's Speech or Debate Clause or the cases interpreting it.

The Speech or Debate Clause—which is "comparable" to that "of the Federal Constitution," *People v. Ohrenstein*, 77 N.Y.2d 38, 53 (1990)—provides that "[f]or any speech or debate in either house of the legislature, the members shall not be questioned in any other place," N.Y. Const. art. III, § 11. By its plain terms, the Clause applies only to "members"[3] and "any speech or debate in either house." *Id.* To be entitled to protection, the act of speech or debate must fall within "the sphere of *legitimate* legislative activity." *Larabee v. Governor*, 880 N.Y.S.2d 256, 268 (1st Dep't 2009), *aff'd as modified sub nom.*, *Maron v. Silver*, 14 N.Y.3d 230 (2010) (emphasis added; citation omitted). Legislative activities "include those acts that are: an integral part of the deliberative and communicative processes by which Members participate in committee and House proceedings with respect to the consideration and passage or rejection of proposed

[3] The U.S. Constitution's comparably worded Speech or Debate Clause extends to legislators' alter egos, such as aides. *Gravel v. United States*, 408 U.S. 606, 616–17, 628 (1972).

legislation or with respect to other matters which the Constitution places within the jurisdiction of either House." *Straniere v. Silver*, 218 A.D.2d 80, 83 (3d Dep't 1996) (citation omitted).

The Speech or Debate Clause does not convey an absolute privilege. While the privilege "*ordinarily* precludes disclosure as to the legislators' deliberations and motivations in passing a regulation," it is subject to multiple exceptions. *Humane Soc'y of N.Y. v. City of N.Y.*, 188 Misc.2d 735, 739 (Sup. Ct. N.Y. Cnty. 2001) (emphasis added). This includes where a party has supported allegations of bad faith or improper motives, *see id.*, to conduct "an inquiry into the purpose of the legislation," *Reformed Church of Mile Square v. City of N.Y.*, 8 A.D.2d 639, 640 (2d Dep't 1959) (citation omitted), where illegal activities such as "agreement to accept a bribe or the acceptance of an unlawful gratuity" to enact legislation are involved, and where purely political (as opposed to governmental) acts are concerned, like "to secure support in the community or to insure reelection," *Ohrenstein*, 77 N.Y.2d at 54.

Illustrative of these principles is the Illinois Supreme Court's decision in *Burton v. Corn Prods. Co.*, 286 Ill. 226 (1918), relied upon by the Second Department of the Appellate Division in *Reformed Church*. *Burton* explained that it is a court's "duty to[ ] inquire and determine whether or not the act of the legislative body lies within [permissible] legislative discretion, and in so doing they may, and should, inquire whether or not the purpose for which such legislative discretion is exercised—that is, the purpose of the ordinance passed—is one which lies within the power of the legislative body to carry out," as one purpose may be "a valid one while the latter is ultra vires." *Id.* at 234. The *Burton* Court concluded that "[w]e know of no rule limiting an inquiry into the purpose of an ordinance to such evidence as appears in the ordinance or the petition, only, and can see no good reason for such a rule." *Id.*

Notably, federal courts determining whether the U.S. Constitution's "comparable" qualified Speech or Debate Clause privilege protects state legislators from various discovery requests apply a well-established, five-factor balancing test. *Ohrenstein*, 77 N.Y.2d at 53; *Favors v. Cuomo*, 285 F.R.D. 187, 209 (E.D.N.Y. 2012). This five-factor test balances the ordinarily applicable legislative privilege with the urgent need for the most direct evidence of partisan intent. *See Rodriguez v. Pataki*, 280 F. Supp. 2d 89, 100–01 (S.D.N.Y. 2003), *aff'd*, 293 F. Supp. 2d 302 (S.D.N.Y. 2003); *see also Benisek v. Lamone*, 241 F. Supp. 3d 566, 575 (D. Md. 2017). The five factors are: (1) "relevance of the evidence sought to be protected"; (2) "availability of other evidence"; (3) "seriousness of the litigation and the issues involved"; (4) "the role of the [State] in the litigation"; and (5) "possibility of future timidity by government employees who will be forced to recognize that their secrets are violable." *Rodriguez*, 280 F. Supp. 2d at 101 (citation omitted).

2. Applying these principles, it is clear that the Speech and Debate Clause does not foreclose any of the discovery that Petitioners seek.

As a threshold matter, a significant portion of the discovery that Petitioners seek falls entirely outside "the sphere of legitimate legislative activity" protected by the Speech or Debate Clause. *Larabee*, 880 N.Y.S.2d at 268 (citations omitted). Instead, it involves communications between legislators and third parties, who are not the legislators' alter egos, such as special advisory groups and the Democratic IRC Commissioners who desired the enactment of unlawful partisan-gerrymandering legislation. Specifically, Petitioners seek "all Documents and Communications concerning the work of the Commissioners of the Democratic Caucus of the IRC, which Documents and Communications [Respondents] received from third parties." NYSCEF No.34 at 8. Petitioners also seek to depose both Respondents and third parties regarding their communications involving redistricting decisions. NYSCEF Nos.35–47. Such third-party

communications—which provide key evidence of partisan intent in partisan-gerrymandering cases, *see Benisek,* 348 F. Supp. 3d at 497, 518; *Common Cause*, 279 F. Supp. 3d at 640; *League of Women Voters*, 178 A.3d at 766–67 & n.38; *Detzner*, 172 So. 3d at 392—do not implicate legislative privilege in any respect. At most, these communications are "casually or incidentally related to legislative affairs but not a part of the legislative process itself." *United States v. Brewster*, 408 U.S. 501, 528 (1972). For example, while LATFOR, an advisory group, developed the redistricting plans at issue, the "legislatively-mandated structure of LATFOR makes its workings more akin to a conversation between legislators and knowledgeable outsiders, such as lobbyists, to mark up legislation—a session for which no one could seriously claim privilege." *See Rodriguez,* 280 F. Supp. 2d at 101.

The remaining discovery sought by Petitioners is likewise not precluded by legislative privilege because the privilege must yield, as here, to claims of partisan gerrymandering under the New York Constitution. Article III of the Constitution prohibits drawing districts "to discourage competition or for the *purpose* of favoring or disfavoring incumbents or other particular candidates or political parties." N.Y. Const. art. III, § 4(c)(5) (emphasis added). "Purpose" means "[a]n objective, goal, or end." *Purpose*, Black's Law Dictionary (11th ed. 2019). This later-enacted ban on partisan gerrymandering found in the same Article of the Constitution as the Speech or Debate Clause must, at minimum, be read to allow Petitioners to inquire into lawmakers' objective, goal, or end in adopting the redistricting maps and legislation at issue here. *See Reiff v. N.Y. City Conciliation & Appeals Bd.*, 128 Misc. 2d 851, 853 (Sup. Ct. N.Y. Cnty. 1985) ("[T]he more recent and more specific of the two [provisions] will control."). To construe the law any other way would lead to a nonsensical result, such as legislators claiming privilege against powerful allegations of unconstitutional racial discrimination. *See* N.Y. Const. art. III, § 4(c)(1).

Moreover, Petitioners' supported claim of partisan gerrymandering permits their requested discovery under the traditional exceptions to the legislative privilege, because partisan gerrymandering is not within "the sphere of *legitimate* legislative activity." *Larabee*, 880 N.Y.S.2d at 268 (emphasis added) (citations omitted). As discussed above, the legislative privilege is not absolute, as even Respondents' primary case for that proposition recognizes. *See Humane Soc'y*, 188 Misc. 2d at 739. The New York statutes and Constitution prohibit partisan gerrymandering, and Petitioners seek evidence that directly proves such unlawful legislative intent, which legislative privilege has never protected from disclosure. *See id.* (no privilege where there are supported allegations of bad faith or improper motives); *Reformed Church*, 8 A.D.2d at 640 (courts may allow "an inquiry into the purpose of the legislation"); *Ohrenstein*, 77 N.Y.2d at 54 (illegal activities and purely political acts are not protected by legislative privilege).

Finally, Petitioners easily satisfy the five-factor test that courts in other partisan-gerrymandering cases use to decide whether legislative privilege protects legislators from specific discovery requests, which this Court should likewise employ. *See Favors*, 285 F.R.D. at 209–10.

First, the requested discovery is directly relevant to Petitioners' allegations that Respondents drafted and enacted the 2022 Maps with impermissible partisan intent. Partisan intent is a necessary element for Petitioners' claim under Article III, Section 4(c)(5) of the New York Constitution and New York Legislative Law § 93(2)(e). Article III, Section 4(c)(5) provides that "in the creation of state senate and . . . congressional districts . . . [d]istricts shall not be drawn to discourage competition or for the purpose of favoring or disfavoring incumbents or other particular candidates or political parties." N.Y. Const. art. III, § 4(c)(5). Given that Petitioners seek documents and testimony that provide the most direct evidence of partisan intent surrounding the map drawing process, "the legislative privilege is inapplicable." *East End Ventures, LLC v. Inc.*

Vill. of Sag Harbor, 2011 WL 6337708, at *4 (E.D.N.Y. Dec. 19, 2011) ("Because the subject matter on which Plaintiffs seek testimony is one of the central issues in this case, the legislative privilege is inapplicable."); *see, e.g., Benisek*, 348 F. Supp. 3d at 497, 518 (noting that, due to "extensive discovery," "the record is replete with direct evidence of . . . precise [partisan] purpose," including documentary and testimonial evidence from elected officials); *see also Common Cause*, 279 F. Supp. 3d at 640; *League of Women Voters*, 178 A.3d at 766–67 & n.38; *Detzner*, 172 So. 3d at 392.

Second, the requested discovery is not available from other witnesses or sources. *See Benisek*, 241 F. Supp. 3d at 575. Respondents uniquely possess the most direct and relevant evidence of impermissible partisan intent. For example, Petitioners must be permitted to depose the legislators responsible for the redistricting choices and review their related communications.

Third, this case presents a very serious issue that affects the public at large. *Id.* at 576. Indeed, there are "few issues [that] could be more serious to preserving our system of representative democracy." *Id.* Thus, the seriousness of alleged partisan and incumbent-protection gerrymandering in violation of the State Constitution weighs in favor of disclosure.

Fourth, the difference between the State's role in litigation and that of the individual legislative leaders "also weighs in favor of [Petitioners]." *Id.* Specifically, the Democratic Party legislative leaders have decided to engage in unlawful partisan gerrymandering, and this deviates from the State's interest in drawing lawful and constitutional maps.

Finally, "the need for disclosure and accurate fact finding outweighs the legislature's need to act free of worry about inquiry into [its] deliberations." *Comm. for a Fair & Balanced Map v. Ill. State Bd. of Elections*, 2011 WL 4837508, at *7 (N.D. Ill. Oct. 12, 2011) (citation omitted; alteration in original); *Benisek*, 241 F. Supp. 3d at 575.

Accordingly, this Court should reject Respondents' claim of legislative privilege and permit the requested discovery that plaintiffs have obtained in partisan-gerrymandering cases. *See, e.g.*, Order, *Bennett v. Ohio Redistricting Comm'n*, No. 2021-1198 (Ohio Oct. 7, 2021).[4]

C. Attorney-Client Or Work Product Privilege Does Not Bar The Discovery Here

Respondents also contend that, to the extent the requested discovery implicates attorney-client or work-product privilege, the discovery requests may not be produced. NYSCEF Nos.94 at 7–8; 95 at 18–20. But such concerns can easily be addressed in a privilege log that will aid the Court in its assessment of privilege claims, particularly given the high stakes of this case. *See In re Subpoena Duces Tecum to Jane Doe, Esq.*, 99 N.Y.2d 434, 442 (2003).

D. Petitioners' Requested Discovery Is Reasonable, Not Unduly Burdensome, And Will Not Delay The Proceedings

Petitioners' requested discovery is plainly permissible in this procedural posture. The Constitution expressly states that redistricting cases such as the one here take "precedence . . . over all other causes and proceedings," and that the Court "shall render its decision within sixty days after a petition is filed." N.Y. Const. art. III, § 5. Again, courts across the country use their broad discretion in permitting plaintiffs in other cases involving similar partisan-gerrymandering claims to conduct discovery in expedited fashion. *Supra* p. 2. And as discussed in Petitioners' Reply Memorandum Of Law In Support Of Their Petition And Amended Petition, the requested expedited discovery may be conducted within the context of this proceeding by the following timing and sequence of events: the Court declaring at the March 3, 2022 return date that (1) the 2012 redistricting maps are unconstitutionally malapportioned; (2) the 2022 Congressional Map and the 2022 Senate Map are procedurally invalid due to the failure to follow the 2014 amendments' mandatory redistricting process; (3) Respondents are enjoined from administering

[4] https://www.supremecourt.ohio.gov/pdf_viewer/pdf_viewer.aspx?pdf=227960.pdf.

any elections under these maps, which would necessarily include enjoining all upcoming election-related deadlines related to the implementation of those maps; (4) all parties may submit proposed remedial maps by March 10, after which the Court may then render its decision within sixty days after [the] petition is filed," as required by the Constitution, N.Y. Const. art. III, § 5; and (5) while the remedial proceedings continue, Petitioners may serve their expedited discovery requests to develop the record on their substantive gerrymandering claim. Pets.' Reply Mem. Of Law In Supp. Of Pet. & Amend. Pet., at 1–2, 12–13. Various courts have similarly paused election-related deadlines and permitted expedited discovery after finding that a redistricting map is unconstitutional; thus, this does not undermine Petitioners' ability to obtain discovery. *See, e.g.*, Order, *Carter v. Chapman*, No. 7 MM 2022 (Pa. Sup. Ct. Feb. 9, 2022);[5] Order, *Harper v. Hall*, 865 S.E.2d 301, 302 (N.C. 2021); *Wilson v. Eu*, 817 P.2d 890, 892–93 (Cal. 1991) (postponing petition circulation and signature deadlines); *accord Petteway v. Henry*, No. 11-511, 2011 WL 6148674, at *3 n.7 (S.D. Tex. Dec. 9, 2011) (noting that the court has "authority to postpone . . . election deadlines if necessary"); *Terrazas v. Ramirez*, 829 S.W.2d 712, 721 (Tex. 1991) (same).

Respondents erroneously contend that permitting discovery would delay and expand the litigation timeframe. NYSCEF Nos.94 at 12–13; 95 at 12–14; 96 at 7–8. But Petitioners simply request the same expedited discovery timeframe that governed in other cases involving partisan-gerrymandering claims. *See, e.g.*, *League of Women Voters of Ohio*, 2022 WL 110261, at *6 (noting that parties conducted discovery under a court-ordered schedule).

Respondents argue that producing the requested discovery is broad and overly burdensome, particularly the requests for production of "All Documents and Communications concerning the

[5] https://www.pacourts.us/assets/opinions/Supreme/out/7mm2022pco%20-%202-9-2022.pdf#search=%227%20mm%202022%22.

subject matter of the Amended Petition," and "All Documents and Communications concerning the drawing of the 2022 New York Congressional and Senate districts." NYSCEF Nos.94 at 12–13; 95 at 4; 96 at 7. While the discovery requests are characterized as "all documents and communications," such characterization is permissible so long as the requests "are limited to specific subjects." *Engel v. Hagedorn*, 170 A.D.2d 301, 301 (1st Dep't 1991). Here, all of Petitioners' requests are tailored to disclosing evidence of partisan intent—the "subject matter" that is "one of the central issues in this case." *East End Ventures*, 2011 WL 6337708, at *4. And, as already explained, the requested discovery is limited to documents and communications that are "material and necessary" to resolving two central issues in Petitioners' case—(1) whether Respondents acted with impermissible partisan intent in drawing the 2022 Senate and congressional maps, N.Y. Const. art. III, § 4(c)(5); and (2) whether Respondents worked with the Democratic IRC Commissioners, politicians, officials, or interest groups to frustrate the mandatory constitutional process for redistricting, N.Y. Const. art. III, §§ 4–5; *see Rawlins v. St. Joseph's Hosp. Health Ctr.*, 108 A.D.3d 1191, 1193–94 (4th Dep't 2013).

As established in Petitioners' moving brief and herein, the proposed discovery requests are neither unduly burdensome nor prejudicial as they are limited to discovering the basic and central evidence of partisan intent—especially in light of the 2014 amendments to the Constitution. Nevertheless, should the Court find that any of discovery requests is improper as drafted, the proper remedy is not to deny Petitioners their fundamental right to pursue discovery, but rather to "fashion or condition [the discovery] order to diminish or alleviate any resulting prejudice." *Georgetown Unsold Shares, LLC v. Ledet*, 130 A.D.3d 99, 106 (2d Dep't 2015) (citations omitted).

CONCLUSION

For the reasons set forth above, Petitioners respectfully request that this Court grant Petitioners leave to conduct expedited discovery, together with such other and further relief as the Court deems just and proper.

Dated: New York, New York
March 1, 2022

Respectfully submitted,

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CERTIFICATION

I hereby certify that the foregoing memorandum of law complies with the bookmarking requirement and word count limitations set forth in Rules 202.5(a)(2) and 202.8-b of the Uniform Civil Rules for the Supreme Court and the County Court. This memorandum of law contains 4,130 words, excluding parts of the document exempted by Rule 202.8-b(b).

Dated: March 1, 2022
New York, New York

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