

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ALBANY

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Anthony S. Hoffmann et al.

Petitioners,

-against-

Index No. 904972-22

Hon. Peter A. Lynch

The New York State Independent Redistricting
Commission et al.,

**RESPONSE TO ORDER TO
SHOW CAUSE**

Respondents

-and-

Tim Harkenrider et al.

*Intervenors-
Respondents.*

Respondents David Imamura, Ivelisse Cuevas-Molina, and Elaine Frazier (“Undersigned Respondents”), by their attorneys Jenner & Block LLP, respectfully respond to the Court’s Order to Show Cause Regarding the Harkenrider Intervenors’ Motion to Dismiss ([Dkt. No. 147](#)) as follows. Undersigned Respondents defer to Petitioners in responding to the legal arguments made in the Harkenrider Intervenors’ Memorandum of Law in Support of their Motion to Dismiss ([Dkt. No. 144](#)) (“Harkenrider Mot.”), but are herein responding to several erroneous assertions of fact in that filing.

First, the Harkenrider Intervenors assert that the New York State Independent Redistricting Commission (“IRC”) is “now-constitutionally-disabled.” Harkenrider Mot. at 2. In fact, the Constitution does not set forth any process for disabling or disbanding the IRC and the IRC continues to be fully constituted with all ten commissioners, including two new commissioners

appointed to replace commissioners who resigned after the IRC submitted its maps to the Legislature in January 2022. *See* Affidavit of David Imamura in Support of Response (“Imamura Aff.”) ¶¶ 2–4.

Second, the Harkenrider Intervenors state that “the IRC apparently no longer has all ten constitutionally mandated commissioners.” Harkenrider Mot. at 2. In fact, the IRC currently has all ten commissioners. *See* Imamura Aff. ¶ 4.

Third, the Harkenrider Intervenors state that “Commissioner John Flateau has apparently resigned from the IRC, meaning that the IRC currently apparently only has nine commissioners.” Harkenrider Mot. at 19. In fact, the IRC is fully constituted with all ten commissioners, including Mr. Flateau. *See* Imamura Aff. ¶¶ 3–4.

Fourth, the Harkenrider Intervenors state that the Commission is “lacking key staff” and that “[s]hould this Court order the IRC to reconvene . . . additional staff would likely need to be hired.” Harkenrider Mot. at 19. In fact, there are no current staffing vacancies that would preclude the Commission from expeditiously undertaking the task of submitting a second round of proposed congressional districting plans for consideration by the Legislature. *See* Imamura Aff. ¶ 5.

Fifth, the Harkenrider Intervenors assert that the “IRC declared its decision to violate its constitutional duties on January 24, 2022.” Harkenrider Mot. at 18. In fact, on January 24, 2022, Respondents Imamura, Frazier, and Cuevas-Molina, along with two of their fellow Commissioners, announced: “We have repeatedly attempted to schedule a meeting by [January 25, 2022], and our Republican colleagues have refused. This is the latest in a repeated pattern of Republicans obstructing the Commission doing its job.” It also stated: “We have negotiated with our Republican colleagues in good faith for two years to achieve a single consensus plan. At every step, they have refused to agree to a compromise.” *See* Imamura Aff. ¶ 6.

WHEREAS, Undersigned Respondents respectfully submit this response to certain factual representations in the Harkenrider Intervenors' Motion to Dismiss for the Court's consideration.

DATED: September 8, 2022
New York, New York

Respectfully Submitted,

By: /s/ Jeremy H. Ershow

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