

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

Petitioners,

**Notice of Appeal**

-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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PLEASE TAKE NOTICE that Respondents Senate Majority Leader and President *Pro Tempore* of the Senate Andrea Stewart-Cousins and the New York State Senate Majority’s appointees to the New York State Legislative Task Force on Demographic Research and Reapportionment (collectively, the “Senate Respondents”), appeal to the Fourth Department of the Supreme Court of the State of New York, from the Order of the Hon. Patrick F. McAllister, signed in this special proceeding on March 9, 2022, duly entered in the Office of the Clerk of Steuben County on the same date, at NYSCEF Dkt. No. 135, and attached as Exhibit A (the

“Order”). This appeal is taken from each and every part of the Order, as well as from the Order in its entirety.

Dated: March 9, 2022  
New York, New York

By: 

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**Exhibit A**

STATE OF NEW YORK  
SUPREME COURT : COUNTY OF STEUBEN

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TIM HARKENRIDER, GUY C. BROUGHT,  
LAWRENCE CANNING, PATRICIA CLARINO,  
GEORGE DOOHER, JR., STEVEN EVANS, LINDA  
FANTON, JERRY FISHMAN, JAY FRANTZ,  
LAWRENCE GARVEY, ALAN NEWPHEW,  
SUSAN ROWLEY, JOSEPHINE THOMAS, and  
MARIANNE VOLANTE,

Index No. E2022-0116CV

Petitioners,

-against-

ORDER

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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PRESENT: Hon. Patrick F. McAllister  
Acting Supreme Court Justice

The Petitioners, through their attorneys, are seeking to set aside the new congressional districts and legislative districts. The Petitioners alleged that the Respondents did not have the authority under the constitution to create the new congressional and legislative districts as they did, and further that the Respondents engaged in prohibited gerrymandering when creating the districts. The Respondents oppose the Petitioners' application. The court heard oral argument on March 3, 2022. The court reserved decision. However, on March 3, 2022 the court did issue a written decision pertaining to discovery. The Respondents immediately appealed that Decision. The Petitioners then sought relief from the Appellate Division so discovery could proceed under the assumption that discovery was automatically stayed. Hon. Stephen K. Lindley, Justice of the Supreme Court Appellate Division Fourth Department ruled that the automatic stay provisions of CPLR §5519(a) do not apply. The Petitioners therefore seek from this court an order granting limited discovery consistent with this court's Decision dated March

3, 2022.

In support of the Petitioner's Petition, Amended Petition, and request for expedited discovery the court received and reviewed the following submissions:

Order to Show Cause;  
Petition;

Affirmation in Support of Petitioners' Order to Show Cause by Bennet Moskowitz affirmed February 3, 2022

[attachments: Article III §5,  
Unconsolidated Laws §4221,  
Board of Elections 2022 Political Calendar,  
Congressional Districts -Senate - Assembly January 30, 2022,  
Amending Congressional Districts February 1, 2022,  
Creation of Congressional Districts February 1 2022];

Order to Show Cause for Leave to File Amended Petition;

Affirmation in Support of Petitioners' Order to Show Cause by Bennet Moskowitz affirmed February 8, 2022

[attachments: Petition dated February 3, 2022,  
Affirmation in Support of Petitioners' Order to Show Cause  
by Bennet Moskowitz affirmed February 3, 2022 with  
attachments,  
Order to Show Cause,  
Article III §5,  
Amended Petition dated February 8, 2022,  
Unconsolidated Laws §4221,  
Board of Elections 2022 Political Calendar,  
Districts -Senate - Assembly January 31, 2022,  
Districts Senate - Assembly February 1, 2022];

Memorandum of Law in Support of Motion for Leave to Amend;

Order to Show Cause why Petitioners should not be Granted Leave to Conduct Expedited Discovery;

Affirmation of Attorney Bennet J. Moskowitz in Support of Petitioners' Proposed Order to Show Cause Why Petitioners Should not be Granted Leave to Conduct Expedited Discovery affirmed February 14, 2022

[exhibits: Petitioners' First Request for the production of Documents to Respondents,  
Notice to Take Deposition Upon Oral Examination,  
Notice to Take Deposition upon Oral Examination,  
Notice to Take Deposition Upon Oral Examination,  
Notice to Take Deposition upon Oral Examination,  
Notice to Take Deposition Upon Oral Examination,  
Notice to Take Deposition upon Oral Examination,

Notice to Take Deposition Upon Oral Examination,  
Notice to Take Deposition upon Oral Examination,  
Subpoena Duces Tecum Ad Testificandum,  
Subpoena Duces Tecum Ad Testificandum,  
Subpoena Duces Tecum Ad Testificandum,  
Subpoena Duces Tecum Ad Testificandum,  
Subpoena Duces Tecum Ad Testificandum];  
Memorandum of Law in Support of Petitioners' Proposed Order to Show Cause  
why Petitioners Should not be Granted Leave to Conduct Expedited Discovery;  
Memorandum of Law in Support of Petition and Amended Petition  
[attachments: Expert Report of Sean P. Trende,  
Expert Report of Claude A. Lavigna];  
Affidavit of Senator Robert G. Ort in Support of Petition sworn to February 14,  
2022;  
Affidavit of Lawrence Garvey in Support of Petition sworn to February 14, 2022;  
Affidavit if Jay Frantz in Support of Petition sworn to February 25, 2002;  
Affidavit of Jerry Fishman in Support of Petition sworn to February 25, 2022;  
Affidavit of Lawrence Canning in Support of Petition sworn to February 26, 2022;  
Affidavit of Linda Fanton in Support of Petition sworn to February 25, 2022;  
Affidavit of Marianne Violante in Support of Petition sworn to February 26, 2022;  
Affidavit of Patricia Clarino in Support of Petition sworn to February 28, 2022;  
Affidavit of Stephen Evans in Support of Petition sworn to February 26, 2022;  
Affidavit of Susan Rowley in Support of Petition sworn to February 28, 2022  
Reply Memorandum of Law in Support of Petitioners' Motion for Leave to Conduct  
Expedited Discovery;  
Reply Memorandum of Law in Support of Motion for Leave to Amend;  
Affirmation of Good Faith by Bennet J. Moskowitz affirmed February 15, 2022;  
Memorandum of Law in Support of Petition and Amended Petition; and  
Reply Memorandum of Law in Support of Petition and Amended Petition and  
Response to Motion to Dismiss;

In opposition to the Petitioners' Petition and Amended Petition and requested for  
expedited discovery the court received and reviewed the following submissions:

Memorandum of Law in Opposition to Order to Show Cause why Petitioners Should  
not be Granted Leave to Conduct Expedited Discovery by Letitia James/Heather  
McKay;  
Memorandum of Law of the Senate Majority Leader and the Speaker of the  
Assembly in Opposition to the Petition;  
Memorandum of Law in Support of the Governor's and Lt. Governor's Motion to  
Dismiss and In Opposition to the Petition;  
The Governor and Lt. Governor's memorandum of Law Opposing Motion to Amend  
the Petition;

Memorandum of Law of the Senate Majority leader and the Speaker of the Assembly in Opposition to Petitioners' Motion to Amend;  
 Reply Memorandum in Support of the Governor's and Lt. Governor's Motion to Dismiss;  
 Governor Hochul's and Lt. Governor Benjamin's Answer to Petition;  
 Declaration Opposing Motion to Amend the Petition;  
 Notice of Motion to Dismiss;  
 Affirmation by Heather McKay affirmed February 24, 2022  
 Attachments: e-mails,  
                   7150 Senate Bill,  
                   2021 Statewide Ballot Proposals,  
                   New York Times Article "*I feel a Heavy Weight of Responsibility*",  
                   Approval #2 Chapter #13 by Kathy Hochul];  
 Answer by Carl Heastie;  
 Answer and Counterstatement by Andrea Stewart-Cousins  
 Affidavit by Dr. Kristopher R. Tapp sworn to February 24, 2022; and  
 Affidavit by Dr. Michael Barber sworn to February 24, 2022.

The court issued a Decision dated March 3, 2022 which provided for limited discovery based on the New York State Courts and Federal Courts analysis of legislative discovery immunity, particularly as it pertains to alleged wrongdoing by the legislators. This court believes allegations of legislators drawing gerrymandered maps which is prohibited by the New York State Constitution to be akin to other cases where legislators were alleged to have committed wrong doing. Therefore, this court carefully constructed what would be and what would not be discoverable.

For the reasons set forth on the record on March 3, 2022 and for the reasons set forth in the Court's March 3, 2022 Decision, this court will hereby grant the Petitioners' limited discovery in accordance with the March 3, 2022 Decision.

NOW, therefore, upon consideration of all papers and proceedings heretofore had herein, and after due deliberation, it is

**ORDERED**, that the Petitioners' are granted expedited limited discovery in accordance with the court's March 3, 2022 Decision.

Dated: March 9, 2022

  
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 Hon. Patrick F. McAllister  
 Acting Supreme Court Justice

ENTER