

**SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION: FOURTH DEPARTMENT**

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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,

AFFIRMATION

A.D. No. CAE 22-00506

Petitioners-Respondents,

Steuben County
Index No. E2022-0116CV

-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-Appellants.

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Misha Tseytlin, an attorney admitted to practice in the State of New York, affirms under the penalties of perjury as follows:

1. I am a Partner at Troutman Pepper Hamilton Sanders LLP, attorneys for Petitioners in this CPLR Article 4 special proceeding. I am familiar with the facts and circumstances of the proceedings in this matter.

2. I submit this affirmation in opposition to Proposed Intervenors' (New York Congressmen, congressional candidates, and voters) request to intervene as Respondents-Appellants in this matter.

3. Given the press of time facing the parties in this expedited appeal and Petitioners' need to concentrate their efforts on merits briefing due before this Court tomorrow, Petitioners offer only this limited response to Proposed Intervenors' untimely and prejudicial intervention request.

4. All motions to intervene—whether as of right or by permission—must be timely to be granted. CPLR 1012 & 1013. Upon a “*timely motion*,” a nonparty may intervene as of right “when the representation of the person’s interest by the parties is or may be inadequate and the person is or may be bound by the judgment.” CPLR 1012(a)(2) (emphasis added). And, upon a “*timely motion*,” a court may, in its discretion, permit a nonparty to intervene after considering “whether the intervention will unduly delay the determination of the action or prejudice the substantial rights of any party.” CPLR 1013 (emphasis added).

5. Proposed Intervenors are not entitled to intervene as their request is clearly untimely and will cause serious prejudice to Petitioners.

6. Petitioners filed their Petition in this matter on February 3, 2022. *See* NYSCEF No.1. Seventy days later, on April 13, 2022, Proposed Intervenors moved to intervene. Proposed Intervenors' request is patently untimely.

7. Proposed Intervenors offer no serious explanation for their delay in seeking to intervene. While Proposed Intervenors attempt to justify their delay contending that they “refrained from seeking intervention in the trial court” based on their ostensible belief that the court would “permit the current election process to proceed” under the challenged Congressional Plan, Affirmation of Matthew D. Brinckerhoff (“Brinckerhoff Aff.”) ¶ 5, this argument makes no sense.

8. As a threshold matter, based on the timing of their seeking intervention, it had been *fourteen days* since the Supreme Court issued its remedy. Thus, given that Proposed Intervenors waited at least that long before deciding to seek intervention, their claim that the Court’s decision “necessitated intervention on appeal,” Brinckerhoff Aff. ¶ 6, falls flat.

9. In any event, throughout the entirety of this case, beginning with the Petition filed on February 3, 2022, Petitioners have sought relief for the 2022 elections. *See* NYSCEF No.1 at 66–67; *see* NYSCEF No.18 at 81–82.

10. Even beyond the Petition, a continual and critical argument between the parties below was whether and to what extent the Supreme Court should modify 2022 election deadlines in order to allow the Supreme Court to grant complete relief to Petitioners for the 2022 elections upon proof of their claims. *See* NYSCEF No.72 at 28–30; NYSCEF No.82 at 25–27; NYSCEF No.102 at 11–12; NYSCEF No.199 at 2; NYSCEF No.206 at 4; NYSCEF No.228 at 2; NYSCEF No.229 at 4–5;

NYSCEF No.232 at 4–10; NYSCEF No.233 at 2–9; NYSCEF No.234 at 3–12; NYSCEF No.237 at 2–4; NYSCEF No.238 at 1–11.

11. And even at the initial, March 3, 2022 hearing the Supreme Court acknowledged the possibility of “suspend[ing] the election process” in 2022, but merely noted that it was not inclined to “at th[at] time” given lingering questions about the strength of Petitioners’ claims before the Supreme Court could hold a hearing and review the evidence. NYSCEF No.231 at 69–70.

12. Thereafter, the Supreme Court specifically permitted supplemental briefing on these very issues on March 16, 2022. *See* NYSCEF No.232 at 1.

13. Proposed Intervenors acknowledge that they were following this case, knowledgeable of the Supreme Court’s March 3 *interim* opinion on pausing 2022 election deadlines in order to provide full relief to Petitioners. *See* Brinckerhoff Aff. ¶ 5. And they acknowledge that they were aware of supplemental briefing in the Supreme Court on the same issue. *Id.* Thus, Proposed Intervenors knew at that time that their interests could be affected, and could have timely intervened in litigation.

14. This untimely intervention request is also deeply prejudicial to Petitioners.

15. Proposed Intervenors are led by several Democratic Representatives, Jamaal Bowman, Yvette Clarke, Adriano Espaillat, Hakeem Jeffries, Sean Patrick Maloney, Gregory Meeks, Grace Meng, Jerrold Nadler, Paul Tonko, and Ritchie

Torres, as well as aspiring Democratic Representatives, Vanessa Fajans-Turner, Laura Gillen, Jackie Gordon, and Josh Lafazan. These individuals are the most direct beneficiaries of the unconstitutional gerrymander here.

16. Had Proposed Intervenors timely intervened, Petitioners would have sought and surely obtained discovery from Proposed Intervenors, including to determine whether they had any conversations with LATFOR, the Democratic-controlled majority of the Legislature, or the Governor, seeking to make the map more favorable for Proposed Intervenors. It would be deeply prejudicial to permit these Proposed Intervenors to come into this case now, after the discovery period has long closed, to obtain the benefits of party status without answering discovery.

17. Petitioners would also be prejudiced by having to face a *fourth* party group—represented by a *fourth* counsel—at the April 20 oral argument.

Dated: Chicago, Illinois
April 14, 2022



Misha Tseytlin