

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

**AFFIRMATION OF GOOD FAITH**

Petitioners,

Mot. Seq. # 003

-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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**BENNET J. MOSKOWITZ**, an attorney admitted to practice in the State of New York,

hereby 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 Art. 4 special proceeding.

2. I submit this Affirmation of Good Faith pursuant to 22 NYCRR § 202.7 to attest to the good faith efforts made in connection with Petitioners' Motion For Leave To Conduct Expedited Discovery (Mot. Seq. # 003).\*

3. On February 3, 2022, Petitioners, electors in the State of New York, commenced this special proceeding to challenge, *inter alia*, the validity of the Legislature's new congressional map ("2022 congressional map"). *See* Petition, NYSCEF Doc. No. 1. On February 8, 2022, Petitioners submitted a still-pending proposed Amended Petition, adding, in relevant part, their challenge to the new state Senate map ("2022 state Senate map"). *See* Proposed Amended Petition, NYSCEF Doc. No. 18, ¶¶ 179–212.

4. This Court's initial Order To Show Cause, entered on February 7, 2022, required the parties to "confer . . . on a schedule for expedited fact discovery and expert reports." Order To Show Cause, NYSCEF Doc. No. 11 at 4.

5. On February 10, 2022, consistent with this Court's February 7 Order To Show Cause, Petitioners and Respondents held a lengthy telephonic meet-and-confer session, during which they discussed Petitioners' proposed discovery requests. At that meeting, counsel for Respondents contended that these proceedings did not contemplate any discovery whatsoever other than notices to admit, and that counsel was unsure how *any* additional discovery could work, given both Respondents' privilege concerns and practical considerations regarding such additional discovery's incompatibility with the form of these proceedings. Nevertheless, Petitioners agreed

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\* As discussed in Petitioners' contemporaneously filed letter to the Court dated February 15, 2022, and contrary to Respondents' suggestion, Petitioners are not required to submit an Affirmation of Good Faith under the present circumstances. Nevertheless, Petitioners hereby submit this Affirmation of Good Faith in an abundance of caution, without conceding that such submission is required.

to provide Respondents a detailed proposal of the discovery Petitioners contemplated, in good faith efforts to come to a reasonable agreement on the scope of discovery.

6. Later that day, Petitioners provided Respondents with a detailed, written proposal of their contemplated discovery requests, including party and non-party document discovery and depositions.

7. Respondents rejected Petitioners' discovery proposal outright, refusing to consent to any such discovery in this matter and instead declaring in substance that Petitioners would have to seek leave to pursue any and all discovery other than notices to admit.

8. Given Respondents' blanket refusal to consent to any discovery beyond notices to admit, and given the exigent nature of this special proceeding, which exigency is set forth in the New York Constitution itself, Petitioners determined in good faith that further discussions concerning the discovery issues would be futile and untenable.

9. Thus, on February 14, 2022, Petitioners filed their Proposed Order To Show Cause Why Petitioners Should Not Be Granted Leave To Conduct Expedited Discovery, which this Court entered the next day. NYSCEF Doc. No. 51.

10. I respectfully submit that counsel for Petitioners made a good faith effort to resolve the issues raised in Petitioners' Motion For Leave To Conduct Expedited Discovery (Mot. Seq. # 003), before filing it.

WHEREFORE, Petitioners respectfully request that the relief requested in their Motion For Leave To Conduct Expedited Discovery (Motion Seq. #003) be in all respects granted, together with any such further relief as the Court deems just and proper.

Dated: New York, New York  
February 15, 2022

A handwritten signature in blue ink, appearing to read 'Bennet J. Moskowitz', is written above a solid horizontal line.

BENNET J. MOSKOWITZ

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