

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK
ALBANY DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

v.

STATE OF NEW YORK and THE NEW YORK
STATE BOARD OF ELECTIONS,

Defendants,

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

Applicants in Intervention.

Case No. 1:10-CV-1214-GLS-RFT

**NOTICE OF MOTION TO
INTERVENE BY 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**

PLEASE TAKE NOTICE that upon the accompanying Memorandum of Law, 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 (hereinafter, the “Harkenrider Proposed Intervenors”), will move this Court before the Hon. Gary L. Sharpe, United States District Judge, at the James T. Foley Courthouse, 445 Broadway, Rm. 441, Albany, NY 12207, at a time to be scheduled by this Court, for an order pursuant to Federal Rule of Civil Procedure 24 granting their Motion to Intervene. As set forth in the accompanying Memorandum of Law,

attached for filing as Exhibit 1 to this Notice of Motion, the Harkenrider Proposed Intervenor seek intervention as of right, or, in the alternative, permissive intervention pursuant to Federal Rules of Civil Procedure 24(a) and 24(b), respectively. Proposed Intervenor also attach for filing with this Notice of Motion a proposed Answer (Exhibit 2) and a Declaration of Misha Tseytlin (Exhibit 3).

Dated: May 9, 2022

Respectfully submitted,

By: /s/ Misha Tseytlin

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Intervenor*

CERTIFICATE OF SERVICE

I hereby certify that on the 9th day of May, 2022, a true and accurate copy of the foregoing was served via the Court's CM/ECF system upon all counsel of record.

By: /s/ Misha Tseytlin _____

Misha Tseytlin

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PATRICIA CLARINO, GEORGE DOOHER, JR., STEPHEN EVANS,
LINDA FANTON, JERRY FISHMAN, JAY FRANTZ, LAWRENCE
GARVEY, ALAN NEPHEW, SUSAN ROWLEY, JOSEPHINE THOMAS,
AND MARIANNE VOLANTE'S MEMORANDUM IN SUPPORT OF
THEIR MOTION TO INTERVENE**

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PRELIMINARY STATEMENT

Proposed Intervenor Tim Harkenrider, Guy C. Brought, Lawrence Canning, Patricia Clarino, George Doohar, Jr., Stephen Evans, Linda Fanton, Jerry Fishman, Jay Frantz, Lawrence Garvey, Alan Nephew, Susan Rowley, Josephine Thomas, and Marianne Volante (collectively, the “Harkenrider Proposed Intervenor”), all citizens that reside and vote in New York, move to intervene as defendants under Federal Rule of Civil Procedure 24. The Harkenrider Proposed Intervenor are the Petitioners in a pending lawsuit in which the state courts: (1) struck down as unconstitutional under the New York Constitution the egregiously gerrymandered and procedurally improper 2022 enacted congressional map, and (2) ordered New York to hold on August 23, 2022, its congressional primary election under a constitutional map that “compli[es] with federal voting laws, including the Uniformed and Overseas Citizens Absentee Voting Act.” *Harkenrider v. Hochul*, ___N.E.3d.___, 2022 WL 1236822, at *12 (N.Y. Apr. 27, 2022). Following those decisions, Defendant the New York State Board of Elections (“Board of Elections”) has “request[ed] that the August 23, 2022 primary date set for congress be recognized and ordered by this [C]ourt as well,” and noted that “the Department of Justice does not oppose this application.” Dkt.92 at 2–3. The Harkenrider Proposed Intervenor respectfully request that this Court consider their letter in support of granting the Board of Elections’ application, as the Harkenrider Proposed Intervenor satisfy the requirements for both intervention as of right and permissive intervention.

FACTUAL BACKGROUND

A. New York Courts Have Adopted An Orderly Process To Hold A Primary Election On A Constitutional Congressional Map On August 23

In 2012, the court in *Favors v. Cuomo* established New York's then-27 congressional districts, but since then, the State has experienced population shifts causing it both to lose a congressional seat and to experience unconstitutional malapportionment in its districts. *See generally Favors v. Cuomo*, No. 11-CV-5632, 2012 WL 928223 (E.D.N.Y. Mar. 19, 2012). Now, New York's per-district population goal is 776,971 persons for each of its now-26 congressional districts, while its per-district population goal in 2012 was 719,298 persons for each of its then-27 congressional districts.

Under amendments to the New York Constitution that the People of New York adopted in 2014, New York now has an exclusive process of adopting redistricting maps, and makes clear that if that process fails, New York courts must draw the redistricting maps for the State. This exclusive process requires that the New York Legislature consider and reject two sets of maps created by the New York Independent Redistricting Commission ("IRC"), before it has any authority to draw its own maps. N.Y. Const. art. III, § 4(b). If this process falters, the Legislature does not have the authority to draw new maps and courts must adopt new maps, upon the suit of any citizen. *Id.* §§ 4(b), (e), 5; *Harkenrider*, 2022 WL 1236822, at *11–13. And substantively, the 2014 amendments specifically prohibited any mapdrawer from drawing maps "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).

After the New York Legislature violated the 2014 Amendment’s exclusive process for redistricting and thus enacted no valid replacement congressional map, the Harkenrider Proposed Intervenor filed a lawsuit in Steuben County Supreme Court, asking, as relevant here, that the courts to carry out their constitutional duty to enact a constitutional congressional map to govern the 2022 elections. *See* Declaration of Misha Tseytlin (“Tseytlin Decl.”), Ex.A at 82. The Harkenrider Proposed Intervenor sued the Board of Elections, among other defendants, which decided to take no stance on the case. *See* Tseytlin Decl., Ex.B.

The Supreme Court ruled in favor of the Harkenrider Proposed Intervenor on March 31, 2022, holding that if the Legislature fails to adopt constitutionally sound maps by April 11, 2022, the court would retain a neutral expert to prepare a new congressional map to govern the 2022 election. Tseytlin Decl., Ex.C at 10, 14, 18. Additionally, the Supreme Court held that the 2012 congressional map was “no longer valid due to unconstitutional malapportionment and therefore can not be used,” Tseytlin Decl., Ex.C at 17, an aspect of the Decision from which no party appealed.

Thereafter, on appeal, the New York Court of Appeals agreed with the Supreme Court and held “the enactment of the congressional and senate maps by the legislature was procedurally unconstitutional, and the congressional map is also substantively unconstitutional as drawn with impermissible partisan purpose, leaving the state without constitutional district lines for use in the 2022 primary and

general elections.” *See Harkenrider*, 2022 WL 1236822, at *11. The Court of Appeals then ordered the Supreme Court to act “with all due haste” to create and adopt “constitutionally conforming maps for use in the 2022 election.” *Id.* at *1, 13. The Court of Appeals specifically acknowledged pertinent federal deadlines pertaining to elections, explaining that the “Supreme Court can swiftly develop a schedule to facilitate an August primary election, allowing time for the adoption of new constitutional maps, the dissemination of correct information to voters, the completion of the petitioning process, and compliance with federal voting laws, including the Uniformed and Overseas Citizens Absentee Voting Act.” *Id.* at *12.

On remand, the Supreme Court entered an order on April 29, 2022, stating that a proposed remedial congressional map will be adopted by May 20, 2022, the primary election would be held on August 23, 2022, and “the deadline for military and overseas ballots to be mailed will be July 8, 2022.” *See Tseytlin Decl.*, Ex.D at 2. In the interim, the parties and other interested persons submitted to the Supreme Court and Special Master proposed congressional maps, and all interested persons had the opportunity to appear and give public testimony on proposed maps before the Supreme Court and Special Master on May 6. *See Tseytlin Decl.*, Ex.E.

B. The De Gaudemar Proposed Intervenor Attempts To Disrupt The New York State Courts’ Redistricting Efforts With Frivolous Filings In Two Federal Courts

On May 2, 2022, Belinda de Gaudemar, Anthony Hoffmann, Susan Schoenfeld, Nancy Pascal, and Michael Corbett (hereinafter, the “De Gaudemar Proposed Intervenor”) filed suit in the Southern District of New York, *see De Gaudemar v.*

Kosinski, No.1:22-cv-03534 (S.D.N.Y. May 2, 2022), Dkt.1,* bizarrely asserting that use of the 2012 Congressional Map that the New York courts already invalidated would violate their constitutional rights. *De Gaudemar* Dkt.1 at 14–15. As a remedy, they requested that the court (re)enjoin the use of the 2012 map, and for the court to draw its own remedial map for the State to “conduct its primary on June 28, 2022, as required by federal court order.” *De Gaudemar* Dkt.1 at 15–16. And they clarified that their request for the court to draw its own map just meant that the court should “adopt . . . the one passed by the New York Legislature and signed by Governor Hochul on February 3, 2022,” *De Gaudemar* Dkt.1 at 13, meaning they seek to force upon the People of New York the very map that the Legislature unconstitutionally purported to enact without any authority under the New York Constitution.

At the May 4, 2022 oral argument hearing, the Hon. Judge Kaplan in the Southern District of New York swiftly denied the *De Gaudemar* Proposed Intervenor’s request. Judge Kaplan admonished the *De Gaudemar* Proposed Intervenor for their attempt to misuse the federal courts, describing their application for injunctive relief as “a Hail Mary pass, the object of which is to take a long shot try as having the New York primaries conducted on district lines that the State says are unconstitutional.” Dkt.98-7 at 15. Judge Kaplan explained that the

* The day of the May 4, 2022 temporary-restraining-order hearing, *De Gaudemar* Proposed Intervenor attempted to amend their lawsuit to add a new claim alleging that delaying the primary to August “would make it unlikely” for the Board of Elections to comply with UOCAVA’s 45-day deadline. *De Gaudemar* Dkt.30 at 15. However, this claim is also patently without merit, as the *De Gaudemar* Proposed Intervenor have no authority to enforce UOCAVA and even acknowledged at the hearing that “it is theoretically possible to comply with UOCAVA with an August 23rd primary.” Dkt.98-7 at 5.

De Gaudemar Proposed Intervenor's injunctive request would only create confusion that fails to "serve[] anybody's interest," Dkt.98-7 at 17, and is "against the public interest," Dkt.98-7 at 39. Judge Kaplan observed that the De Gaudemar Proposed Intervenor "not only ignor[ed] that their requested districts were improperly gerrymandered districts," but they sought to preserve the June 28th primary "without any regard for the chaos" that such request would "trigger." Dkt.98-7 at 38–39. Such request would "impinge[], to some degree, on the public perception" of "[f]ree, open, rational elections" and the "respect for the courts," Dkt.98-7 at 40. Notably, Judge Kaplan explained that this Court's 2012 order was "rendered in entirely different circumstances on an evidentiary record which is 10 years or more old," and found that the De Gaudemar Proposed Intervenor presented "no evidence" to suggest that the State could not comply with UOCAVA requirements under an August primary date. Dkt.98-7 at 33–34. In short, Judge Kaplan found the De Gaudemar Proposed Intervenor's requested relief "unconstitutional" and "unnecessary." Dkt.98-7 at 18.

The De Gaudemar Proposed Intervenor (now comprising only Belinda de Gaudemar and Susan Schoenfeld) have now continued their scheme of abuse of the federal courts from the Southern District of New York to this Court, trying to stop orderly and timely 2022 elections in New York under constitutional maps. On May 5, 2022, the Board of Elections submitted a letter motion to this Court "requesting that the August 23, 2022 primary date set for congress be recognized and ordered by this [C]ourt as well," noting that the U.S. Department of Justice "d[id] not oppose this

application.” Dkt.92 at 2–3. The following day, counsel for the De Gaudemar Proposed Intervenor moved to stop this straightforward and unopposed letter motion, expressing their intent to file a motion to intervene and oppose the supplemental order offered by the Board of Elections. Dkt.94. Continuing their campaign to circumvent the New York Constitution, basic principles of federalism, and the judgment that the Harkenrider Proposed Intervenor previously secured in the state courts to ensure a constitutional congressional map is in place for the 2022 elections, counsel for the De Gaudemar Proposed Intervenor filed their motion to intervene later that evening. Dkts.97, 98. On May 6, 2022, counsel for the Harkenrider Proposed Intervenor also submitted a letter motion to this Court, stating that should the Court delay ruling on the Board of Elections’ application in order to hear from proposed intervenors, they would seek to intervene on Monday, May 9, 2022. Dkt.96.

ARGUMENT

Federal Rule of Civil Procedure 24(a)(2) provides that an applicant may intervene in an action as of right “[o]n timely motion,” if that applicant “claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant’s ability to protect its interest, unless existing parties adequately represent that interest.” Fed. R. Civ. P. 24(a)(2). The Court may also afford an applicant permissive intervention under Rule 24(b)(1) if the party “has a claim or defense that shares with the main action a common question of law or fact.”

Id. 24(b)(1)(B). Here, the Harkenrider Proposed Intervenor satisfy Rule 24(a)(2), thus, this Court should grant them intervention as of right. *Infra* Part I. Alternatively, this Court should grant the Harkenrider Proposed Intervenor permissive intervention under Rule 24(b)(1). *Infra* Part II.

I. The Harkenrider Proposed Intervenor Are Entitled To Intervene As Of Right Under Rule 24(a)(2), Given Their Direct And Substantial Interests In New York’s Congressional Districts And The 2022 Election Cycle

An applicant must satisfy four elements to intervene as of right under Rule 24(a)(2): The applicant “must (1) timely file an application, (2) show an interest in the action, (3) demonstrate that the interest may be impaired by the disposition of the action, and (4) show that the interest is not protected adequately by the parties to the action.” *In re N.Y.C. Policing During Summer 2020 Demonstrations*, 27 F.4th 792, 799 (2d Cir. 2022) (citation omitted). The Harkenrider Proposed Intervenor satisfy each of these four elements.

1. *The motion is timely.* To “determin[e]” whether a motion to intervene is “timel[y],” this Court considers : “(a) the length of time the applicant knew or should have known of its interest before making the motion; (b) prejudice to existing parties resulting from the applicant’s delay; (c) prejudice to the applicant if the motion is denied; and (d) the presence of unusual circumstances militating for or against a finding of timeliness.” *Floyd v. City of N.Y.*, 770 F.3d 1051, 1058 (2d Cir. 2014). The Second Circuit has found intervention to be timely when an applicant moves for intervention early and causes no delay in the proceedings. *See, e.g., Laroe Ests., Inc. v. Town of Chester*, 828 F.3d 60, 67 (2d Cir. 2016), *vacated and remanded on other*

grounds sub nom. Town of Chester v. Laroe Ests., Inc., 137 S. Ct. 1645 (2017) (recognizing that intervention was timely where the parties had not yet begun discovery). The Harkenrider Proposed Intervenor's intervention motion is plainly timely, given that they filed this Motion within two business days of the Board of Elections' filing of its letter motion to modify the Court's 2012 injunction and allow New York to hold its congressional primary on August 23, 2022. Dkt.92.

2. *The Harkenrider Intervenor has a direct and substantial interest.* For intervention-as-of-right purposes, an interest "must be direct, substantial, and legally protectable." *Brennan v. N.Y.C. Bd. of Educ.*, 260 F.3d 123, 129 (2d Cir. 2001) (citation omitted); *accord Donaldson v. United States*, 400 U.S. 517, 531 (1971) (requiring "significantly protectable interest"). When a party has obtained a judgment in a matter, that can provide a "legally protectable" interest in the outcome of any related proceedings that may affect that judgment. *See, e.g., XL Specialty Ins. Co. v. Lakian*, 632 F. App'x 667, 669–70 (2d Cir. 2015) (holding that investors who obtained a judgment against a financial services company had a "legally protectable" interest in suit by insurance company against the same creditor because they had an interest in any funds paid pursuant to the policy). An interest "will not satisfy [Rule 24]" when it is "remote from the subject matter of the proceeding, or . . . is contingent upon the occurrence of a sequence of events before it becomes colorable." *Floyd*, 770 F.3d at 1060 (citations omitted). Further, "[t]he Supreme Court has recognized that 'certain public concerns may constitute an adequate "interest" within the meaning of [Rule 24(a)(2)].'" *Herdman v. Town of Angelica*, 163 F.R.D. 180, 187 (W.D.N.Y. 1995)

(alteration in original) (quoting *Diamond v. Charles*, 476 U.S. 54, 68 (1986)). This Court, therefore, must “take into account both the public nature” of the instant litigation “and the basis for, and strength of, [the Harkenrider Proposed Intervenor’s] particular interest in the outcome of the litigation.” *Id.*; accord *Commack Self-Serv. Kosher Meats, Inc. v. Rubin*, 170 F.R.D. 93, 100 (E.D.N.Y. 1996).

The Harkenrider Proposed Intervenor now have a direct and substantial interest in this case, *Brennan*, 260 F.3d at 129—and, specifically, in this Court granting the Board of Elections’ letter motion allowing New York to hold an August 23 primary. The Harkenrider Proposed Intervenor brought suit in New York state court, securing a judgment in the Steuben County Supreme Court that moved the primary election date to August 23 *for the 2022 elections*, see Tseytlin Decl., Ex.C at 10, 14, 17, 18, which was one of the Harkenrider Proposed Intervenor’s key requests for relief throughout the state-court case, Tseytlin Decl., Ex.A at 82.

Additionally, and independently, as citizens who regularly vote in New York congressional elections, the Harkenrider Proposed Intervenor have a “direct, substantial, and legally protectable interest” in an orderly process for the creation and implementation of the 2022 Congressional Map. See *Brennan*, 260 F.3d at 129. The Harkenrider Proposed Intervenor have an interest in ensuring the 2022 congressional elections take place in an orderly, timely manner under *constitutional* maps, which can best be accomplished with an August 23 primary date.

3. *Denial of the Board of Elections’ letter motion could impair the Harkenrider Proposed Intervenor’s direct and substantial interest.* As just explained, the

Harkenrider Proposed Intervenor have a significant interest in New York holding its congressional primary on August 23—as the Board of Elections has requested in its letter motion to this Court—which is the most optimal way to proceed in this 2022 election cycle under a constitutional remedial map adopted by the Steuben County Supreme Court. Denial of the Harkenrider Proposed Intervenor’s intervention request will directly “impair or impede” the Harkenrider Proposed Intervenor’s “ability to protect their interests.” *N.Y. Pub. Int. Rsch. Grp., Inc. v. Regents of Univ. of State of N.Y.*, 516 F.2d 350, 352 (2d Cir. 1975). As discussed, the Harkenrider Proposed Intervenor seek to have New York hold this year’s congressional primary on August 23, as that is the most logical means of protecting the Harkenrider Proposed Intervenor’s interest in constitutionally drawn maps, per the state-court judgment.

4. *The parties do not adequately represent the Harkenrider Proposed Intervenor’s interests.* Finally, intervention under Rule 24(a)(2) is warranted when there is “sufficient doubt about the adequacy of representation.” *Trbovich v. United Mine Workers of Am.*, 404 U.S. 528, 538 (1972). “This requirement ‘is satisfied if the applicant shows that representation of his interest “may be” inadequate; and the burden of making that showing should be treated as minimal.” *In re N.Y.C. Policing*, 27 F.4th at 803 (quoting *Trbovich*, 404 U.S. at 538 n.10). Courts must permit intervention under this factor unless the interests of existing parties are “so similar to those of [intervenors] that adequacy of representation [is] assured.” *Brennan*, 260 F.3d at 132–33. Where a proposed intervenor has the same ultimate objective as a

defendant, it is the proposed intervenors' burden to overcome the presumption of adequacy. *See Butler, Fitzgerald & Potter v. Sequa Corp.*, 250 F.3d 171, 179–80 (2d Cir. 2001). The Second Circuit has not precisely defined what is necessary to meet this heightened burden. *See id.* at 180 (holding that, while “not an exhaustive list, . . . evidence of collusion, adversity of interest, nonfeasance, or incompetence may suffice to overcome the presumption of adequacy”).

Here, the liberal, default rule applies because no party's interests are identical to the Harkenrider Proposed Intervenors' interests—and, *a fortiori*, no government party has the duty to represent the Harkenrider Proposed Intervenors' interests in this case. All existing parties—the U.S. Department of Justice and the Board of Elections—are government entities, and “governmental entities do not adequately represent the interests of aspiring [private] intervenors.” *Fund For Animals, Inc. v. Norton*, 322 F.3d 728, 736 (D.C. Cir. 2003); *see also, e.g., Crossroads Grassroots Pol’y Strategies v. FEC*, 788 F.3d 312, 321 (D.C. Cir. 2015) (“[W]e look skeptically on government entities serving as adequate advocates for private parties.”). The government/private-party distinction is an independently sufficient reason for satisfying the adequacy-of-representation element.

The New York Board of Elections and the U.S. Department of Justice do not adequately represent the Harkenrider Proposed Intervenors' interests under any standard. As for the Board of Elections, it took no position on the merits of the Harkenrider Proposed Intervenors' claims in the state case. *See supra* p. 3. Further, the Harkenrider Proposed Intervenors seek to protect the judgment they secured in

the state-court action, which is a judgment entered *against* the Board of Elections. *See* Tseytlin Decl., Ex.C. Consequently, while the Board of Elections has now moved this Court to allow New York to hold its primary on August 23, the Board of Elections cannot be expected to rigorously defend the Harkenrider Proposed Intervenor's interests in their state-court judgment. *See In re N.Y.C. Policing*, 27 F.4th at 803. The U.S. Department of Justice only has an interest in ensuring state compliance with UOCAVA, *see generally* Dkt.1, therefore, the U.S. Department of Justice has no interest in a specific primary date that provides New York State Courts the opportunity to create a court-drawn map. *See In re N.Y.C. Policing*, 27 F.4th at 803.

II. Alternatively, This Court Should Grant The Harkenrider Proposed Intervenor's Permissive Intervention Under Rule 24(b)(1)(B)

Alternatively, the Harkenrider Proposed Intervenor respectfully request that this Court grant them permissive intervention under Rule 24(b)(1)(B). Permissive intervention has two elements: the intervenor must "timely" move to intervene and must have "a claim or defense that shares with the main action a common question of law or fact." Fed. R. Civ. P. 24(b)(1)(B). Further, this Court may, in its "very broad" discretion, consider other relevant factors, including "the nature and extent of the intervenor's interests, and whether [the] parties seeking intervention will significantly contribute to full development of the underlying factual issues in the suit and to the just and equitable adjudication of the legal questions presented." *Bldg. & Realty Inst. of Westchester & Putnam Cnty., Inc. v. New York*, No. 19-CV-11285, 2020 WL 5658703, at *5–6 (S.D.N.Y. Sept. 23, 2020) (citation omitted; alteration in original); *see also U.S. Postal Serv. v. Brennan*, 579 F.2d 188, 191–92

(2d Cir. 1978). Overall, permissive intervention under Rule 24(b) “is to be liberally construed” in favor of intervention. *Olin Corp. v. Lamorak Ins. Co.*, 325 F.R.D. 85, 87 (S.D.N.Y. 2018) (citation omitted); *see also U.S. Postal Serv.*, 579 F.2d at 191 (“Permissive intervention is wholly discretionary with the trial court.”). The “principal guide in deciding whether to grant permissive intervention is whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.” *Olin*, 325 F.R.D. at 87 (citation omitted).

This Court should grant the Harkenrider Proposed Intervenors permissive intervention. First, the Harkenrider Proposed Intervenors’ Motion To Intervene is timely, as already described above with respect to intervention as of right. *Supra* pp. 8–9. Second, the Harkenrider Proposed Intervenors have filed a proposed Answer, which “shares with the main action a question of law or fact,” *Bldg. & Realty Inst.*, 2020 WL 5658703, at *5 (quoting Fed. R. Civ. P. 24(b)(1)(B))—namely, whether this Court should modify its 2012 permanent injunction so as to allow New York to hold its congressional primary on August 23, 2022. Finally, the Harkenrider Proposed Intervenors have direct and substantial interests here. As discussed above, the Harkenrider Proposed Intervenors have a significant interest in ensuring the State will hold its congressional elections on August 23, on a constitutional map. *Supra* pp. 9–10. As the party who secured a state-court judgment below, which includes an order that the State conduct its primary elections on August 23, 2022, the Harkenrider Proposed Intervenors offer a unique perspective in this case.

CONCLUSION

This Court should grant the Harkenrider Proposed Intervenor's Motion To Intervene.

Dated: May 9, 2022

Respectfully submitted,

By: /s/ Misha Tseytlin

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*Attorney for the Harkenrider Proposed
Intervenor*

CERTIFICATE OF SERVICE

I hereby certify that on the 9th day of May, 2022, a true and accurate copy of the foregoing was served via the Court's CM/ECF system upon all counsel of record.

By: /s/ Misha Tseytlin

Misha Tseytlin

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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK
ALBANY DIVISION

UNITED STATES OF AMERICA

Plaintiffs,

v.

STATE OF NEW YORK and THE NEW
YORK STATE BOARD OF ELECTIONS,

Defendants.

Case No. 1:10-CV-1214-GLS-RFT

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'S PROPOSED ANSWER TO PLAINTIFF'S COMPLAINT

INTRODUCTION

Harkenrider Proposed Intervenors submit this proposed Answer pursuant to the requirement set forth in Federal Rule of Civil Procedure 24(c), that the motion to intervene of Proposed Intervenor-Defendants 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 (hereinafter, collectively, the "Harkenrider Proposed Intervenors"), be accompanied by a "pleading that sets out the . . . defense[s] for which intervention is sought." Fed. R. Civ. P. 24(c). The Harkenrider Proposed Intervenors do not waive any of their defenses, privileges,

immunities, or their right to amend this proposed Answer. *See* Fed. R. Civ. P. 12(a)(4)(A); *see also* Fed. R. Civ. P. 15(a).

ANSWER TO COMPLAINT

1. The Harkenrider Proposed Intervenor admits that this action is brought by the Attorney General of the United States on behalf of the United States. Paragraph 1 references federal statutes, which speak for themselves.

2. Paragraph 2 references federal statutes, which speak for themselves.

3. Paragraph 3 references a federal statute, which speaks for itself. The allegations in Paragraph 3 also set forth legal conclusions for which no response is required; however, if a response is required, the Harkenrider Proposed Intervenor denies the allegations in Paragraph 3.

4. The Harkenrider Proposed Intervenor admits that New York is responsible for complying with UOCAVA and ensuring that validly requested ballots are sent to UOCAVA voters in accordance with its terms. Otherwise, Paragraph 4 references federal statutes, which speak for themselves. To the extent that Paragraph 4 contains legal conclusions, no response is required; however, if a response is required, the Harkenrider Proposed Intervenor denies the conclusions.

5. The Harkenrider Proposed Intervenor admits that the New York State Board of Elections has various duties under New York law. Otherwise, Paragraph 5 references state statutes, which speak for themselves. To the extent that Paragraph 5 contains legal conclusions, no response is required; however, if a response is required, the Harkenrider Proposed Intervenor denies the conclusions.

6. Paragraph 6 references federal statutes, which speak for themselves.

7. Paragraph 7 references a federal statute, which speaks for itself.

8. Paragraph 8 references federal statutes, which speak for themselves.

9. The Harkenrider Proposed Intervenor lack knowledge or information sufficient to form a belief about the allegations in Paragraph 9, and therefore deny the allegations. Further, Paragraph 9 references federal statutes, which speak for themselves.

10. The Harkenrider Proposed Intervenor lack knowledge or information sufficient to form a belief about the allegations in Paragraph 10, and therefore deny the allegations. Further, Paragraph 10 references a federal statute, which speaks for itself.

11. The Harkenrider Proposed Intervenor lack knowledge or information sufficient to form a belief about the allegations in Paragraph 11, and therefore deny the allegations.

12. Paragraph 12 references state statutes, which speak for themselves.

13. The Harkenrider Proposed Intervenor lack knowledge or information sufficient to form a belief about the allegations in Paragraph 13, and therefore deny the allegations.

14. The Harkenrider Proposed Intervenor lack knowledge or information sufficient to form a belief about the allegations in Paragraph 14, and therefore deny the allegations.

15. The Harkenrider Proposed Intervenor lack knowledge or information sufficient to form a belief about the allegations in Paragraph 15, and therefore deny the allegations.

16. The Harkenrider Proposed Intervenor lack knowledge or information sufficient to form a belief about the allegations in Paragraph 16, and therefore deny the allegations.

17. The Harkenrider Proposed Intervenor lack knowledge or information sufficient to form a belief about the allegations in Paragraph 17, and therefore deny the allegations.

18. The Harkenrider Proposed Intervenor lack knowledge or information sufficient to form a belief about the allegations in Paragraph 18, and therefore deny the allegations.

19. The Harkenrider Proposed Intervenor lack knowledge or information sufficient to form a belief about the allegations in Paragraph 19, and therefore deny the allegations.

20. Paragraph 20 references a federal statute, which speaks for itself. The allegations in Paragraph 20 also set forth legal conclusions for which no response is required; however, if a response is required, the Harkenrider Proposed Intervenor deny the allegations in Paragraph 20.

21. The allegations in Paragraph 21 set forth legal conclusions for which no response is required; however, if a response is required, the Harkenrider Proposed Intervenor deny the allegations in Paragraph 21.

WHEREFORE,

1. Paragraph 1 references federal statutes, which speak for themselves. The allegations in Paragraph 1 also set forth legal conclusions for which no response is required; however, if a response is required, the Harkenrider Proposed Intervenor deny the allegations in Paragraph 1. The Harkenrider Proposed Intervenor deny any allegations not otherwise answered in the prior paragraphs, including any allegations in headings, to the extent such denials are consistent with the Harkenrider Proposed Intervenor's prior answers.

2. Paragraph 2 references a federal statute, which speaks for itself. The allegations in Paragraph 2 also set forth legal conclusions for which no response is required; however, if a response is required, the Harkenrider Proposed Intervenor deny the allegations in Paragraph 2. The Harkenrider Proposed Intervenor deny any allegations not otherwise answered in the prior paragraphs, including any allegations in headings, to the extent such denials are consistent with the Harkenrider Proposed Intervenor's prior answers.

3. The final statement requesting "such other relief as the interests of justice may require, together with the costs and disbursements of this action," sets forth legal conclusions for which no response is required; however, if a response is required, the Harkenrider Proposed Intervenor deny the conclusions. The Harkenrider Proposed Intervenor deny any allegations not otherwise answered in the prior paragraphs, including any allegations in headings, to the extent such denials are consistent with the Harkenrider Proposed Intervenor's prior answers.

AFFIRMATIVE DEFENSES

1. The Court should confirm the 2012 permanent injunction does not apply here. However, if the 2012 permanent injunction does apply, the Court should modify it so as to make clear that New York may hold its upcoming 2022 congressional primary on August 23, 2022.

PRAYER FOR RELIEF

WHEREFORE, the Harkenrider Proposed Intervenor request that this Court:

1. confirm that the 2012 permanent injunction does not apply; or
2. codify its 2012 permanent injunction in order to clarify that the 2022 New York congressional primary may be held on August 23, 2022.

Dated: May 9, 2022

Respectfully submitted,

By: /s/Misha Tseytlin

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*Attorney for Harkenrider Proposed
Intervenor*

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK
ALBANY DIVISION**

UNITED STATES OF AMERICA

Plaintiff,

v.

STATE OF NEW YORK and THE NEW
YORK STATE BOARD OF ELECTIONS,

Defendants.

Case No. 1:10-CV-1214-GLS-RFT

**DECLARATION OF MISHA
TSEYTLIN**

MISHA TSEYTLIN hereby declares as follows:

1. I am a member of the bar of the State of New York and admitted to practice in this Court.

2. I am a partner at Troutman Pepper Hamilton Sanders LLP, counsel of record for Tim Harkenrider, Guy C. Brought, Lawrence Canning, Patricia Clarino, George Dooher, Jr., Stephen Evans, Linda Fanton, Jerry Fishman, Jay Frantz, Lawrence Garvey, Alan Nephew, Frank Peretti, Susan Rowley, Josephine Thomas, and Marianne Volante, who have moved to intervene as defendants in this case (hereinafter, the “Harkenrider Proposed Intervenors”).

3. I am fully familiar with the facts and circumstances set forth herein.

4. I submit this declaration in support of the Harkenrider Proposed Intervenors’ Motion to Intervene (hereinafter, the “Motion”) and the Harkenrider Proposed Intervenors’ Letter In Support Of The New York State Board Of Elections’ Letter Memorandum (hereinafter, the “Letter”).

5. The sole purpose of this Declaration is to place before the Court copies of the materials cited by the Harkenrider Proposed Intervenors in their Motion and Letter.

6. Attached hereto as **Exhibit A** is a copy of the Petition filed by Harkenrider Proposed Intervenors on February 8, 2022, in *Harkenrider v. Hochul*, No. E2022-0116CV (Steuben Cnty. Sup. Ct.), Dkt.18.

7. Attached hereto as **Exhibit B** is a copy of the letter submitted by the New York State Board Of Elections to Hon. Patrick F. McAllister on February 16, 2022, in *Harkenrider v. Hochul*, No. E2022-0116CV (Steuben Cnty. Sup. Ct.), Dkt.54.

8. Attached hereto as **Exhibit C** is a copy of the Decision and Order of the Steuben County Supreme Court entered March 31, 2022, in *Harkenrider v. Hochul*, No. E2022-0116CV (Steuben Cnty. Sup. Ct.), Dkt.243.

9. Attached hereto as **Exhibit D** is a copy of the Preliminary Order of the Steuben County Supreme Court entered April 29, 2022, in *Harkenrider v. Hochul*, No. E2022-0116CV (Steuben Cnty. Sup. Ct.), Dkt.301.

10. Attached hereto as **Exhibit E** is a copy of the Second Amended Order entered April 29, 2022, in *Harkenrider v. Hochul*, No. E2022-0116CV (Steuben Cnty. Sup. Ct.), Dkt.296.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: May 9, 2022

Respectfully submitted,

By: /s/Misha Tseytlin

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*Counsel for the Harkenrider Proposed
Intervenors*

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EXHIBIT A

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF STEUBEN

-----X

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

AMENDED PETITION

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.

-----X

Petitioners 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, by their counsel, Keyser Maloney & Winner LLP, and Troutman Pepper Hamilton Sanders LLP, for their Petition against Respondents 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 E. Heastie, the New York State Board of Elections, and the New York State Legislative Task Force on Demographic Research and Reapportionment, allege as follows:

PRELIMINARY STATEMENT

1. The People of New York in 2014 enshrined in the New York Constitution an exclusive process for enacting replacement congressional and state legislative districts, while also prohibiting partisan and incumbent-protection gerrymandering. Yet, in the very first redistricting cycle after these landmark constitutional amendments, the Democratic Party politicians who control the New York Legislature and Governor's office violated these constitutional provisions.

2. These politicians brazenly enacted a congressional map ("2022 congressional map") that is undeniably politically gerrymandered in their party's favor. Dave Wasserman, a nonpartisan national elections expert, correctly noted that these politicians' congressional map is "an effective gerrymander," designed so that Democrats will "gain three seats and eliminate four Republican seats," creating "probably the biggest shift in the country."¹ The non-partisan election analysis website FiveThirtyEight similarly explained that the map is so "skewed toward Democrats" and "egregious" as to "represent[] a failure for [New York's] new redistricting process."² And even a top attorney for the famously left-leaning Brennan Center for Justice opined that the congressional map "isn't good for democracy," because it is "a master class in gerrymandering, . . . tak[ing] out a number of Republican incumbents very strategically."³ Indeed,

¹ Grace Ashford & Nicholas Fandos, *N.Y. Democrats Could Gain 3 House Seats Under Proposed District Lines*, N.Y. Times (Jan. 30, 2022), available at <https://www.nytimes.com/2022/01/30/nyregion/new-york-redistricting-congressional-map.html> (all websites last visited on Feb. 8, 2022).

² Nathaniel Rakich, *New York's Proposed Congressional Map Is Heavily Biased Toward Democrats. Will It Pass?*, FiveThirtyEight (Jan. 31, 2022), available at <https://fivethirtyeight.com/features/new-yorks-proposed-congressional-map-is-heavily-biased-toward-democrats-will-it-pass/>.

³ Nick Reisman, *How the Proposed Congressional Lines Could Alter New York's Politics*, Spectrum News 1 (Feb. 1 2022), available at <https://spectrumlocalnews.com/nys/central-ny/ny-state-of-politics/2022/02/01/how-the-proposed-congressional-lines-could-alter-ny-s-politics>.

the congressional map is so obviously biased that it favors Democratic partisan interests more than any of 5,000 computer-generated maps drawn without partisan considerations.

3. While the 2022 congressional map received the great bulk of media attention, the Legislature's new state Senate map ("2022 state Senate map") is likewise politically gerrymandered to favor the Democratic Party and Democratic Party incumbent politicians. Yet again, when the Legislature's state Senate map was compared to any of 5,000 computer-generated maps designed to create state Senate districts consistent with New York law but without partisan considerations, it is the most favorable to the Democratic Party.

4. In 2014, the People of New York amended Sections 4 and 5 of Article III of the New York Constitution, establishing an *exclusive* process for redistricting that, both as a matter of procedure and substance, prohibits partisan and incumbent-protection gerrymandering. Through the creation of the New York Independent Redistricting Commission ("IRC" or "the Commission"), the requirements for multiple public hearings to receive public comment on proposed maps, and limiting the New York State Legislature's ("Legislature") authority to an up-or-down vote on IRC-proposed maps, these amendments designed a process to preclude gerrymandering. Indeed, these amendments explicitly prohibit drawing maps "for the purpose of favoring or disfavoring incumbents or other particular candidates or political parties." N.Y. Const. art. III, § 4(c)(5). Thus, the amendments bar the sorts of gamesmanship and self-interested gerrymandering that have plagued the redistricting process in this State for years.

5. The State of New York even bragged about these reforms to its redistricting process before the U.S. Supreme Court, claiming that Article III, Section 4(c)(5) was powerful evidence

that States could fight partisan gerrymandering by barring the drawing of district lines for the purpose of favoring or disfavoring a political party.⁴

6. The Democrat-controlled Legislature attempted, but failed, to gut these reforms in 2021 through a proposed constitutional amendment. That amendment would have allowed the Legislature to assume vast redistricting authority if the Commission failed to vote on redistricting plans for the Legislature's consideration.

7. But the People decisively voted this measure down in 2021, reconfirming the IRC's exclusive redistricting process under New York law.

8. Undeterred, the Democrats who control the Legislature and Governor Kathy Hochul have egregiously violated both the procedural and substantive protections in the New York Constitution to seek precisely the type of advantage for their party that the People outlawed in 2014 and reaffirmed in 2021. Governor Hochul thus lived up to her promise to "use [her] influence to help Democrats expand the House majority through the redistricting process," and help the Democratic Party "regain its position that it once had when [she] was growing up."⁵

9. This Court should invalidate both the unconstitutional 2022 congressional map and unconstitutional 2022 state Senate map on two separate and independent bases.

10. First, the Legislature had no authority to enact the new maps because the Legislature did not follow the *exclusive* process for enacting replacement maps that the People enshrined through the 2014 amendments, meaning that the Senate map and congressional map are

⁴ Amicus Br. for States of N.Y., et al. at 18, *Rucho v. Common Cause*, 558 U.S. ____ (2019) (No. 18-422).

⁵ Katie Glueck & Luis Ferré-Sadurní, *Interview with Kathy Hochul: "I Feel a Heavy Weight of Responsibility"*, N.Y. Times (Aug. 25, 2021), available at <https://www.nytimes.com/2021/08/25/nyregion/kathy-hochul-interview.html>.

entirely void.⁶ Accordingly, the only validly enacted or adopted maps are those that the Legislature and courts adopted for New York after the 2010 decennial census. But the prior congressional map (“2012 congressional map”) is now unconstitutionally malapportioned after the 2020 census and does not have the correct number of seats. And the prior state Senate map (“2012 state Senate map”) is similarly malapportioned, given changes in New York’s population. This Court should expeditiously adopt new maps—prior to the impending deadlines for candidates to access the ballot—to cure the malapportionment now affecting the 2012 congressional and state Senate maps.⁷

11. Second, if this Court holds that the Legislature somehow had the authority to adopt replacement maps notwithstanding these procedural failures, this Court should reject the new 2022 congressional map and 2022 state Senate map as a matter of substance, as those maps are obviously unconstitutional partisan and incumbent-protection gerrymanders. If this Court takes this approach, it should invalidate the 2022 congressional map and 2022 state Senate map and then send them back to the Legislature to create new maps that comply with the law.

THE PARTIES

12. Petitioner Tim Harkenrider is an elector of the state of New York, residing at 22 Spruce Street, Canisteo, NY 14823, in Steuben County, within Congressional District 23 and state Senate District 59.

⁶ To be sure, this same procedural basis for invalidation applies equally to the state Assembly map. However, the Petitioners do not challenge that map in this lawsuit. Of course, any other elector, N.Y. Const. art. III, § 5; Unconsolidated Laws § 4221, can challenge the Assembly map if that elector chooses.

⁷ Although this failure applies equally to the state Assembly map enacted by the Legislature, Petitioners do not challenge that map or ask for its invalidation. Therefore, the Court need not consider any procedural failures related to enactment of the 2022 state Assembly map.

13. Petitioner Guy C. Brought is an elector of the state of New York, residing at 170 Horton Lane, Apt. 462, Port Ewen, NY 12466, in Ulster County, within Congressional District 19 and state Senate District 48.

14. Petitioner Lawrence Canning is an elector of the state of New York, residing at 2843 Johnny Cake Hill Road, Hamilton, NY 13346, in Madison County, within Congressional District 19 and state Senate District 55.

15. Petitioner Patricia Clarino is an elector of the state of New York, residing at 274 Garden Street, New Windsor, NY 12553, in Orange County, within Congressional District 18 and state Senate District 41.

16. Petitioner George Dooher, Jr. is an elector of the state of New York, residing at 209 Dixon Dr., Syracuse, New York 13219, in Onondaga County, within Congressional District 22 and state Senate District 52.

17. Petitioner Stephen Evans is an elector of the state of New York, residing at 440 West 41st Street, Apt. 4G, New York, NY 10036, in New York County, within Congressional District 10 and state Senate District 30.

18. Petitioner Linda Fanton is an elector of the state of New York, residing at 2347 Fulmer Valley Road, Wellsville, NY 14895, in Allegany County, within Congressional District 23 and state Senate District 58.

19. Petitioner Jerry Fishman is an elector of the state of New York, residing at 8200 Narrows Avenue, Brooklyn, NY 11209, in Kings County, within Congressional District 11 and state Senate District 22.

20. Petitioner Jay Frantz is an elector of the state of New York, residing at 39 Orchard Place, Gowanda, NY 14070, in Cattaraugus County, within Congressional District 23 and state Senate District 58.

21. Petitioner Lawrence Garvey is an elector of the state of New York, residing at 2 Hillman Road, New City, NY 10956, in Rockland County, within Congressional District 17 and state Senate District 40.

22. Petitioner Alan Nephew is an elector of the state of New York, residing at 28 Aldrich Street, Gowanda, NY 14070, in Cattaraugus County, within Congressional District 23 and state Senate District 58.

23. Petitioner Susan Rowley is an elector of the state of New York, residing at 876 Ford Peterson Road, Frewsburg, NY 14738, in Chautauqua County, within Congressional District 23 and state Senate District 58.

24. Petitioner Josephine Thomas is an elector of the state of New York, residing at 322 Wynthrop Road, Syracuse, NY 13209, in Onondaga County, within Congressional District 22 and state Senate District 52.

25. Petitioner Marianne Volante is an elector of the state of New York, residing at 170 Loder Road, Yorktown Heights, NY 10598, in Westchester County, within Congressional District 16 and state Senate District 42.

26. Respondent Kathy Hochul is the Governor of the State of New York. She is being sued in her official capacity.

27. Respondent Brian A. Benjamin is the Lieutenant Governor of the State of New York and President of the New York State Senate. He is being sued in his official capacity.

28. Respondent Andrea Stewart-Cousins is the New York State Senate Majority Leader and President *Pro Tempore* of the New York State Senate, representing the 35th Senate District. Majority Leader Stewart-Cousins has offices in Albany and at 28 Wells Avenue, Building #3, 5th Floor, Yonkers, NY 10701. She is being sued in her official capacity.

29. Respondent Carl E. Heastie is the Speaker of the New York State Assembly, representing the 83rd Assembly District. Speaker Heastie has offices in Albany and at 1446 East Gun Hill Road, Bronx, NY 10469. He is being sued in his official capacity.

30. Respondent New York State Board of Elections was established on June 1, 1974, as an Executive Department agency vested with the authority and responsibility for administration and enforcement of the laws relating to election in the State of New York. It has its principal place of business at 40 North Pearl Street, Suite 5, Albany, NY 12207.

31. Respondent New York State Legislative Task Force on Demographic Research and Reapportionment (“LATFOR”) was established by the Legislature in 1978 pursuant to New York Legislative Law § 83-m, with the principal responsibility—at least before the 2014 constitutional amendments to Article III, Section 4—of preparing and formulating reapportionment plans to the Legislature following each decennial census. LATFOR’s principal place of business is located at 250 Broadway, Suite 2100, New York, NY 10007.

JURISDICTION AND VENUE

32. This Court has jurisdiction over this lawsuit pursuant to Article III, Section 5 of the New York Constitution, CPLR § 3001, and Unconsolidated Laws § 4221, the latter of which grants authority to the “supreme court” to “review” any “petition of any citizen” challenging “[a]n apportionment by the legislature.”

33. Venue is proper in this County under Article III, Section 5 of the New York Constitution, CPLR § 503(a), and Unconsolidated Laws § 4221, the latter of which authorizes the filing of a petition challenging “[a]n apportionment by the legislature” in “the supreme court where any such petitioner resides.”

FACTUAL BACKGROUND

A. Redistricting in New York

34. Following each federal decennial census, the New York Constitution requires the State of New York to redraw its state Senate, state Assembly, and congressional districts to adjust for population changes. The process of redrawing these district lines is known as redistricting.

35. New York congressional and state Senate districts must be redrawn so that each district is contiguous; contains, to the extent possible, an equal number of inhabitants; and is in as compact a form as possible, as required by Article III, Sections 4 and 5 of the New York State Constitution.

36. Redistricting is an extremely time-sensitive requirement, including because candidates must know what their districts are in advance of an election, in order to meet state-ballot-access requirements. Multiple petition and signature-related deadlines are looming for New York congressional candidates. *See generally* N.Y. Election Law § 6-100, *et seq.*

i. The Redistricting Process Before 2014

37. Before 2014, the Legislature maintained primary responsibility for redistricting.

38. To aid the Legislature in its task, LATFOR would prepare proposed redistricting maps for the Legislature’s vote.

39. Established in 1978, LATFOR is a partisan body that has consistently produced partisan maps. It consists of six members, including four legislators and two non-legislators. The Temporary President of the Senate appoints one legislator and one non-legislator. The Speaker of the Assembly also appoints one legislator and one non-legislator. The Minority Leader of the Assembly appoints one legislator, and the Minority Leader of the Senate appoints one legislator.

40. Under the LATFOR system, “legislators w[ould never] give up their right to draw district lines.” David Freedlander, *Backgrounder: How Redistricting Will Reshape New York’s Battle Lines*, Observer (Dec. 27, 2010).⁸ Indeed, legislators could effectively control redistricting under the LATFOR process in a partisan manner, by controlling “who winds up on [LATFOR]—those who make it are likely to be the favorites of [incumbent legislative leaders] and are likely to get exactly the districts that they want.” *Id.*

41. Over time, the Legislature manipulated its role in the redistricting process to protect existing incumbents. Under this pre-2014 system, elections were often predestined, with state legislative incumbents winning reelection more than 98% of the time, “usually overwhelmingly.” *Elections With No Meaning*, N.Y. Times (Feb. 21, 2004), at A14.⁹ The “major reason” for this seemingly insurmountable incumbency advantage was gerrymandering, allowing the party in power to draw districts with “surgical precision” to “exclude the homes of rival candidates” and making favorable districts nearly “impregnable.” *Id.* With incumbents facing little chance of

⁸Available at <http://observer.com/2010/12/backgrounder-how-redistricting-will-reshape-new-yorks-battle-lines/>.

⁹ Available at <https://www.nytimes.com/2004/02/21/opinion/elections-with-no-meaning.html>.

defeat under the then-existing process, elections became uncompetitive, and voters became increasingly disillusioned by the reality that they could not choose their representatives.

42. This system granted political parties significant leeway to gerrymander for partisan and incumbent gain. Only the requirement of “one person, one vote,” and requirements that districts “shall contain as nearly as may be an equal number of inhabitants, excluding aliens, and be in as compact form as practicable, and shall remain unaltered until the first year of the next decade . . . , and shall at all times consist of contiguous territory,” N.Y. Const. art. III, § 4 (2014), constrained the party leaders responsible for drawing new maps. The New York Constitution required respect for county and city lines, noting that “no county shall be divided in the formation of a senate district except to make two or more senate districts wholly in such county,” and “[n]o town, except a town having more than a full ratio of apportionment, and no block in a city inclosed by streets or public ways, shall be divided in the formation of senate districts,” as well as the “block on border” and “town on border” requirements. *Id.*; *see also* N.Y. Const. art. III, § 4(c)(6) (current version). But even these “requirements” were largely meaningless constraints. *See Schneider v. Rockefeller*, 31 N.Y.2d 420, 426–27, 293 N.E.2d 67 (1972).

43. Additionally, prior to 2014, some New York Courts interpreted the then-pertinent constitutional provisions as not providing for a claim of partisan gerrymandering. *Bay Ridge Cmty. Council, Inc. v. Carey*, 479 N.Y.S.2d 746, 749, 103 A.D.2d 280 (2d Dep’t 1984) (per curiam), *aff’d* 66 N.Y.2d 657, 486 N.E.2d 830 (1985) (order).

44. Therefore, the pre-2014 system for redistricting and reapportionment gave broad discretion to the politicians in power and *required* only that all state legislative and congressional districts largely abide by the equal-population principle, creating unfair and undemocratic maps that ensconced powerful parties in the seat of government.

ii. The Redistricting Process After the 2014 Reforms

45. In recent years, however, the People of this State explicitly outlawed partisan gerrymandering and constitutionalized an exclusive, nonpartisan redistricting procedure.

46. In 2014, New Yorkers amended Article III, Sections 4 and 5 of the New York Constitution, and added a new Section 5-b to the same Article, enacting the following ballot measure:

The Proposed amendment to sections 4 and 5 and addition of new section 5-b to Article 3 of the State Constitution revises the redistricting procedure for state legislative and congressional districts. The proposed amendment establishes a redistricting commission every 10 years beginning in 2020, with two members appointed by each of the four legislative leaders and two members selected by the eight legislative appointees; prohibits legislators and other elected officials from serving as commissioners; establishes principles to be used in creating districts; requires the commission to hold public hearings on proposed redistricting plans; subjects the commission's redistricting plan to legislative enactment; provides that the legislature may only amend the redistricting plan according to the established principles if the commission's plan is rejected twice by the legislature; provides for expedited court review of a challenged redistricting plan; and provides for funding and bipartisan staff to work for the commission. Shall the proposed amendment be approved?

*2014 N.Y. State Prop. No. 1: An Amendment Revising State's Redistricting Procedure.*¹⁰

47. Proposition 1 amended the New York Constitution to vest primary redistricting responsibility in the newly created IRC and established numerous procedural safeguards against the Legislature's continued gerrymandering practices.

48. One such procedural safeguard is the IRC's 10-member composition. Two Commissioners are appointed by the New York State Senate Majority Leader and Temporary President, two are appointed by the New York State Senate Minority Leader, two are appointed

¹⁰ Available at <https://www.elections.erie.gov/Files/Election%20Results/2014/11042014/2014-General.pdf>.

by the Speaker of the New York State Assembly, and two are appointed by the New York State Assembly Minority Leader. The final two members are then selected by these eight appointees and cannot have enrolled as a Democrat or Republican in the past five years. All Commission members must be registered voters in New York.

49. Article III, Section 4 of the New York Constitution requires the IRC to hold public hearings in cities and counties around the State and release draft plans, data, and related information to facilitate public review of proposed district lines. Draft plans must be made available at least thirty days before the first public hearing and no later than September 15 of the year following the census.

50. Article III, Section 5-b(f) and (g) of the New York Constitution governs IRC voting and the procedure for approving and submitting redistricting maps to the Legislature. Five members of the IRC constitute a quorum. IRC approval of a plan requires seven votes, which must include a member appointed by each of the legislative leaders. If no plan gets seven votes, the IRC must submit the plan(s) with the highest vote to the Legislature.

51. Article III, Section 4 of the New York Constitution requires the IRC to submit an initial set of maps and the necessary implementing legislation to the Legislature no later than January 15 of the second year following the census. The Legislature then votes on the maps and implementing legislation without amendment. N.Y. Const. art. III, § 4(b); *see also* N.Y. Legis. Law § 93(1).

52. If the Legislature fails to adopt the first set of maps and implementing legislation or if the Governor vetoes adopted implementing legislation, then the redistricting process reverts back to the IRC. The IRC must submit a second set of maps and implementing legislation to the

Legislature, subject to the requirements outlined above, within 15 days of notification of the first rejection and no later than February 28. The Legislature then votes on the second set of proposed maps and implementing legislation without amendment. N.Y. Const. art. III, § 4(b); *see also* N.Y. Legis. Law § 93(1).

53. If (and only if) the Legislature fails to adopt the IRC's second set of maps and implementing legislation, or if the Governor vetoes the second adopted implementing legislation, can the Legislature amend the IRC's proposed redistricting maps and enact its own replacement maps.

54. The 2014 amendments to Article III, Section 4 also changed and added to the *substantive* redistricting requirements. Now, the New York Constitution specifically provides that districts "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).

55. The Legislature must follow all of the substantive requirements for redistricting applicable to the IRC. That is, any maps and implementing legislation adopted by the Legislature cannot involve partisan gerrymandering or incumbent-favoring gerrymandering, must be compact and contiguous, and must have equal population between districts, in addition to the already-noted procedural requirement that all maps be enacted via a single mandatory process involving the IRC.

56. The Legislature also established an additional guardrail against partisan gerrymandering with Section 3 of the Redistricting Reform Act of 2012. 2012 N.Y. Sess. Laws 17, § 3. Applicable above and apart from New York Legislative Law §§ 93, 94, Section 3 of the Redistricting Reform Act of 2012 provides that "[a]ny amendments by the senate or assembly to a redistricting plan submitted by the independent redistricting commission, shall not affect more

than two percent of the population of any district contained in such plan.” 2012 N.Y. Sess. Laws 17, § 3.

iii. The Legislative Democrats Fail To Derail These Reforms With A Proposed 2021 Constitutional Amendment

57. In 2021, the Legislature referred a constitutional amendment to New York voters that would have gutted the 2014 constitutional reforms in favor of the Legislature over the Commission, but the People decisively voted this measure down.

58. The ballot proposal would have amended the New York Constitution in a number of ways, including section 4(b) of Article III, to provide:

If either house shall fail to approve the legislation implementing the second redistricting plan, or the governor shall veto such legislation and the legislature shall fail to override such veto, or the redistricting commission fails to vote on a redistricting plan and implementing legislation by the required deadline and makes a submission to the legislature pursuant to subdivision (g-1) of section five-b of this article, each house shall introduce such implementing legislation with any amendments each house of the legislature deems necessary.

2021 Statewide Ballot Proposals, New York State Board of Elections (amendment underlined).¹¹

59. The IRC’s exclusive redistricting process, enshrined in Article III, Section 4 of the New York Constitution, can only be altered by a constitutional amendment. Yet, within days of the People’s rejection of the 2021 constitutional amendment, the Legislature referred a bill that purports to achieve largely the same result as the failed amendment to the Governor for her signature. The Governor signed this unconstitutional bill on November 24, 2021.

¹¹ Available at <https://www.elections.ny.gov/2021BallotProposals.html>.

60. This law attempts to avoid the Constitution's limitations by purporting to amend only section 4(c) of the Redistricting Reform Act of 2012, notwithstanding the expressed desires of the People of this State:

If either house shall fail to approve the legislation implementing the second redistricting plan, or the governor shall veto such legislation and the legislature shall fail to override such veto within ten days of such veto, or if the commission does not vote on any redistricting plan or plans, for any reason, by the date required for submission of such plan and the commission submitted to the legislature pursuant to subdivision (a) of this section all plans in its possession, both completed and in draft form, and the data upon which such plans are based, each house shall introduce such implementing legislation with any amendments each house deems necessary. If approved by both houses, such legislation shall be presented to the governor for action within three days.

L.2021, c. 633, § 1 (amendment underlined).

B. The 2012 Congressional Map and 2012 State Senate Map Are Unconstitutional Under The New York Constitution

61. Following the 2010 Census, the Legislature in 2012 reapportioned New York's state legislative districts, 2011–2012 N.Y. Reg. Sess. Leg. Bills S.6696 and A.9525 (as technically amended by S.6755 and A.9584), but could not agree on new congressional districts. As a result, a panel of three federal judges appointed a federal magistrate judge, Roanne Mann, to propose a new congressional map for New York. On March 19, 2012, the judicial panel imposed its congressional map, which was largely the same as the map issued by Judge Mann. *Favors v. Cuomo*, No. 11-CV-5632, 2012 WL 928223 (E.D.N.Y. Mar. 19, 2012); *see also* Thomas Kaplan, *New Congressional Lines Imposed by Federal Court*, N.Y. Times (Mar. 19, 2012).¹²

¹² Available at <https://www.nytimes.com/2012/03/20/nyregion/judges-impose-new-congressional-map-for-new-york.html>.

62. After the 2010 census, New York had a population goal of 719,298 residents for each of its 27 congressional districts, and 313,242 residents for each of its state Senate districts.

63. In the interim, various population shifts caused state Senate and congressional districts to become unconstitutionally malapportioned.

64. New York's 26 congressional districts now have a population goal of 776,971 residents, whereas the state Senate districts have a population goal of 320,537.

65. The 2012 congressional map does not comply with this new population target or the constitutional requirements for population equality.

66. In other words, none of the districts complies with the "strict standard of population equality applicable to congressional apportionment," which requires "maximum population equality." *Schneider v. Rockefeller*, 31 N.Y.2d 420, 427–28, 293 N.E.2d 67 (1972).

67. None of the prior districts matches exactly (or even within 1,000 residents) the population goal of 776,971 residents.

68. For example, in 2012 Congressional District 23, where Petitioners Tim Harkenrider, Linda Fanton, Jay Frantz, Alan Nephew, and Susan Rowley reside, the current population is 83,462 residents below the population goal (a -10.7% deviation).

69. In 2012 Congressional District 22, where Petitioner Lawrence Canning resides, the current population is 80,361 residents below the population goal (a -10.3% deviation).

70. In 2012 Congressional District 19, where Petitioner Guy C. Brought resides, the current population is 78,298 residents below the population goal (a -10.1% deviation).

71. In 2012 Congressional District 24, where Petitioners George Dooher, Jr. and Josephine Thomas reside, the current population is 59,664 residents below the population goal (a -7.7% deviation).

72. In 2012 Congressional District 10, where Petitioner Stephen Evans resides, the current population is 26,832 residents above the population goal (a 3.5% deviation).

73. Moreover, the 2012 congressional map includes 27 congressional districts, and New York only receives 26 congressional seats after the most recent census, so that map is plainly invalid. U.S. Census Bureau, 2020 Census: Apportionment of the U.S. House of Representatives (April 26, 2021).¹³

74. The 2012 state Senate map is no better. Even allowing for some deviation between state Senate districts as presumptively valid, *Schneider*, 31 N.Y.2d at 428–29, many of the 2012 state Senate districts vary wildly in population without any valid explanation for their continued use.

75. 2012 state Senate District 27—where Petitioner Stephen Evans resides—now has a population 12.2% above the goal.

76. 2012 state Senate District 53—where Petitioner Lawrence Canning resides—now has a population 10.6% below the goal.

77. 2012 state Senate District 57—where Petitioners Linda Fanton, Jay Frantz, Alan Nephew, and Susan Rowley reside—now has a population 13.3% below the goal.

¹³ Available at <https://www.census.gov/library/visualizations/2021/dec/2020-apportionment-map.html>.

78. 2012 state Senate District 58—where Petitioner Tim Harkenrider resides—now has a population 10.1% below the goal.

79. Many more 2012 state Senate districts have similarly large population deviations.

C. The IRC And Legislature Failed To Follow The Constitutional Process For Redistricting To Cure This Malapportionment

i. The Commission's Initial Efforts To Develop Redistricting Maps

80. On April 26, 2021, the U.S. Census Bureau released the population counts from the 2020 Census, showing that New York's resident population increased by more than 4 percent, or 823,147 residents, from 19,378,102 a decade ago to 20,201,249 in 2020. Because of national population shifts, however, New York lost one of its congressional seats in the United States House of Representatives, leaving the State with 26 congressional districts.

81. The 2020 Census data further showed, as previously mentioned, that New York's congressional and state Senate districts are now unconstitutionally malapportioned.

82. Pursuant to the 2014 constitutional amendments, the New York Constitution established an exclusive process for adopting any replacement redistricting maps, granting the IRC and Legislature specifically defined roles.

83. The IRC's current members are David Imamura, serving as Chair, Jack M. Martins, serving as Vice Chair, Eugene Benger, Ross Brady, John Conway III, Dr. Ivelisse Cuevas-Molina, Dr. John Flateau, Elaine Frazier, Charles H. Nesbitt, and Willis H. Stephens, Jr.

84. Consistent with the procedures established by the 2014 amendments, Democratic leaders in the Legislature appointed the "Democratic Caucus" of the Commission, made up of: David Imamura, Eugene Benger, John Flateau, and Elaine Frazier, along with non-party enrollee Ivelisse Cuevas-Molina.

85. Similarly, Republican leaders in the Legislature selected the “Republican Caucus” of the Commission, made up of: Jack Martins, John Conway, Charles Nesbitt, and Willis Stephens, joined by Conservative Party member Ross Brady.

86. From the outset, Democratic legislative leaders attempted to hamstring the new Commission with multiple challenges and delays.

87. The Democrats attempted to impede the Commission by delaying its receipt of state funding from the Legislature. Despite a \$1 million allocation in the 2020 state budget, the funding never materialized, forcing Commission staff to work on a voluntary basis for months. After more than a year, the Legislature finally allocated \$4 million to the Commission’s redistricting efforts in April 2021. Ethan Geringer-Sameth, *New York Redistricting Commission Kicks Off State’s New Map-Drawing Process*, Gotham Gazette (July 20, 2021);¹⁴ Sarah Darmanjian, *NY’s Independent Redistricting Commission Clinches \$4M Budget*, News10 (Apr. 12, 2021).¹⁵

88. Finally, beginning on June 20, 2021, the IRC held a series of nine public meetings across the State to hear public testimony about the new maps and the redistricting process, as required by the New York Constitution. N.Y. Const. art. III, § 4(c).

89. On September 15, 2021, members of the IRC released initial map drafts, consistent with constitutional requirements. N.Y. Const. art. III, § 4(c).

90. Republican members had hoped to submit a single bipartisan set of draft maps. Speaking to reporters about the two draft plans, Commissioner Martins said the IRC “should end

¹⁴ Available at <https://www.gothamgazette.com/state/10664-new-york-redistricting-commission-set-to-kick-off>.

¹⁵ Available at <https://www.news10.com/news/redistricting-commission/>.

up with the maps being negotiated and presented jointly,” but the Democratic commissioners had not agreed to meet over the weekend before the Commission released the draft maps. *See* Rebecca C. Lewis & Zach Williams, *Takeaways From New York’s (Competing!) Redistricting Draft Maps*, City & State N.Y. (Sept. 15, 2021).¹⁶

91. The Democratic members viewed the competing draft maps differently, with Commissioner Imamura stating that “the fact that we put out two plans does not indicate that the commission will be unable to come to a bipartisan agreement.” *Id.*

92. The IRC held an additional fourteen public hearings across the State, during which residents voiced concerns, desires, and suggestions regarding the draft maps and the redistricting process. The IRC also solicited written comments and draft maps from the public.

93. Democratic members revised their respective maps between the end of November and when the full Commission met to deliberate in December. Testimony of Eugene Banger at 23:44–24:10, Virtual Public Meeting of the NYIRC, Jan. 3, 2022 (“1/3/22 IRC Meeting”).¹⁷

94. The IRC held its last public hearing on December 5, 2021, and the final deadline for public comments and draft maps was December 6, 2021.

95. Following the public comment period, the IRC scheduled meetings to negotiate and finalize a single set of maps to submit to the Legislature. The IRC agreed on a procedure for putting together this set of consensus maps:

¹⁶ Available at <https://www.cityandstateny.com/policy/2021/09/new-yorks-first-draft-2022-redistricting-maps-have-been-released/185374/>.

¹⁷ Available at <https://totalwebcasting.com/view/?func=VOFF&id=nysirc&date=2022-01-03&seq=1>.

- a. First, two third-party redistricting organizations, Redistricting Partners and Redistricting Insight, would prepare a set of maps without IRC input, using the draft maps released by the IRC in September, as well as the public testimony and written comments.
- b. The Commission would then hold a series of meetings, breaking into subgroups, to review the organizations' preliminary maps.
- c. Based on these discussions, the IRC would make changes to the preliminary maps and work to arrive at a single map.

96. All Commission members initially followed their agreed-upon plan and worked together on a set of consensus maps for over two weeks, moving toward a bipartisan consensus.

97. On December 22, 2021, the full Commission met to discuss the bipartisan maps. By this point, only a small number of issues remained open, and the Commission was close to reaching a consensus. After discussing the open issues for two hours, the Commission broke at 1:00 p.m., agreeing to reconvene at 4:00 p.m. to reach an agreement on the remaining issues. Testimony of Jack Martins at 8:44–9:14, 1/3/22 IRC Meeting, *supra*.

98. When the IRC reconvened at 4:00 p.m. on December 22, Commissioner Imamura read a statement announcing that the Democratic Caucus would no longer negotiate the bipartisan maps, as all members previously agreed to do. Instead, the Democratic Caucus was only willing to negotiate on the latest iteration of the maps it had released unexpectedly, and without explanation, the day prior. Testimony of Jack Martins at 9:16–9:49, 1/3/22 IRC Meeting, *supra*.

ii. The IRC Submits Two Sets Of Maps To The Legislature

99. On January 3, 2022, the IRC met to vote on maps to send to the Legislature.

100. The Democratic Caucus again refused to negotiate with the full Commission, discuss the bipartisan maps, or make any concessions. Commissioner Martins expressed his disappointment with the impasse, noting that the Republican members had reached an agreement with Democrats on 90 percent of the new district lines before talks broke down.

101. The Commission then voted on two redistricting plans—the Democratic members’ partisan maps presented on December 21 (“Plan A”) and the consensus maps, which were based on the preliminary maps drawn by independent organizations and negotiated by the full Commission throughout December 2021 (“Plan B”).

102. Both plans received five votes each, resulting in both being delivered to the Legislature on January 3.

103. The Legislature rejected both plans out-of-hand, without consideration of the public’s input, the Commission’s negotiations and reflections on the public’s testimony, bipartisan priorities, and the other considerations New Yorkers enshrined in the Constitution.

104. The Assembly set the plans for a party vote, rejecting them all. Before the final vote, Assemblyman Colin Schmitt asked Assemblyman Kenneth Zebrowski, a Democrat representing the 96th District who sponsored Plan A, whether the Assembly would “follow[] all of the currently prescribed State Law and State constitutional process for redistricting” if the Legislature failed to approve any of the IRC’s plans—including taking public input before enacting new maps. Assemblyman Zebrowski did not give a concrete answer, saying “I don’t—I don’t think that’s germane to—to this debate right now.” Transcript at 12–14, Session, New York State

Assembly (Jan. 10, 2022) (Questioning of Assemblyman Zebrowski by Assemblyman Colin Schmitt).¹⁸

105. In the Senate, Plan A's maps received no votes in favor of enactment. Seventeen senators voted in favor of Plan B's Senate and Assembly districts, with forty-six voting no, while nineteen senators voted to enact Plan B's congressional map, with forty-four voting against. Before voting in favor of Plan B, Senator Andrew Lanza commented on the Commission's lack of real autonomy, saying, "I think it's been the worst-kept secret in Albany, if not the entire country, that this Independent Redistricting Commission was never going to be allowed to remain independent." Transcript at 73:14–17, Regular Session, New York State Senate (Jan. 10, 2022) (Testimony of Senator Andrew Lanza).¹⁹

106. On January 10, the Legislature advised the Commission that it had rejected the submitted plans.

107. Following this rejection, the IRC had until January 25 to submit a revised plan under the 2014 amendments to the Constitution.

108. The full Commission met to discuss a single plan for the final submission to the Legislature, as required by Article III, Section 4(b) of the New York Constitution. The Republican members attempted to restart negotiations on the previously negotiated bipartisan maps. Chairman Imamura stated that the Democratic members wanted to re-submit virtually the same plan that the

¹⁸ Available at <https://www.nyassembly.gov/av/session/>.

¹⁹ Available at <https://legislation.nysenate.gov/pdf/transcripts/2022-01-10T15:51/>.

legislature had rejected. Despite multiple entreaties from the Republican members, the Democratic members refused to meet to discuss bipartisan maps.

109. On January 18, before the IRC's constitutional window for revision expired, Speaker Carl Heastie announced he had appointed Assembly Democrat Kenneth Zebrowski to be the temporary co-chair of LATFOR. Speaker Heastie stated that "the results of reapportionment will determine the path our state and our nation take for the coming decade," and "Assemblymember Zebrowski is the right person for the job." Assembly Speaker Carl E. Heastie, News Release, *Speaker Heastie Announces Assemblymember Zebrowski Appointed Temporary Co-Chair of LATFOR* (Jan. 18, 2022).²⁰

110. On January 24, 2021, Commissioner Imamura announced that the IRC was at an impasse and would not be submitting a second set of redistricting maps to the Legislature at all.

111. On the same day, Commissioner Martins made a statement on behalf on the Republican members on the Commission, outlining the Democratic members' refusal to engage with anything other than their partisan maps and expressing his disappointment that the Commission failed its constitutional mandate.

112. On January 25, 2022, the 15-day window for the IRC to submit revised maps to the Legislature closed without the IRC submitting new maps, as required by the Constitution.

113. Upon information and belief, the Democratic Caucus of the IRC decided not to submit a compromise congressional map within the constitutional timeframes after receiving

²⁰ Available at <https://www.nyassembly.gov/Press/?sec=story&story=100542>.

encouragement to undermine the constitutional process from Democratic Party politicians and officials.

iii. Notwithstanding The Failure Of The Constitutional Process, The Legislature Nevertheless Attempted To Enact Replacement Congressional And State Senate Maps, And The Maps It Enacted Are An Unconstitutional Partisan And Incumbent-Protection Gerrymanders

114. Despite the failure of the IRC to vote on and present a second set of maps, the Legislature proceeded to craft its own congressional map, turning a blind eye to the mandatory and exclusive constitutional process for redistricting established in Article III, Section 4.

115. In doing so, the Legislature ignored calls from all across the aisle to engage with the public and be more transparent about the choices it was making in drawing district lines. Clifford Michel & Farah Javed, *Albany Democrats Seize Control of Redistricting, With Unclear Role for Public*, The City (Jan. 27, 2022).²¹

116. Instead, Democratic leaders crafted and pushed through legislation to enact their own new congressional map over the course of only a few days, releasing the Legislature's proposed map on Sunday evening, January 30, without a single public hearing. Ashford & Fandos, *supra*.

117. This map bears no resemblance to the two maps proposed by the IRC.

118. To underscore how different the Legislature's map is, and to make adoption of this unrecognizable congressional map possible, the Legislature added a "notwithstanding clause" to

²¹ Available at <https://www.thecity.nyc/2022/1/26/22903787/albany-democrats-seize-control-of-redistricting-with-unclear-role-for-public>.

the enacting legislation, exempting the map from any laws to the contrary, including the 2% rule embodied in 2012 New York Session Laws 17, § 3.

119. The Democratic leaders also crafted and hurriedly pushed through legislation to enact their own state Senate districts, releasing this map two days later, on February 1, 2022. Bill Mahoney, *New State Senate Maps Shift Two Seats from Upstate to NYC. Here's Where.*, Politico.com (Feb. 1, 2022).²²

120. The result is unmistakably gerrymandered maps for Congress and state Senate.²³

a. Gerrymandered Congressional Districts

121. The Legislature created a congressional map that, without a doubt, creates “an effective [Democratic] gerrymander, resulting in the Democrats “gain[ing] three seats and eliminat[ing] four Republican seats,” and creating the biggest shift in the country” with “the stroke of a pen.” Ashford & Fandos, *supra*.

122. As noted by Laura Ladd Bierman, the executive director of the League of Women Voters of New York, “New Yorkers deserve a transparent and fair redistricting process, and it is shameful that the Legislature has denied them this.” *NYC Would Get More Seats in State Senate Under Proposed Maps*, N.Y. Daily News Feb. 1, 2022).²⁴ So, even though the New York Constitution prohibits partisan gerrymandering, she noted that the congressional map “reflect[s] a

²² Available at <https://www.politico.com/news/2022/02/01/new-state-senate-maps-shift-two-seats-from-upstate-to-nyc-heres-where-pro-00004173>.

²³ This failure applies equally to the Legislature’s enactment of the state Assembly map. But, again, Petitioners do not challenge that map, and so the Court need not consider it.

²⁴ Available at <https://www.nydailynews.com/news/politics/new-york-elections-government/ny-state-senate-nyc-seats-legislative-redistricting-20220202-2xoyaqnvlfdliax5tosbnuaage-story.html>.

Legislature that appears to care more about favoring partisan interests than it does for fair maps.”

Id.

123. In fact, the Legislature’s congressional gerrymander was so successful and so biased in favor of Democrats, that the enacted congressional map is more favorable to Democrats than *any* of the 5,000 computer simulated maps designed specifically to follow New York’s redistricting requirements without aiming to increase partisan advantage.

124. The Legislature concocted numerous individual congressional districts with boundaries with no honest explanation except for impermissible partisan and incumbent-favoring gerrymandering. The following examples are illustrative.

125. In Long Island, the Legislature completely changed Congressional Districts 1 and 2, swapping Republican voters for Democratic voters in an egregious gerrymander.

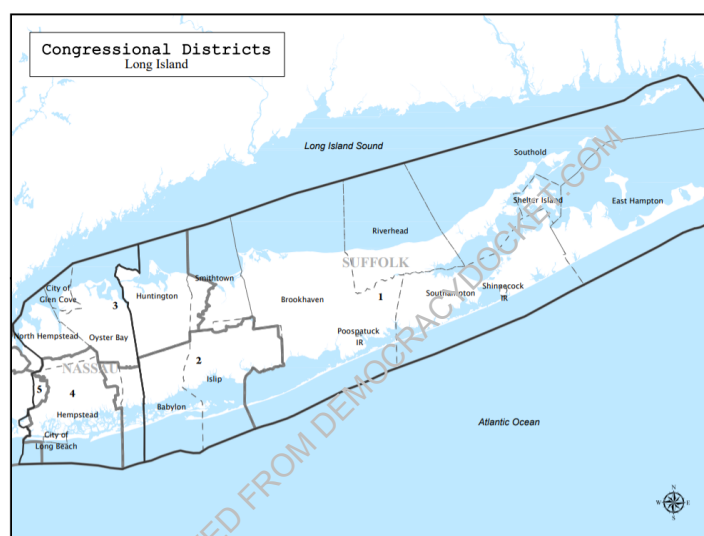
126. In particular, the Legislature placed areas with high concentrations of Republican voters into new Congressional District 2 while moving solidly Democrat communities into Congressional District 1—all the Republican communities in Brookhaven on the south shore are now in District 2, whereas the heavily Democrat areas in the center of Long Island are now channeled into District 1.

127. This partisan reconfiguration creates several new town splits and an additional county split where Congressional District 1 now reaches into Nassau County between Oyster Bay and Huntington. By packing Republicans into Congressional District 2, the Legislature effectively flipped Congressional District 1.

128. The result of this blatant gerrymandering has turned Congressional District 1 from a strong Republican district, solely in Suffolk County, into a lean Democratic district, unnecessarily sprawling across two counties.

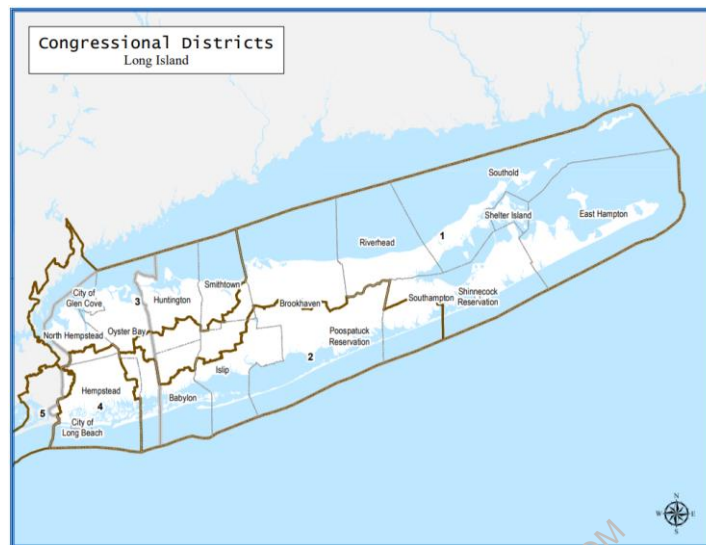
129. Similarly, the redrawing shifted District 2 from a safe Republican district into an outright uncompetitive Republican stronghold.

Map of Prior Congressional Districts 1 & 2²⁵



²⁵ All maps, unless otherwise specified, come from the LATFOR government website, available at <https://www.latfor.state.ny.us/maps/>.

Map of New Congressional Districts 1 & 2



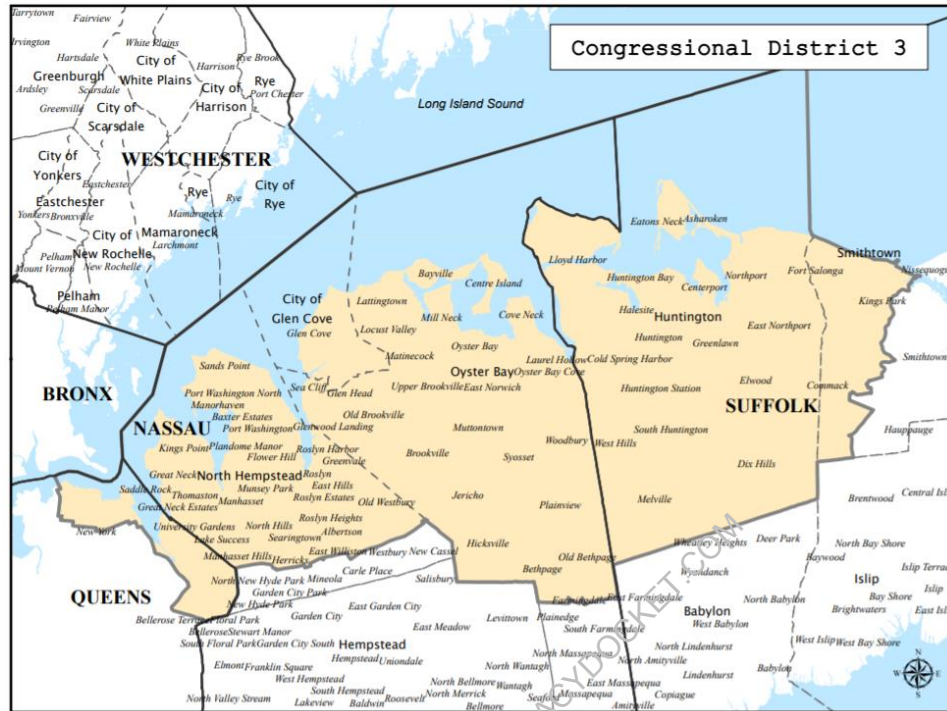
130. The new Congressional District 3 is dramatically different from the old map in order to accomplish the Legislature's partisan goals.

131. The old District 3 bridged Suffolk and Nassau counties, with a slight reach into Queens County. The new map reaches from Suffolk County, through Nassau and Queens counties, and then skips through Bronx County all the way up into Westchester County across the Long Island Sound in a thin strip up to the Town of Rye, capturing overwhelmingly Democrat-voting towns along the shore.

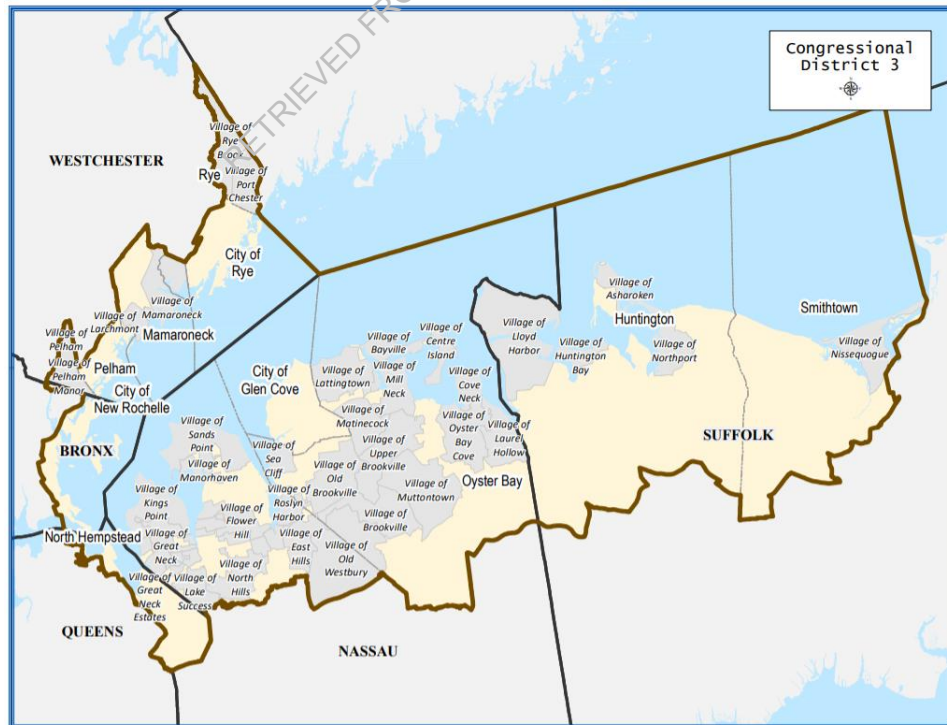
132. This combination of Westchester, with a district largely populated on Suffolk and Nassau counties, makes no sense. These communities have no nexus and share no communities of interest.

133. With these stark and otherwise unexplainable changes, the Legislature has decreased competitiveness, shifting Congressional District 3 from a competitive Democratic-leaning district to a strong Democrat district.

Map of Old Congressional District 3



Map of New Congressional District 3



134. The new Congressional Districts 8, 9, 10, and 11 radically break up established communities of interest in Brooklyn to create a partisan advantage for Democrats.

135. The new map divides closely knit, concentrated Orthodox Jewish and Russian communities with strong social and cultural ties, resulting in conservative Republican-leaning voters spread or “cracked” across multiple districts.

136. These new districts are drawn as vertical stripes across the southern two-thirds of Brooklyn, moving large numbers from the Russian Jewish communities in Brooklyn into Congressional District 8 and dividing the Orthodox Jewish communities between Congressional District 9 and Congressional District 10.

137. This partisan gerrymander also split other communities of interest—in Congressional District 10, the Legislature cut across an established Asian community, moving half of it into Congressional District 11.

138. In particular, it cuts Sunset Park off from northern Brooklyn and the Lower East Side of Manhattan, separating the Asian American, Pacific Islander, and Latino communities—which have formed the “backbone” of the district for nearly 30 years, since the 1992 reapportionment process—from its related communities of interest in northern Brooklyn and Manhattan’s Lower East side. Kristyn Brendlen, *Brooklyn Electeds, Community leaders Ask State Gov Officials to Reconsider Redistricting Maps*, Brooklyn Paper (Feb. 1, 2022).²⁶ This new split breaks up these linked communities from the North Brooklyn area, which is especially important given the recent “rise in anti-Asian hate.” *Id.*

²⁶ Available at <https://www.brooklynpaper.com/brooklyn-electeds-community-redistricting/>.

139. Democratic Assemblymember Marcela Mitaynes also decried this inexplicable particular line-drawing, noting that the Legislature had “separate[d]” these “culturally and historically connected” communities for nothing more than “political expediency to ensure a[n] electoral advantage in the near term,” and “fail[ed] to meet the necessary level of transparency, accountability, and public participation that our constituents rightfully deserve from our democratically elected leaders,” before concluding that she would “not dismantle the political voice of [her] constituents by voting to approve the proposed Congressional Districts.” Assemblymember Marcela Mitaynes’ Statement on New York State’s Proposed 2022 Congressional Maps (Feb. 2, 2022).²⁷

140. The Legislature designed this particular shift to unseat incumbent Republican Congresswoman Nicole Malliotakis from Congressional District 11. Carl Campanile, *Dems Plan to Topple GOP Rep. Malliotakis in Redistricting Plan*, N.Y.Post (Jan. 27 2022);²⁸ Jeff Coltin, *Rep. Nicole Malliotakis is (Probably) Screwed*, City & State New York (Jan. 31, 2022).²⁹

141. Congressional District 11 shifted from the previous map, where it covered Staten Island and adjacent southern portions of Brooklyn, to now covering Staten Island and winding northwestward into the heavily liberal areas of Brooklyn—Sunset Park, Red Hook, Gowanus, Windsor Terrace, and Park Slope, thereby drastically changing the political composition of this district and providing the Democrats a drastically increased chance of flipping the seat.

²⁷ Available at https://docs.google.com/document/d/16jJFKDH-_U8P5aAsjwEOCQaLZSIXsAkTnaZiW9xaCMs/edit?usp=sharing.

²⁸ Available at <https://nypost.com/2022/01/27/dems-plan-to-topple-gop-rep-nicole-malliotakis-in-redistricting-plan/>.

²⁹ Available at <https://www.cityandstateny.com/politics/2022/01/rep-nicole-malliotakis-probably-screwed/361412/>.

142. As the Asian American Legal Defense Fund noted on Twitter, “[t]he legislature’s map does not keep our [Asian American] communities together”³⁰:

 Asian American Legal
@aaldef

“The legislature’s map does not keep our communities together. The #UnityMap does. We call on @GovKathyHochul to not sign any redistricting plan passed by the NYS legislature until there have been public hearings...LET US BE HEARD,” says @heyjudylei @aaldef.



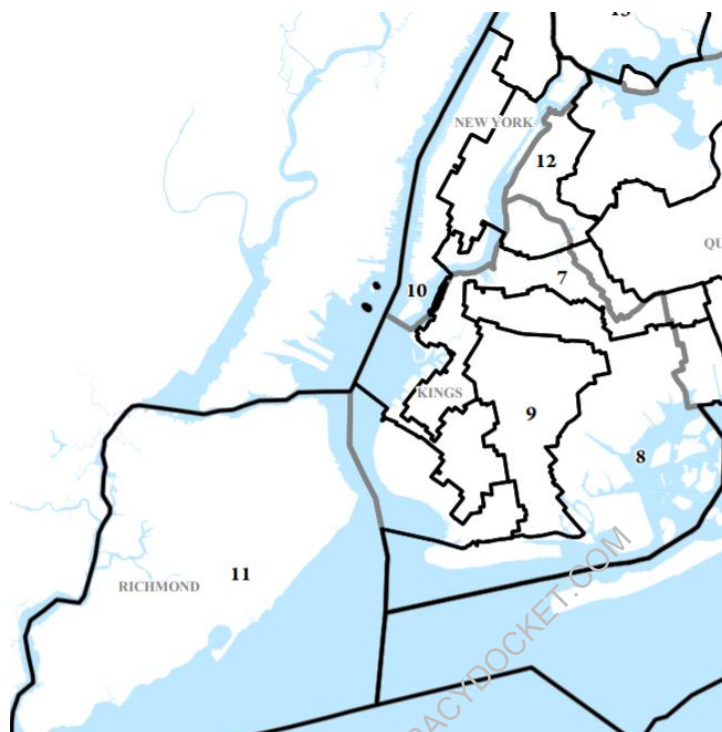
12:51 PM · Jan 31, 2022 from City Hall Park · Twitter for iPhone

143. These redrawn Brooklyn districts are blatant gerrymanders, with bizarre, roving boundaries crossing multiple bodies of water and snaking between each other for no discernible reason besides partisan advantage.

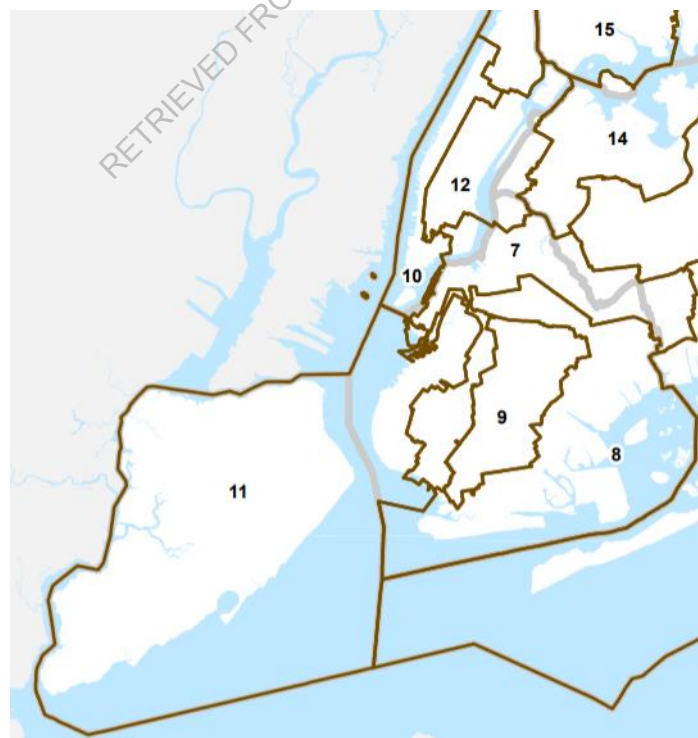
144. These shifts allowed the Legislature to place additional, safe Democratic voters into District 11, changing that district from a strong Republican district to a Democratic district.

³⁰ Available at <https://twitter.com/aaldef/status/1488223479371599876>.

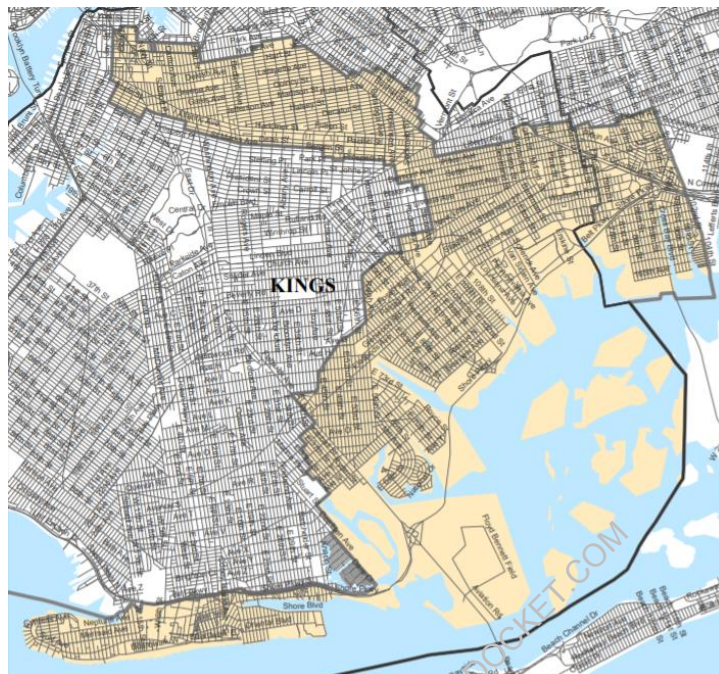
Map of Old Congressional Districts 8, 9, 10, & 11



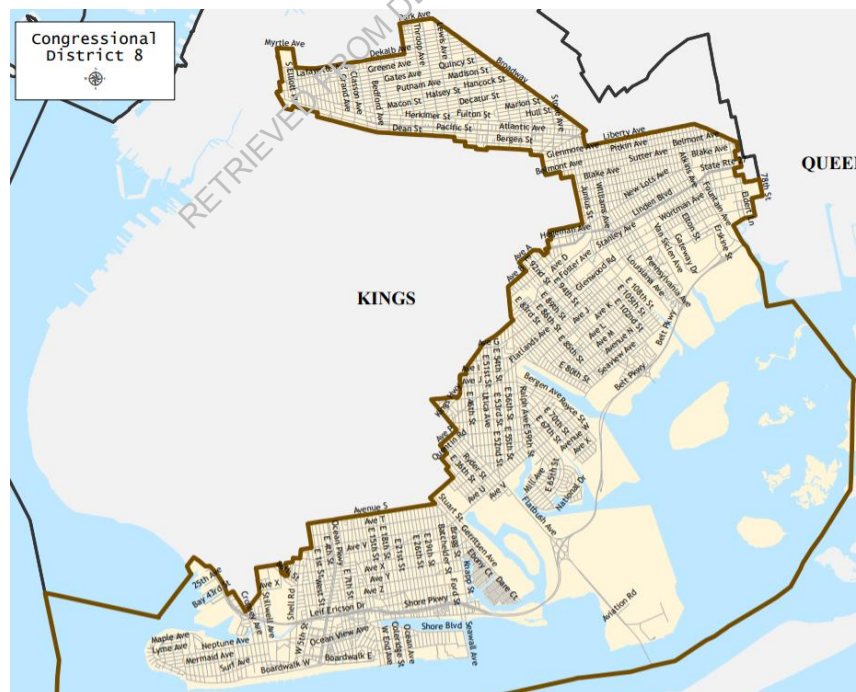
Map of New Congressional Districts 8, 9, 10, & 11



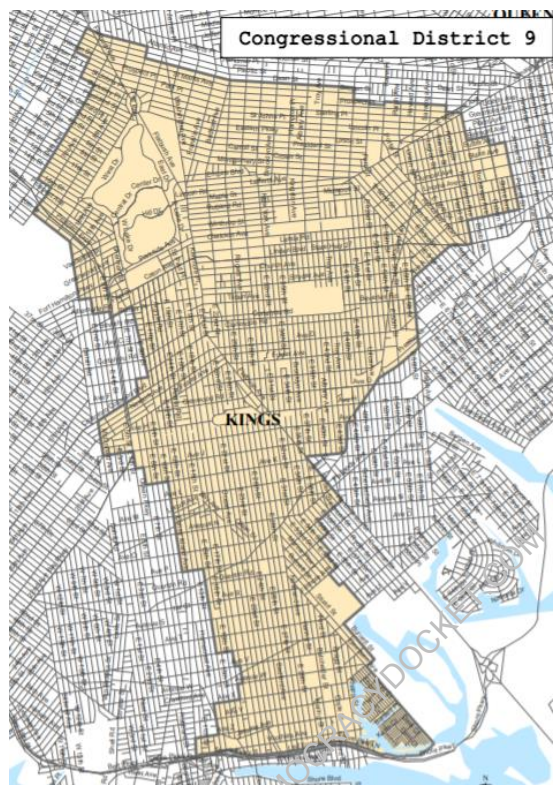
Map of Old Congressional District 8



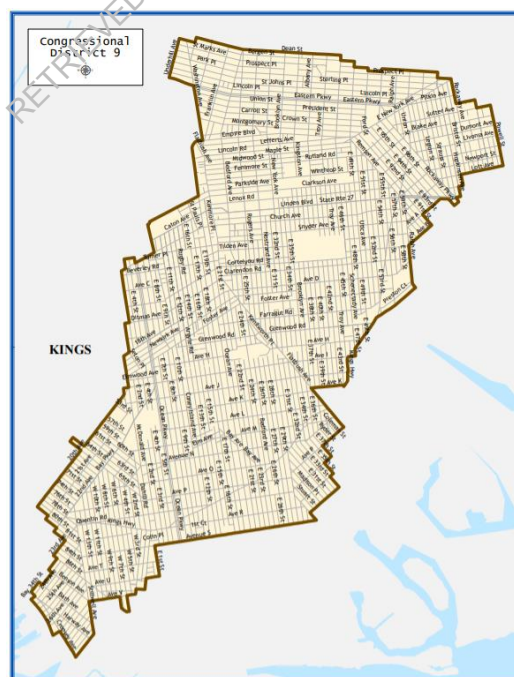
Map of New Congressional District 8



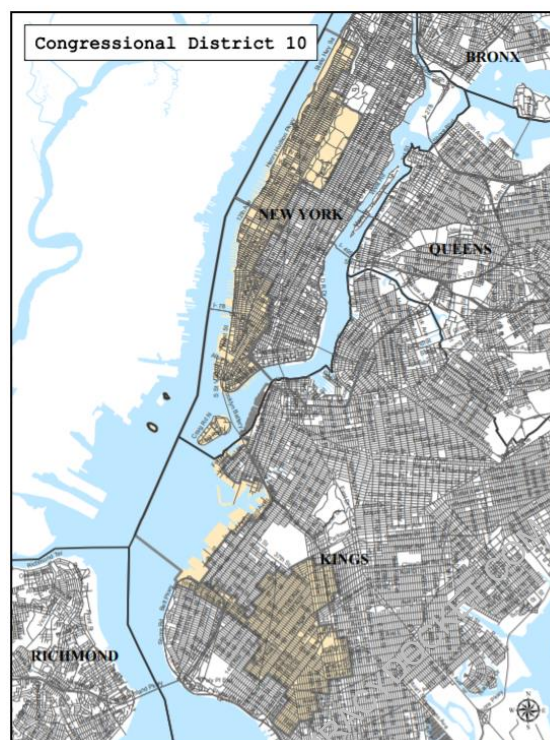
Map of Old Congressional District 9



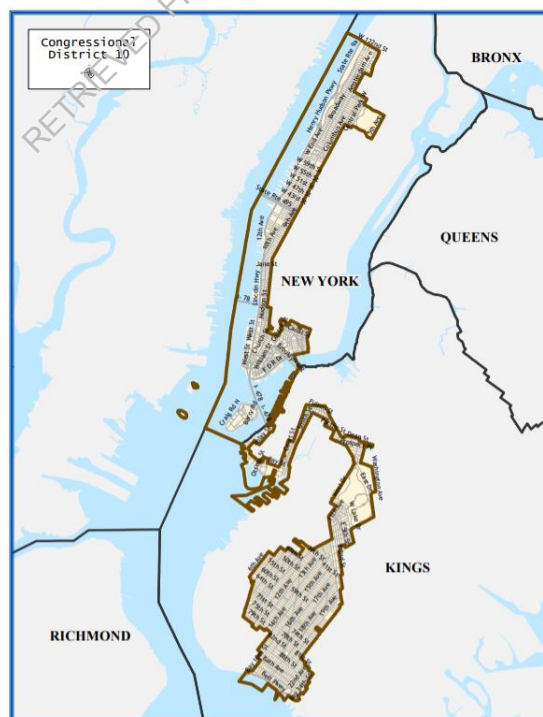
Map of New Congressional District 9



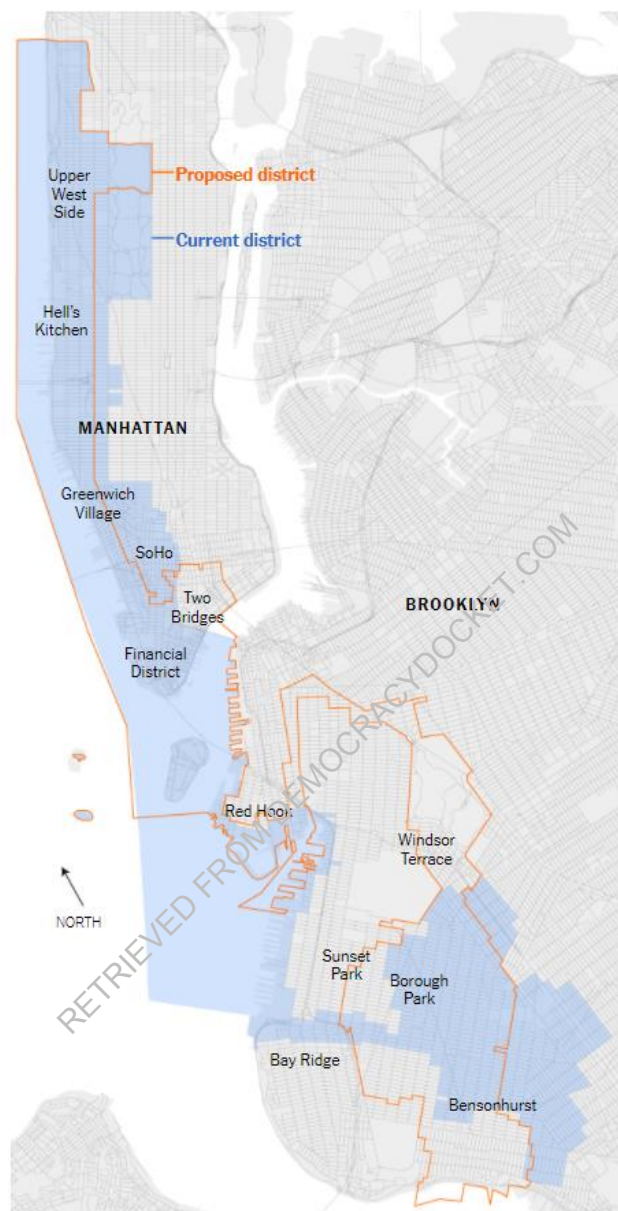
Map of Old Congressional District 10



Map of New Congressional District 10

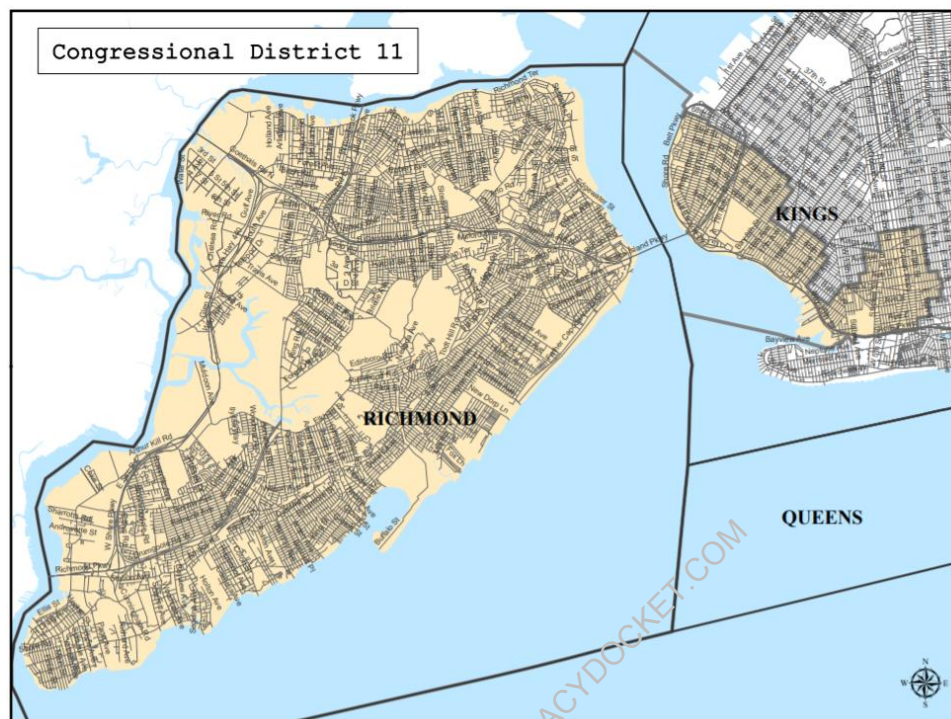


Overlay of Old Congressional District 10 and New Congressional District 10³¹

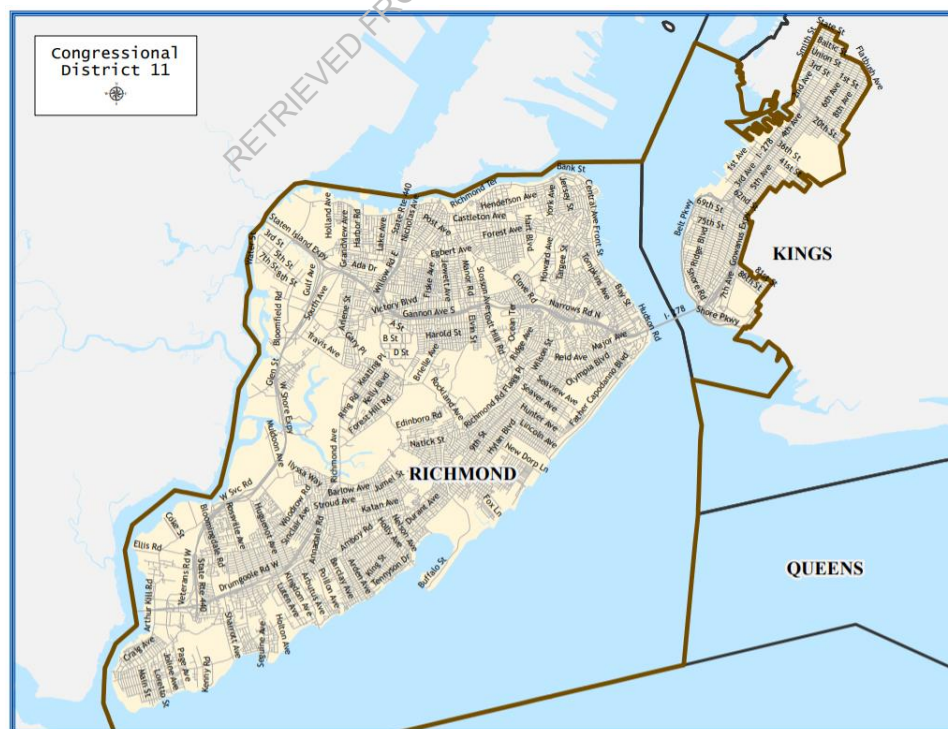


³¹ Nicholas Fandos, *How N.Y. Democrats Came Up With Their Gerrymandered Districts on Their New Map*, N.Y. Times (Jan. 31, 2022), available at <https://www.nytimes.com/2022/01/31/nyregion/nyc-congressional-district-nadler.html>.

Map of Old Congressional District 11



Map of New Congressional District 11



145. The old Congressional District 16 was almost entirely contained in Westchester County, with only a small section of the Bronx for population purposes, while the new District connects a section of the Bronx to Mount Vernon and Yonkers—Democratic strongholds—then winds in a narrow segment up through Westchester County into Putnam County, grabbing rural and suburban Republican communities to “crack” them out of Congressional District 18.

146. The towns of Putnam Valley, Carmel, Yorktown, and Somers—strongly Republican areas—are awkwardly connected to highly populated Democratic communities, neutralizing these Republican votes. The bisection of Westchester County and added county split into Putnam County creates a district with geographically distanced communities.

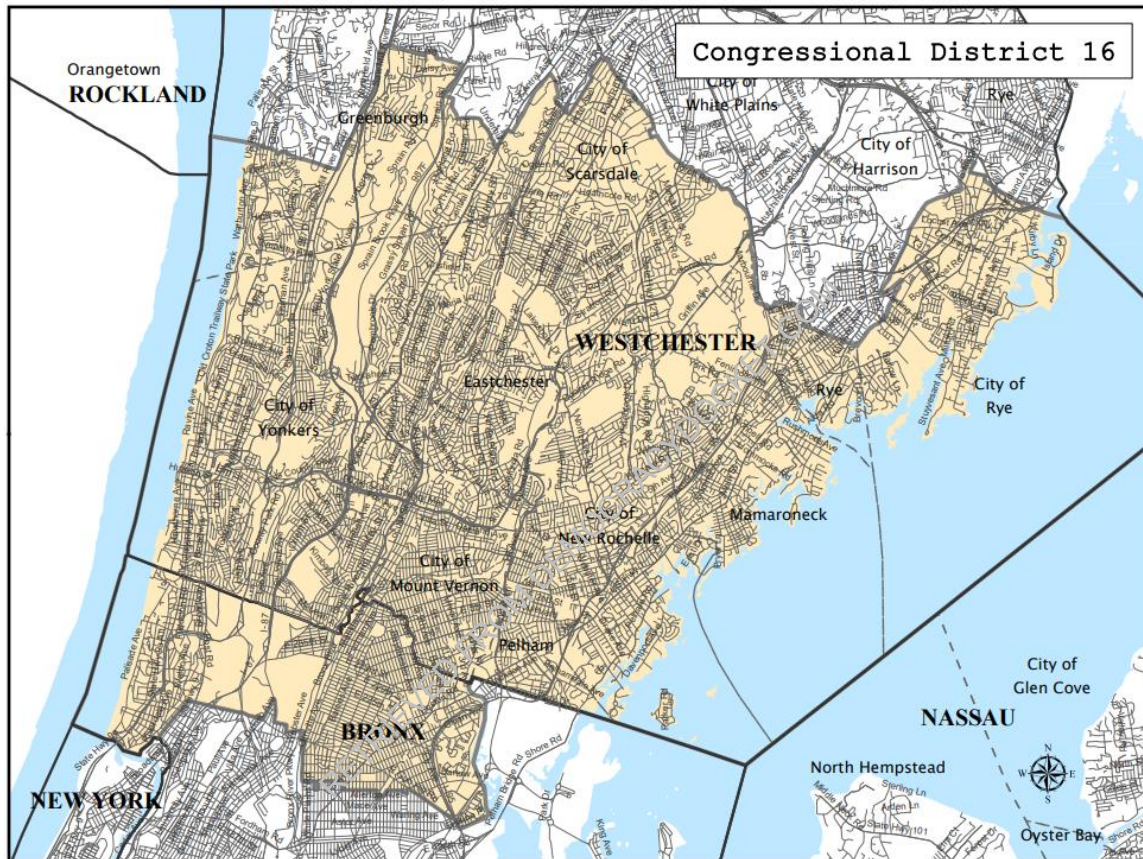
147. Furthermore, the gerrymander of Congressional District 16 removes Republican voters from Congressional District 18 and places them into a strong Democratic district, making Congressional District 18 a safer Democratic district without jeopardizing the Democratic Party’s interests in Congressional District 16.

148. Congressional District 18 is now oddly shaped, like a sitting dog, with a tail that extends into the Ulster County towns of Rochester and Wawarsing, with legs made of Peekskill, Cortlandt, North Salem, Lewisboro, Bedford, and Pound Ridge, and a noticeable space between those legs where the central portions of Putnam and Westchester counties were scooped out for Congressional District 16.

149. The legislative Democrats made these shifts not only to shore up their party’s chances in Congressional District 18, but also to protect incumbent Democratic Congressman Sean Maloney, the newly elected chair of the Democratic Congressional Campaign Committee.

150. As a result of this gamesmanship, Congressional District 16 moves only somewhat from a very strong Democratic district to a still-strong Democratic one, whereas District 18 shifts from a lean Republican district to a lean Democratic district.

Map of Old Congressional District 16



Congressional District 16

PUTNAM

Putnam Valley Carmel

WESTCHESTER

Somers

Yorktown Bedford

North Castle

ROCKLAND

Greenburgh

Village of Hastings-on-Hudson

Scarsdale

Village of Scarsdale

Harrison

City of White Plains

Village of Tuckahoe

City of New Rochelle

Village of Briarcliff

City of Eastchester

City of Yonkers

City of Mount Vernon

IBRONX

NEW YORK

NASSAU

SUFFOLK

DEMOCRACYDOCKET.COM

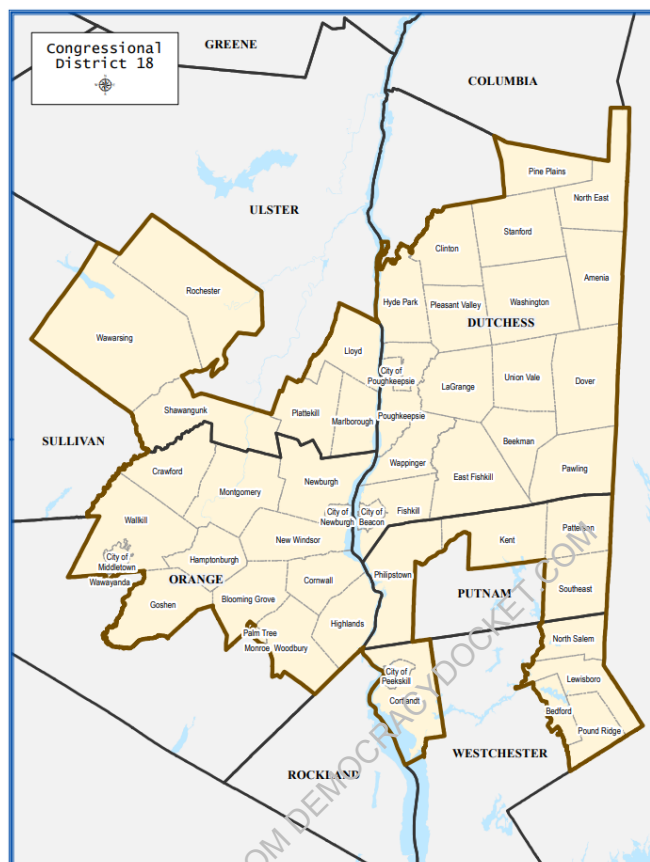
Congressional District 18

The map displays the following counties and their constituent towns and villages within the district:

- Sullivan:** Bethel, Thompson, Fallsburg, Wawarsing, Shawangunk, Mamakating, Crawford, Forestburgh, Highland, Lumberland, Mount Hope, City of Middletown, Deerpark, Greenville, Wawayanda, Minisink, Goshen, Blooming Grove, Chester, Warwick, Tuxedo, Ramapo.
- Ulster:** Marlborough, Esopus, New Paltz, Gardiner, Plattekill, Maillbrough, Poughkeepsie, Wappinger, Newburgh, New Windsor, Cornwall, Highlands, Woodbury, Monroe, Chester, Warwick, Tuxedo, Ramapo.
- Dutchess:** Pleasant Valley, Union Vale, Dover, Beekman, Pawling, East Fishkill, Patterson, Kent, Southeast, Carmel, North Salem, Lewisboro, Apund Ridge, Bedford, Mount Kisco, New Castle, North Castle, Clarkstown, Ossining, Mount Pleasant, Pleasanton, Haverstraw, Stony Point, Cortlandt, Yorktown, Somers, Putnam Valley, Philipstown, Fishkill, City of Newburgh, City of Poughkeepsie, Wappinger, Newburgh, New Windsor, Cornwall, Highlands, Woodbury, Monroe, Chester, Warwick, Tuxedo, Ramapo.
- Putnam:** Kent, Patterson, Southeast, Carmel, North Salem, Lewisboro, Apund Ridge, Bedford, Mount Kisco, New Castle, North Castle, Clarkstown, Ossining, Mount Pleasant, Pleasanton, Haverstraw, Stony Point, Cortlandt, Yorktown, Somers, Putnam Valley, Philipstown, Fishkill, City of Newburgh, City of Poughkeepsie, Wappinger, Newburgh, New Windsor, Cornwall, Highlands, Woodbury, Monroe, Chester, Warwick, Tuxedo, Ramapo.
- Westchester:** Pleasanton, Haverstraw, Stony Point, Cortlandt, Yorktown, Somers, Putnam Valley, Philipstown, Fishkill, City of Newburgh, City of Poughkeepsie, Wappinger, Newburgh, New Windsor, Cornwall, Highlands, Woodbury, Monroe, Chester, Warwick, Tuxedo, Ramapo.
- Rockland:** Ramapo, Clarkstown, Ossining, Mount Pleasant, Pleasanton, Haverstraw, Stony Point, Cortlandt, Yorktown, Somers, Putnam Valley, Philipstown, Fishkill, City of Newburgh, City of Poughkeepsie, Wappinger, Newburgh, New Windsor, Cornwall, Highlands, Woodbury, Monroe, Chester, Warwick, Tuxedo, Ramapo.

A compass rose in the bottom left corner indicates North (N), South (S), East (E), and West (W).

Map of New Congressional District 18



151. The new Congressional District 17 is similarly stretched to include strong Democrat-voting communities with rural Republican areas, while splitting the conservative Jewish communities to neutralize their Republican votes.

152. The old Congressional District 17 was compactly located in Rockland and Westchester counties.

153. Now, the District reaches from Sullivan County through Orange County into Rockland County, finally crossing the river to connect with Democrat strongholds in Westchester County, including Greenburgh and Mount Kisco.

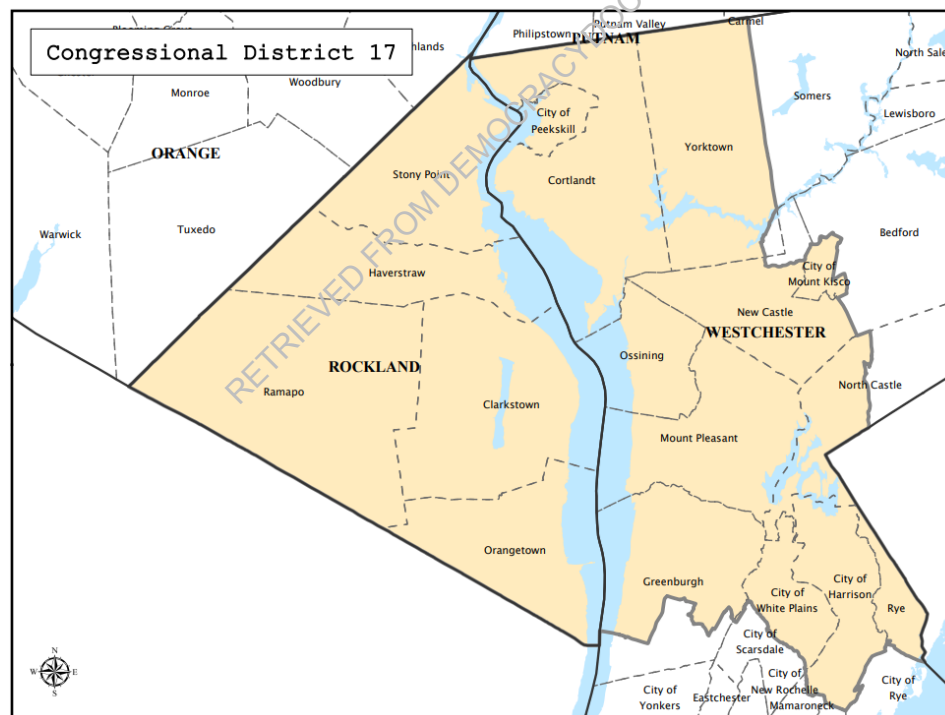
154. The District also includes part of the strongly Democrat city of White Plains.

155. The district combines the Orthodox communities in Sullivan and Rockland counties but excludes the Kiryas Joel Jewish community in Orange County, despite the extensive public testimony and overwhelming evidence in support of keeping these communities together.

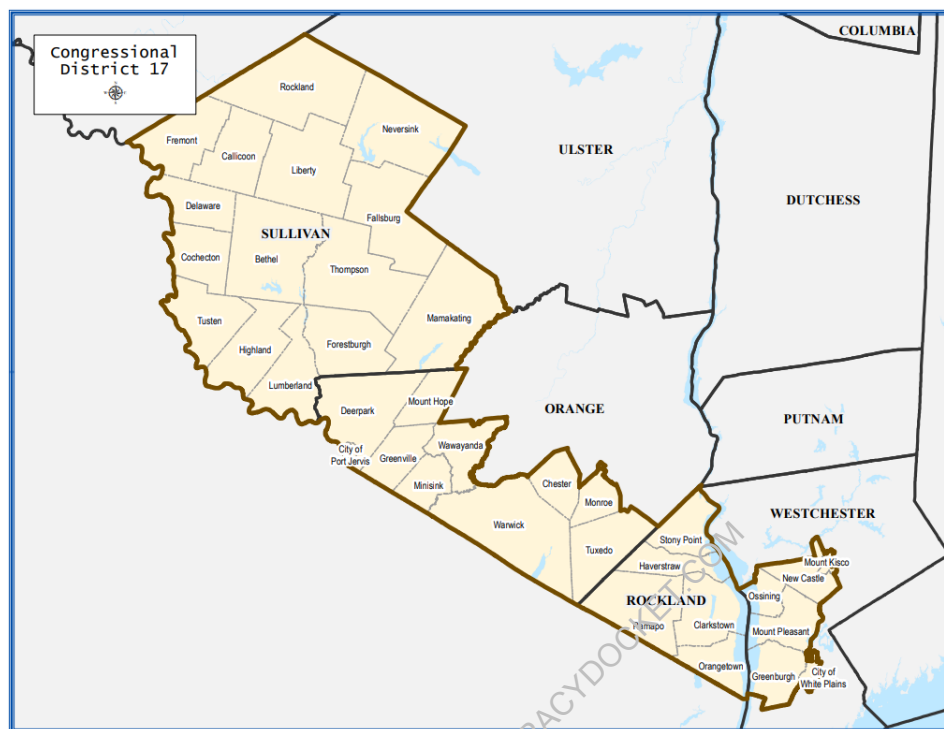
156. The resulting new District cracks those conservative communities, spreading Republican voters among multiple districts to decrease their voting power without jeopardizing any Democratic districts.

157. Thus, Congressional District 17 shifted only slightly from a Democratic stronghold to a still-reliable but less Democratic district.

Map of Old Congressional District 17



Map of New Congressional District 17



158. Congressional District 19 is similarly drawn for the impermissible purpose of strengthening the Democratic Party's political interests, with the four reaching corners of Congressional District 19 showing how the Legislature shopped for Democratic voters to turn the district from Republican-leaning to a Democratic-advantage district.

159. The new Congressional District 19 extends through the Republican communities in Columbia and Greene counties to pick up part of Albany County—specifically the Town of Bethlehem—to add Democrat voters and a new county split.

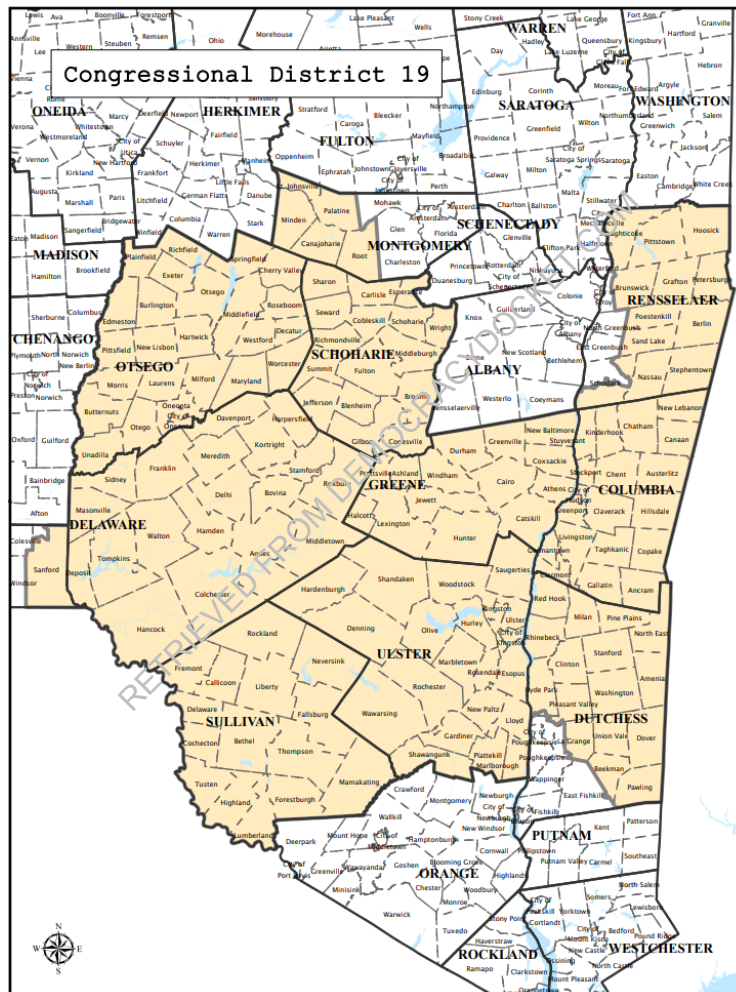
160. In Ulster County, the District picks up Democrats while specifically avoiding communities with large numbers of Republican voters.

161. The new Congressional District 19 then stretches far west to encompass the mostly Democratic city of Binghamton, to pick up additional Democratic voters there.

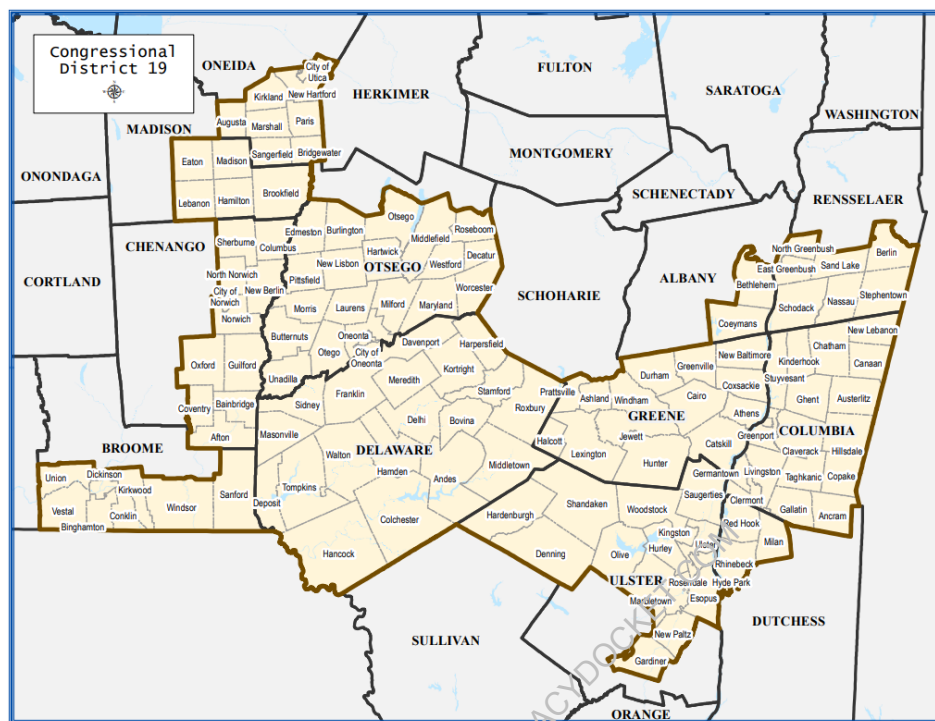
162. Finally, the District extends northward to pick up the Democrat-voting city of Utica.

163. All these particular partisan choices flipped this District into a Democratic-advantage district.

Map of Old Congressional District 19



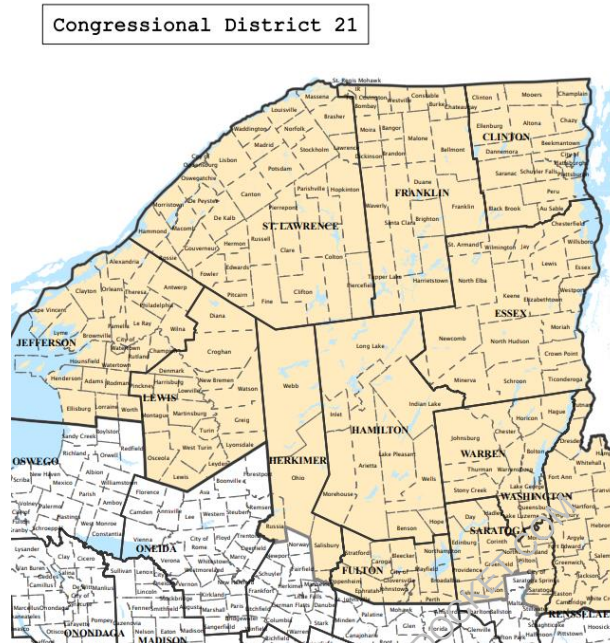
Map of New Congressional District 19



164. The Legislature also gerrymandered Congressional District 21 by packing it with additional Republican voters.

165. The new Congressional District 21 now extracts Saratoga and Schenectady counties, in addition to splitting off a portion of Warren County, from the surrounding areas, replacing those regions with much of Oneida County and Herkimer County, half of Montgomery County, and all of Schoharie County, thereby packing additional Republican voters into this single district and eliminating their ability to make surrounding districts more competitive for Democratic candidates.

Map of Old Congressional District 21



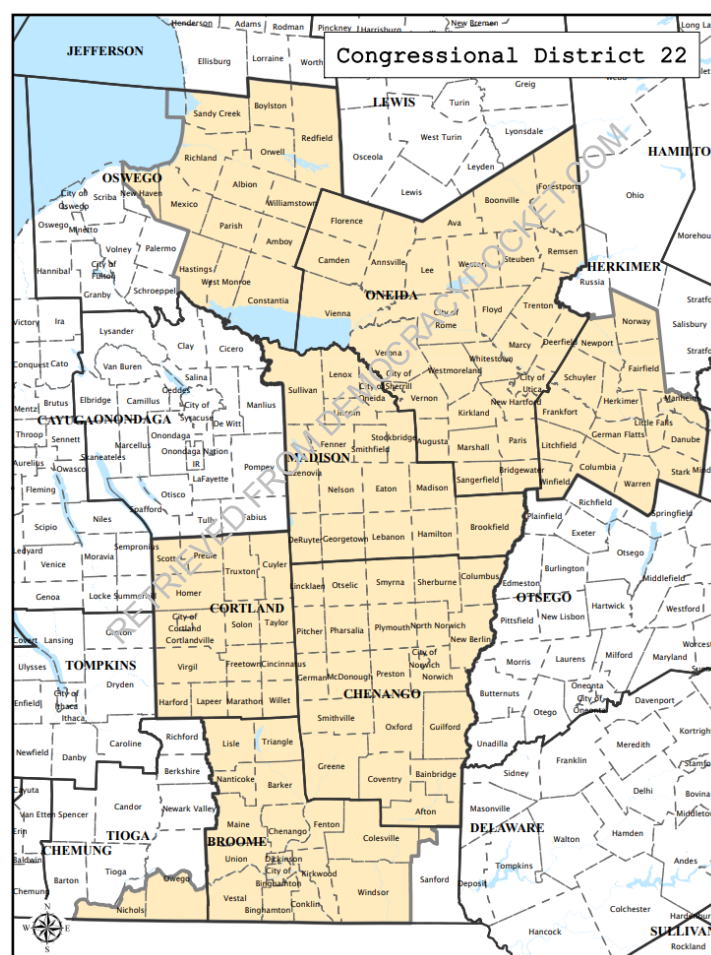
Map of New Congressional District 21



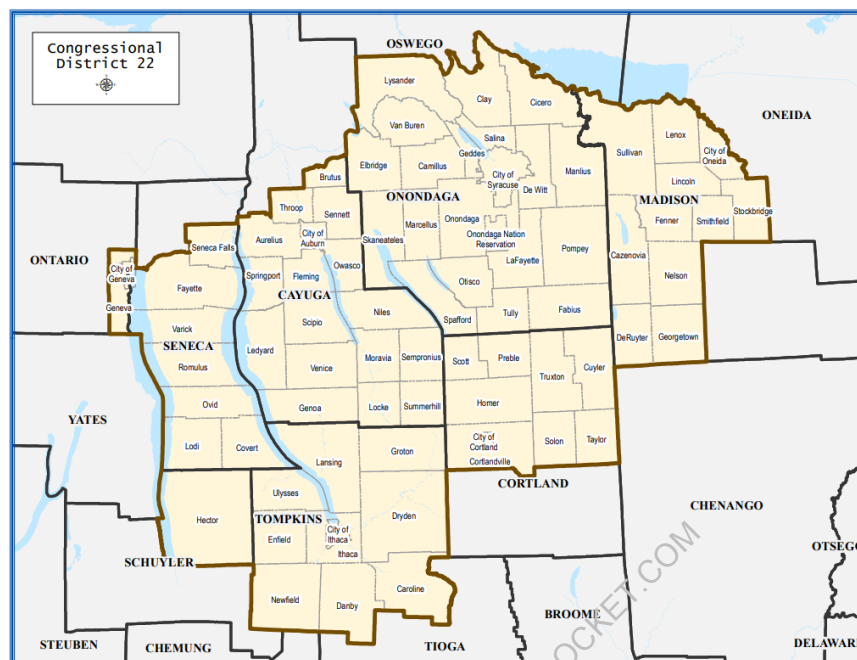
166. In Congressional District 22, the Legislature removed Republican areas and replaced them with Tompkins County, including the city of Ithaca, to flip the district from a competitive Republican district to a strong Democratic one.

167. As a result, Congressional District 22 underwent a massive political swing, changing from a very competitive Republican district to a strong Democratic district.

Map of Old Congressional District 22



Map of New Congressional District 22



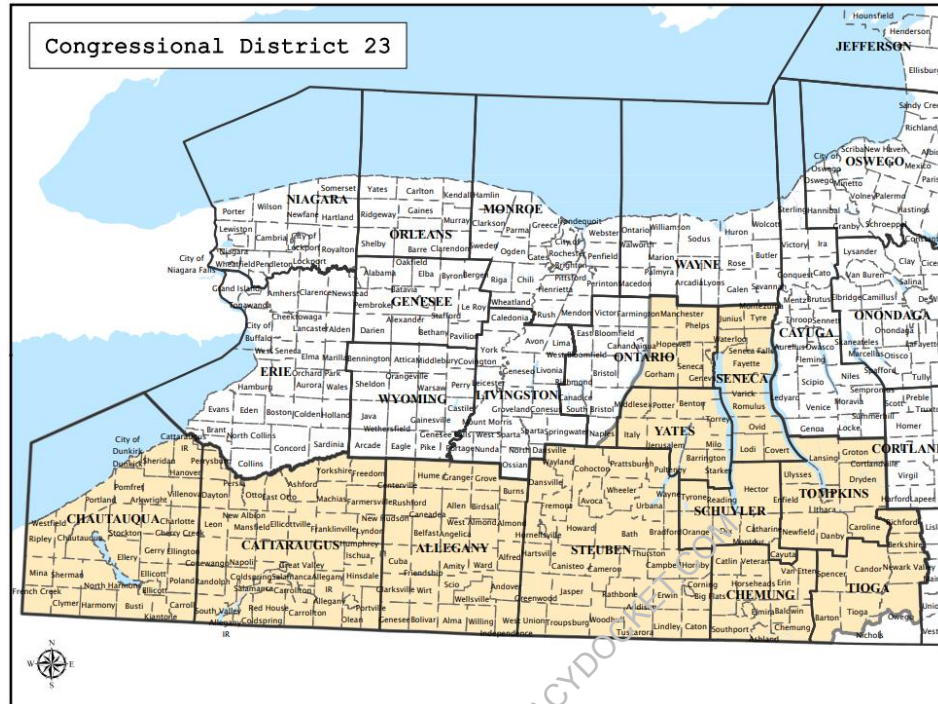
168. The Legislature gerrymandered Congressional District 23 by “packing” as many Republican votes into this district as it could, again for partisan gain.

169. The new district now includes southern Erie County towns—first-ring suburbs to the city of Buffalo—connecting them with far away and rural areas around Binghamton.

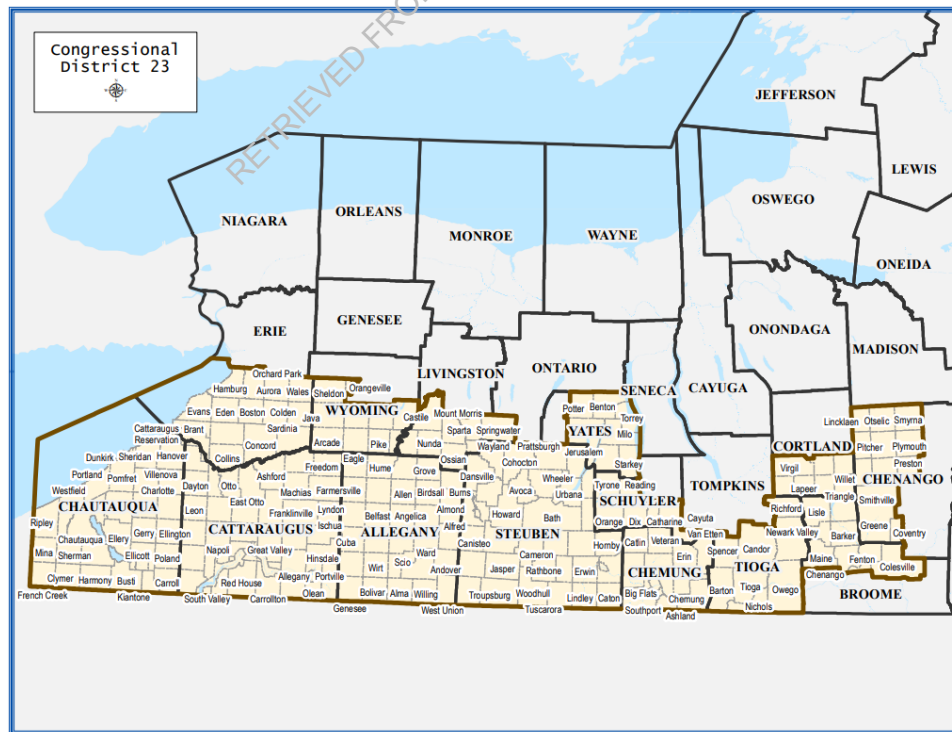
170. The old district also included some heavily Democratic areas in Tompkins County, but the Legislature removed those areas, as noted above, placing them in Congressional District 22 to flip that district.

171. As a result, Congressional District 23 became less competitive and shifted from a very strong Republican district to an uncontestable Republican district.

Map of Old Congressional District 23



Map of New Congressional District 23



172. Previously, District 24 compactly encompassed the bordering counties of Wayne, Cayuga, and Onondaga, as well as part of Oswego County.

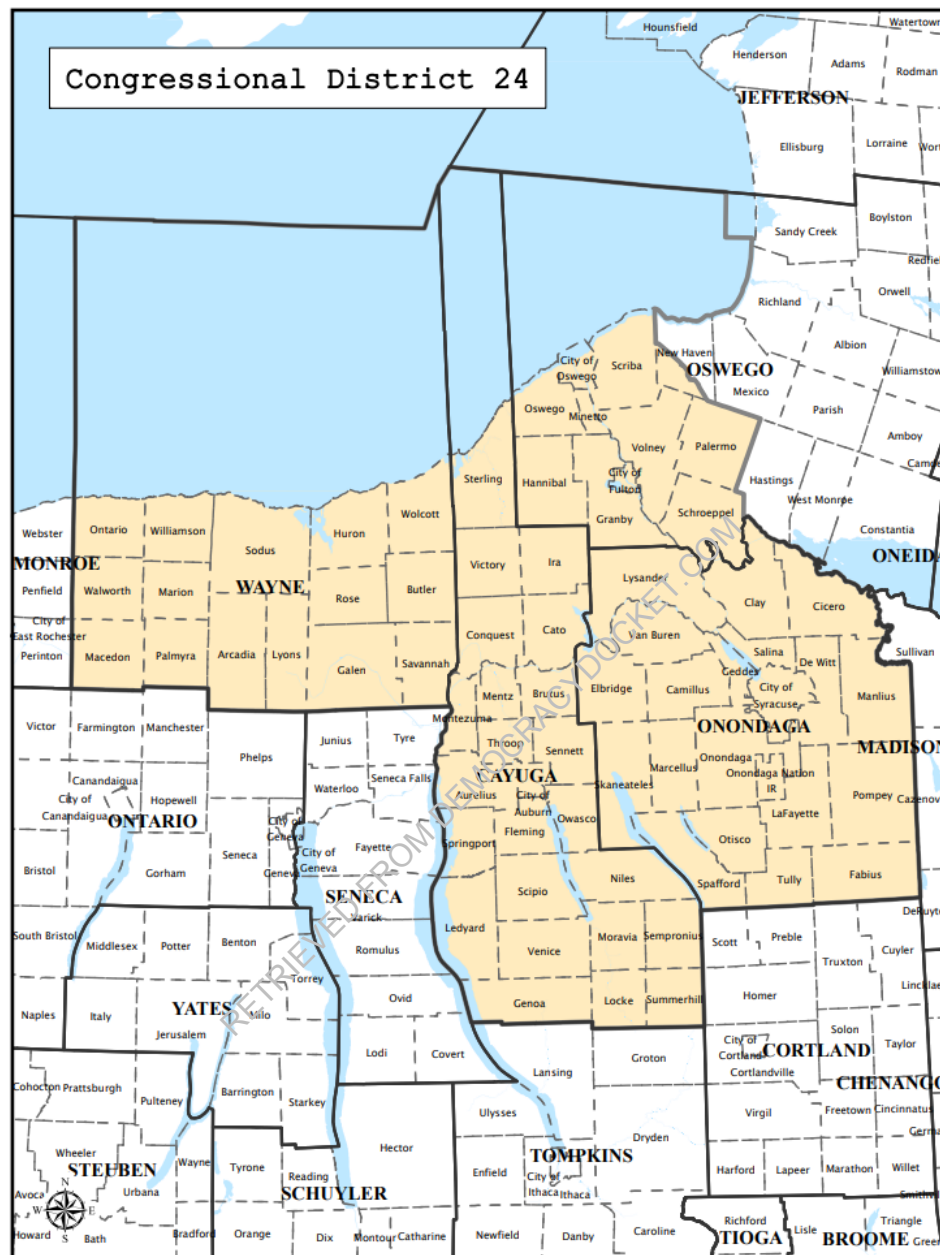
173. Now, this District extends from Lewiston, in Niagara County, and various similarly Republican areas in northeast Erie County, all the way eastward and northward to Jefferson County (all the way to the St. Lawrence County line), while notably avoiding certain portions of Monroe and Ontario counties.

174. Indeed, this District now stretches across four media markets, connecting numerous areas over more than 250 miles with little or nothing in common.

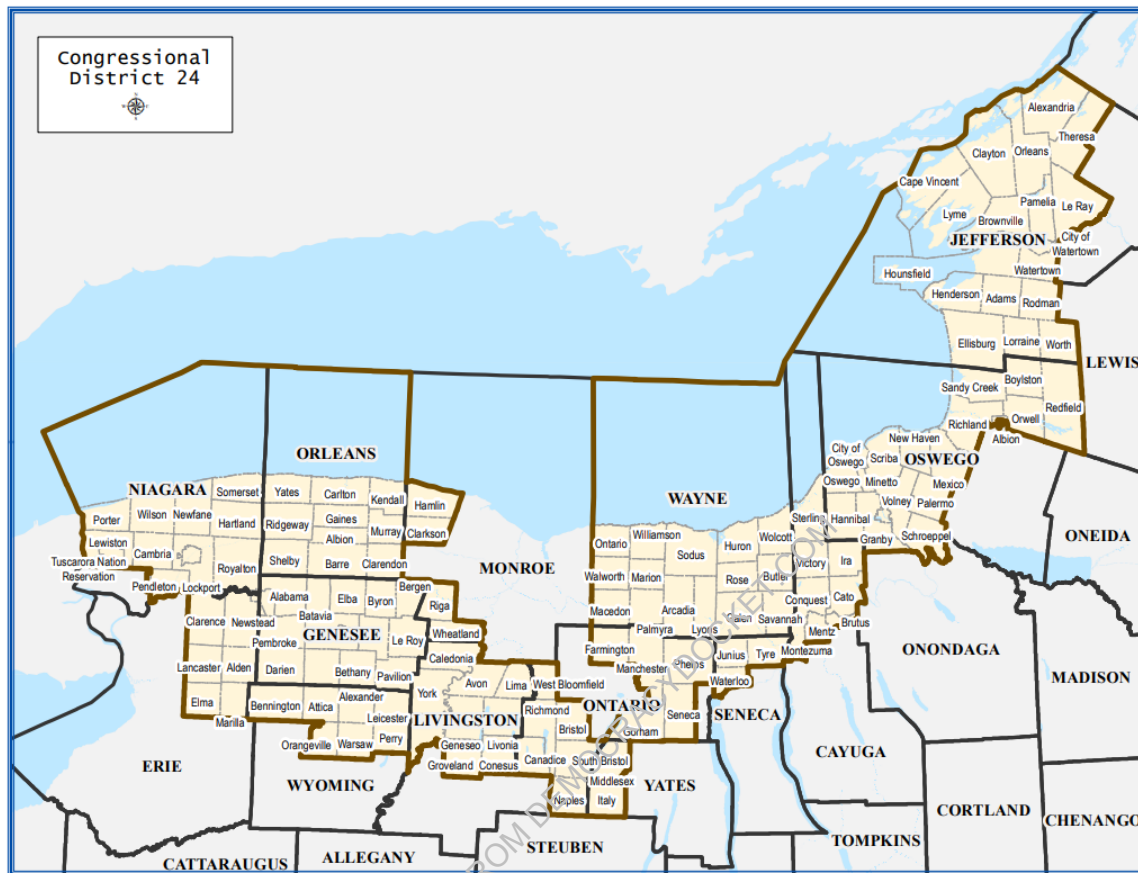
175. As a result, the Legislature shifted Congressional District 24 from a highly competitive Democratic district into a very strong Republican district, designed to protect numerous surrounding districts from any serious Republican challenge.

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Map of Old Congressional District 24



Map of New Congressional District 24



176. Each of these blatantly gerrymandered districts, both individually and collectively, has no reasonable explanation except the Legislative Democrats' specific goal of increasing their political power. These examples are only illustrative of the map's partisan design as a whole.

177. On February 2, 2022, notwithstanding the egregious gerrymander within the Legislature's map, the Democrats in the Assembly and State Senate adopted the congressional map (with only slight modifications unrelated to their gerrymandering efforts), despite every Republican in the Assembly and State Senate voting against the map. *See* 2021–2022 N.Y. Reg. Sess. Leg. Bills S.8196 and A.9039 (as technically amended by A.9167).

178. In addition to the Republican legislators, all of whom voted against this egregious gerrymander, Democratic Assemblymembers Simcha Eichenstein and Marcela Mitaynes voted against the congressional maps.

b. Gerrymandered State Senate Districts

179. The 2022 state Senate map is no better. Just as the Legislature gerrymandered the congressional districts, it concocted numerous state Senate districts with no viable explanation but impermissible partisan and incumbent-favoring plotting. *See Mahoney, supra.*

180. On Long Island, the Legislature sought to pack Republican voters into two strongly Republican districts and make each of the other seven districts more favorable for Democratic candidates.

181. For example, in state Senate District 2, the new map packs Republican voters who had been in Senate District 1 in the 2012 state Senate map, thereby making new Senate District 1 more favorable for a Democratic candidate.

182. The Legislature similarly packed Long Island's state Senate District 4 with Republican voters. The already somewhat-reliable Republican Senate District 4 now encompasses Bayport, Oakdale, and east Islip, areas that previously made state Senate District 3 competitive.

183. And the Legislature combined the Republican incumbents who currently represent state Senate Districts 3 and 4 into new Senate District 4, while creating an open seat in new Senate District 3.

184. In short, the Legislature connected and consolidated some of the most Republican areas of Suffolk and Nassau counties in state Senate District 4, ensuring that Republican voters

who previously resided in multiple districts that had been represented by Republican state Senators for the majority of the last decade would now be represented by only one Republican state Senator.

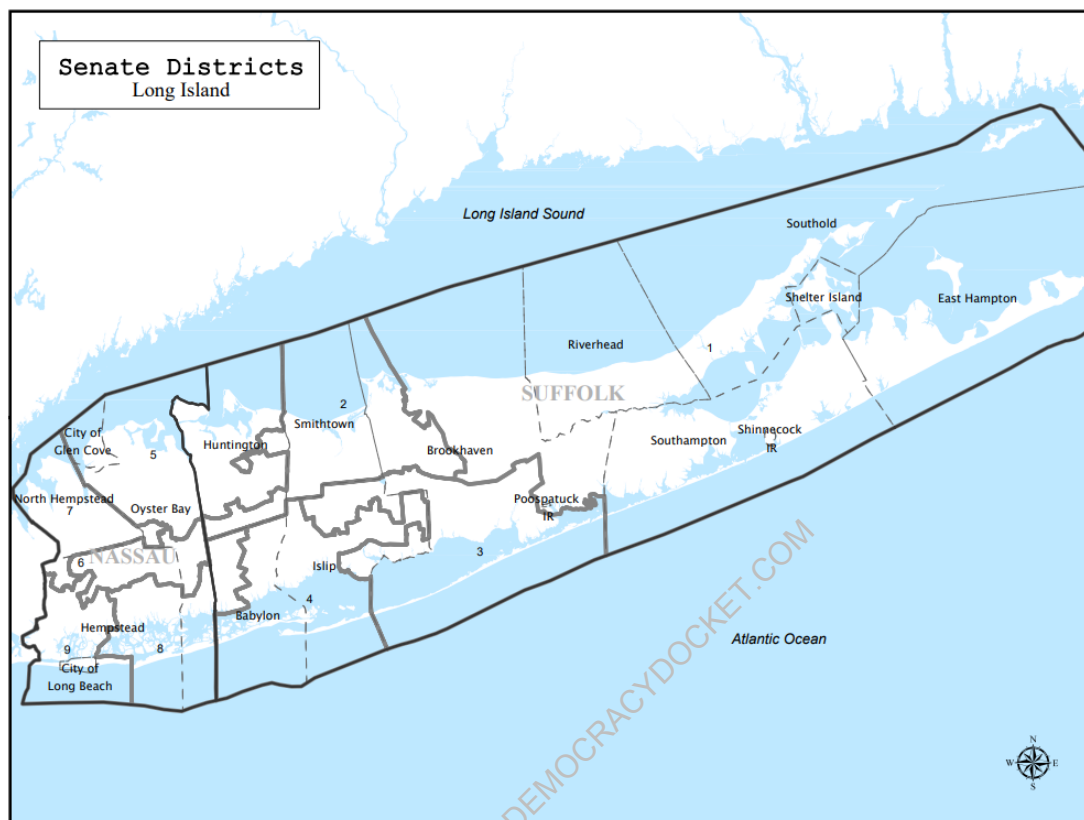
185. In new state Senate Districts 5 and 6, the Legislature combined areas that had been in different state Senate districts for decades, and which are not communities of interest, to turn previously swing districts into strongly Democrat-favoring districts.

186. In state Senate District 5, the Legislature removed the half of the district that had been in the Town of Oyster Bay and ran the district southward into the Town of Babylon, picking up very Democratic regions to make the district more favorable for Democratic candidates.

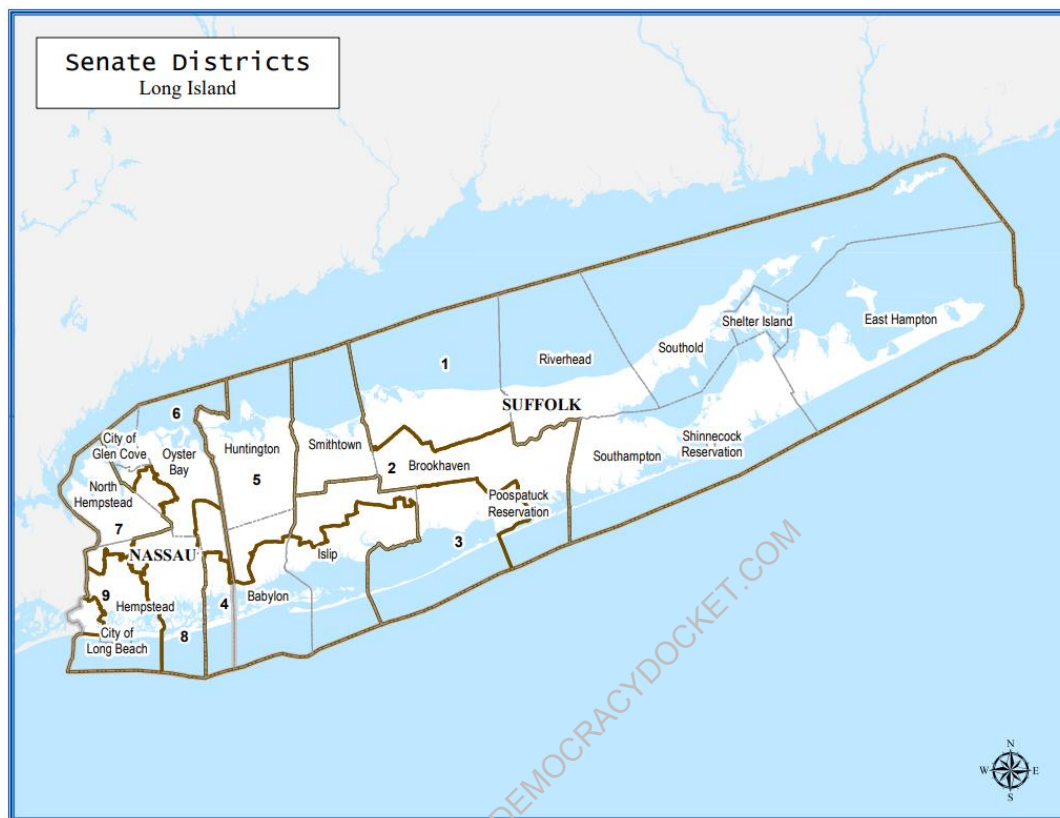
187. The Legislature then took Oyster Bay from old Senate District 5 and placed it in new Senate District 6, running that district southward to add strong Democrat areas from Uniondale and the Village of Hempstead to make that district much more favorable for Democratic candidates.

188. The Legislature also increased the Democratic Party's advantage in state Senate District 7, and in state Senate District 9, the Legislature removed the heavily Orthodox Jewish communities known as the Five Towns, which have a history of voting strongly Republican, from the district and then moved them to a heavily Democratic district in Queens, thus making Senate District 9 more favorable for a Democratic candidate. Unlike the 2012 state Senate map, the 2022 state Senate map now breaks the Nassau-Queens border.

Map of Old State Senate Districts on Long Island



Map of New State Senate Districts on Long Island



189. The Legislature's partisan gerrymander of Senate District 9 also impacts Senate District 10. The Legislature removed heavily Orthodox Jewish and Republican leaning areas known as the Five Towns from state Senate District 9 in Nassau County and placed them into Senate District 10, an already heavily Democratic district in Queens, combining two unrelated communities, and thereby diluting the voting power of Republicans in the new district without at all risking that seat for Democrats.

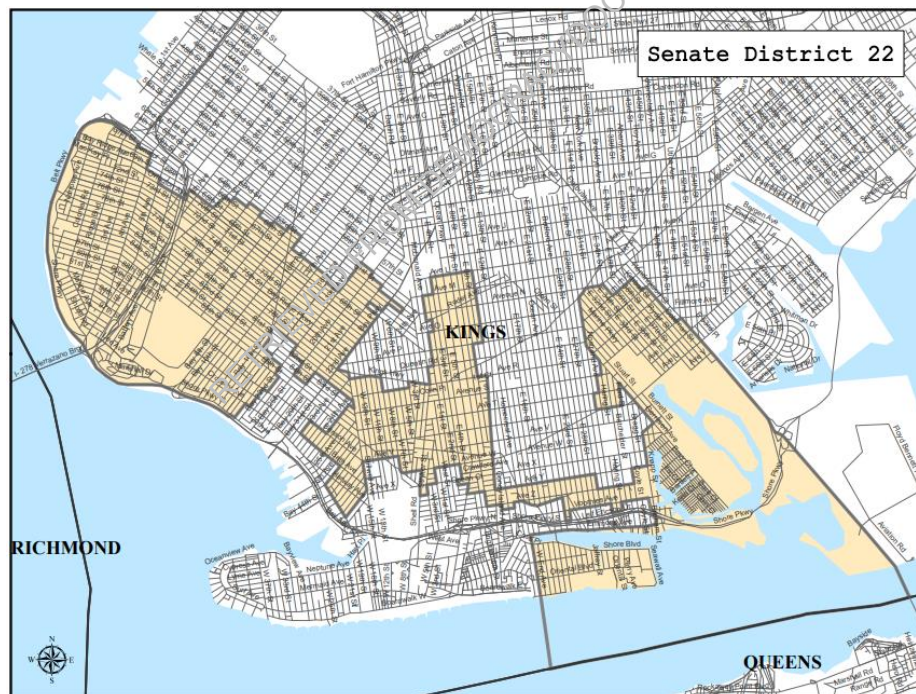
190. Moreover, the Legislature failed to respect the longstanding division of Nassau County from New York City by breaking the Nassau County-Queens County border, where there had been no prior cross-border state Senate districts breaching that line. By moving the Five Towns to a Queens-based Senate district, the Legislature targets a religious community of interest

and separates it from other suburban areas with similar government, school district, and community institutions to join it with New York City.

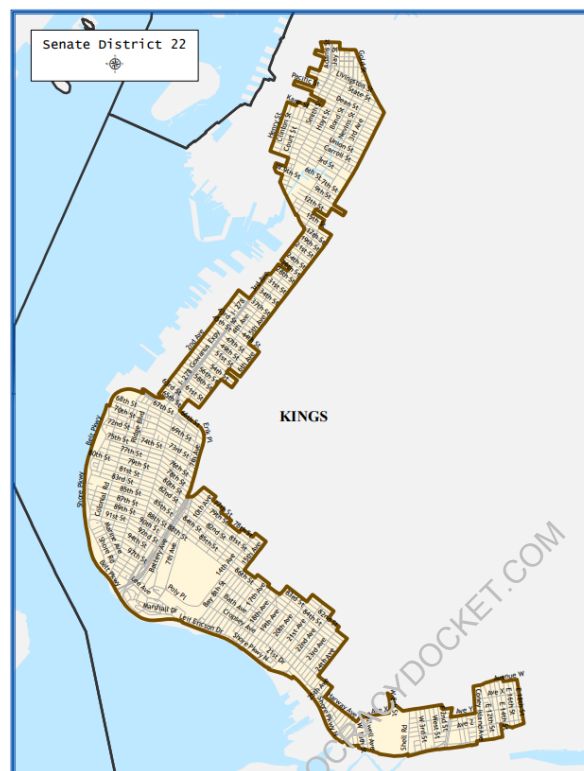
191. In state Senate District 22, the Legislature specifically drew the boundaries to remove Republican votes in southern Brooklyn by awkwardly extending a long arm northeastward into communities in northern Brooklyn that share little in common, using those heavily Democratic voting areas to negate the Republicans at the southwestern ends of the District.

192. By doing so, the Legislature divided Brooklyn's Russian and Orthodox Jewish community of interest between multiple state Senate districts.

Map of Old State Senate District 22



Map of New State Senate District 22



193. North of New York City, the Legislature continued its gerrymander. Republican leaning towns in Dutchess County and swing northern Westchester towns were removed from what had been Senate District 40, and in the new Senate District 42, a thin finger stretches southward to include the city of White Plains—which has nothing in common with the more rural/suburban towns in Putnam and norther Westchester counties. This converted a swing district that had been represented by Republicans for most of the last decade into a strong Democratic district.

Map of New State Senate District 42



194. Putnam County is now split between state Senate District 42 and state Senate District 41 and is now connected with Orange County, instead of Dutchess County, with which it shares a natural community of interest.

195. The Legislature moved the Putnam County Town of Philipstown and the Dutchess County communities of Beacon and Fishkill from what had been Senate District 41 (Dutchess and Putnam counties) to the new, Orange County-based Senate District 41. The Legislature did so because these three communities are Democrat-leaning and, by moving them to the new state

Senate District 41, they shifted the district from Republican to Democratic, making it a safe seat for the Democratic incumbent. The Legislature accomplished this shift by removing the Republican-performing Orange County towns of Montgomery, Crawford, Chester, and Monroe from the previous Senate District 39 in its new incarnation as Senate District 41, and placed them in new Senate District 44.

196. The Legislature likewise gerrymandered state Senate District 44, by packing it with Republican voters, removing parts of Ulster County that generally vote Democrat from the district, and adding parts of Orange County that generally vote Republican, as well as similar areas in Delaware and Broome counties.

197. New state Senate District 48 (which most closely approximates state Senate District 46 in the 2012 state Senate map), is now a somewhat strong Democratic district, flipping from a lean Republican district. The Legislature accomplished this gerrymandered flip by lopping off Republican-performing areas in the northern reaches of the previous district—Montgomery County and portions of Schenectady County—and replacing them with more Democratic areas in Ulster, Dutchess, and Columbia counties.

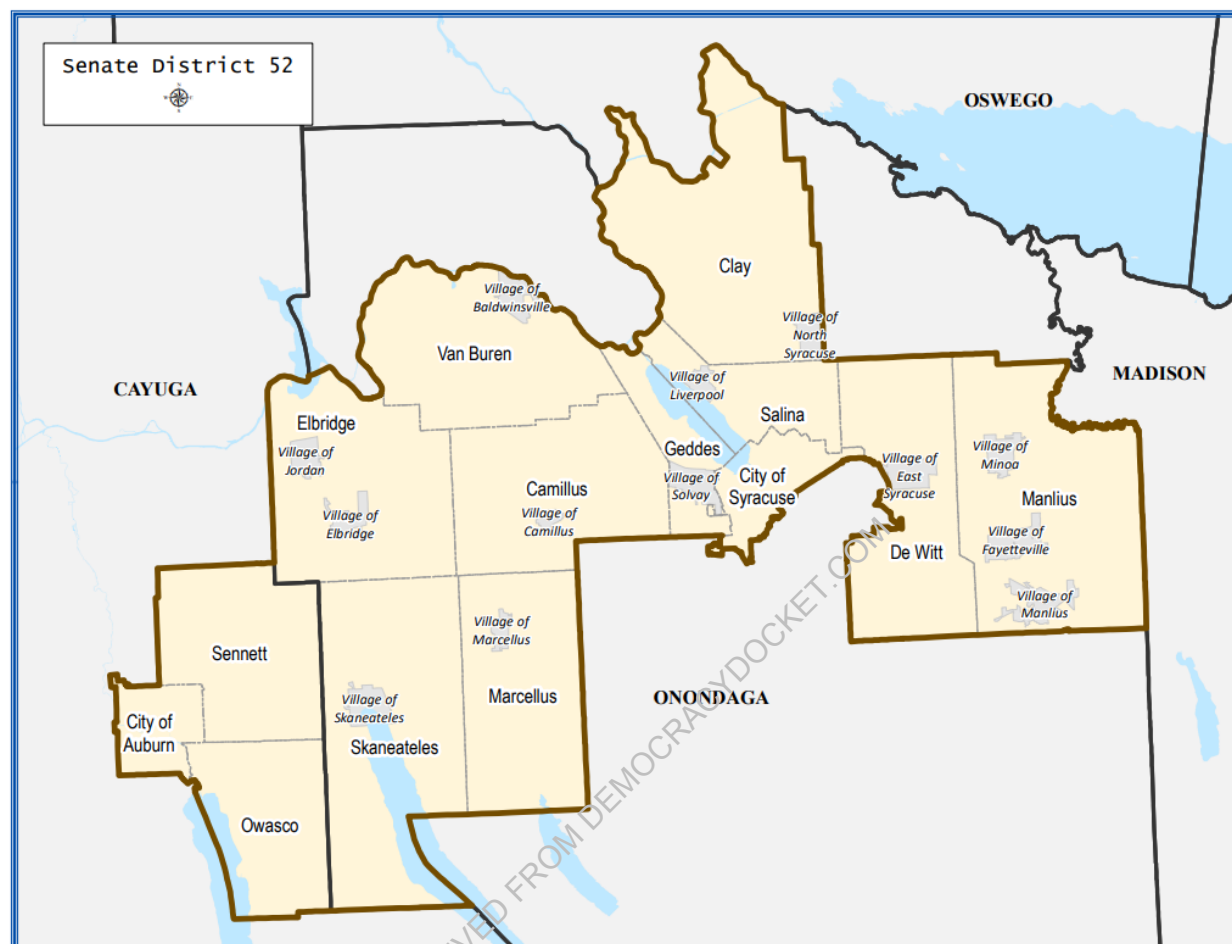
198. In state Senate District 46, the Legislature disconnected the City of Albany and the Albany County river cities that face it across the Hudson River and combined it with Republican areas in Saratoga County with which it has little in common, to create a safe Democratic district.

199. The Legislature's drawing of new state Senate District 51 lumps both Republican Senator James Tedisco and Republican Senator Peter Oberacker into the same district. The Democratic leaders in the Legislature drew this district specifically to disfavor or remove one of these two incumbent Republican Senators.

Map of Old State Senate District 50



Map of New State Senate District 52



201. In new state Senate District 53, the Legislature cynically disconnected Tompkins County, a portion of Cortland County, and portions of Tioga and Broome counties from surrounding areas with which they had been historically connected to create a new district that strongly favors a Democrat candidate.

202. In new state Senate District 54, the Legislature packed Republicans by adding Wayne County to other strongly Republican-performing areas in Genesee, Livingston, Ontario, and Cayuga counties.

203. The Legislature's specific choices here made this district noticeably less competitive, creating a very strong Republican district, and also extracted these strong Republican areas from their previous districts, which also included swing areas, thereby decreasing protection in neighboring districts.

204. In new state Senate District 56 (which most closely resembles District 55 in the 2012 state Senate map), the Legislature added a large portion of the City of Rochester, and its heavily Democratic voting citizens to flip this district from one that had been represented by a Republican state senator until his recent retirement into a strong Democratic district. The situation is virtually identical in new state Senate District 57.

205. In new state Senate District 58, the Legislature packed a large number of Republicans to remove them from surrounding districts and decrease competitiveness, enabling the Legislature to create the new Democratic district in Tompkins and Broome counties.

206. In creating new state Senate District 60, the Legislature broke the Erie-Niagara County border and added the City of Niagara Falls to what had been state Senate District 60 under the 2012 state Senate map and removed the towns of Orchard Park, Evans, and Brant. Previously, State Senate District 60 had been a competitive swing district represented by both Republicans and Democrats over the last decade. By adding the heavily Democratic City of Niagara Falls, which is in a different county than the rest of the district, the district changed from one that leaned Democratic to one that is now solidly Democratic, reducing realistic competition there.

207. Relatedly, the Legislature gerrymandered new state Senate District 62 by packing it with Republicans. The Legislature removed from this district the City of Niagara Falls, while

adding the reliably Republican towns to the east, to make this a heavily Republican district with little to no competitiveness.

208. The Legislature also gerrymandered state Senate District 63 by cobbling together from several disparate areas: the suburban swing Town of Amherst, the east side of Buffalo, and part of Lackawanna County. The Town of Amherst is much more closely aligned with the other suburban towns to the north of the City of Buffalo and these three areas are not communities of interest by any reasonable metric and lack commonalities with one another.

209. As a result, new state Senate District 63 is overwhelmingly Democratic, with no real risk of the Democrats losing that Senate seat.

210. All in all, the 2022 state Senate map largely guarantees the Democratic Party in New York an outsized number of state Senate seats compared to their political support in this State.

211. In fact, the Legislature's state Senate gerrymander was so successful and so biased in favor of Democrats, that the enacted state Senate map is more favorable to Democrats than *any* of the 5,000 computer simulated maps designed specifically to follow New York's redistricting requirements without partisan considerations.

212. Despite these and other gerrymandered districts within the new 2022 state Senate map, the Legislature enacted that map on a vote of 118–29 in the Assembly and 43–20 (a straight party line) in the Senate on February 3, 2022. *See* 2021–2022 N.Y. Reg. Sess. Leg. Bills A.9040-A and A.9168.

iv. The Governor Signs The Legislature's Unfair Congressional And State Senate Maps Into Law Despite Widespread Objection From New Yorkers

213. After the Legislature released its proposed maps, there was extensive public outcry over both the process and substance.

214. Members of the public took to the IRC's public comment page to decry the Legislature's opaque approach to redrawing the maps. Submissions, New York Independent Redistricting Committee ("IRC Public Submissions").³² As one comment said, "[t]his is clearly gerrymandering at its worst." IRC Public Submissions, *supra* (submitted by Anthony on Jan. 31, 2022). Betsy Gotbaum, the executive director of good-government group Citizens Union, described the Legislature's lack of process succinctly: "There was no public input." Jacob Kaye, *State Legislature Shares Version of Congressional Redistricting Map*, Queens Daily Eagle (Feb. 1, 2022).³³ She also noted that the Legislature's actions completely deprived the process of an accurate understanding of the public's desires in new maps: "We don't really know what groups of people really wanted once the commission couldn't come to any kind of a conclusion and then the legislators took it over. We don't know." *Id.*

215. New Yorkers across the state quickly flagged the new maps as highly partisan gerrymanders. "If it looks like gerrymandering and sounds like gerrymandering—it's most likely gerrymandering," said Brian Browne, a political science professor at St. John's University in New York City. Kaye, *supra*. "This is why people don't trust politicians," observed Pat Kiernan, a local morning news anchor on NY1, "[a]nd the Democrats have given up any high ground they had over Republicans on gerrymandering." Nicholas Fandos, *How N.Y. Democrats Came Up With Gerrymandered Districts on Their New Map*, N.Y. Times (Jan. 31, 2022).³⁴

³² Available at <https://nyirc.gov/submissions>.

³³ Available at <https://queenseagle.com/all/state-legislature-shares-version-of-congressional-redistricting-map>.

³⁴ Available at <https://www.nytimes.com/2022/01/31/nyregion/nyc-congressional-district-nadler.html>.

216. Even Democratic politicians condemned the maps. Cynthia Appleton, the Democratic chair for Wyoming County, described the congressional map as “an absolute travesty.” Jerry Zremski, *New Congressional Map Sparks Gerrymandering Outcry*, Buffalo News (Jan. 31, 2022).³⁵ Nate McMurray, a former Democratic congressional candidate, offered a similar view on the new map, calling it “nuts.” *Id.* Melanie D’Arrigo, a Democratic candidate running in Congressional District 3, harshly criticized the new map as well: “We cannot stay silent as we watch the state legislature publish a map that extreme gerrymanders our district.” Kaye, *supra*. Describing the redrawn Congressional District 3, which now spans five counties, D’Arrigo despaired, “How is this fair to the people who live in any of these counties?” *Id.* She further noted that “[c]onstituent services will be more difficult, more expensive and less efficient: the needs of someone living on the border of Connecticut being wildly different from someone in Huntington,” and “[a]ll of the voters at stake deserve real representation, not to be used as political pawns.” *Id.*

217. On February 3, 2022, Governor Hochul signed the Legislature’s congressional and state Senate maps, 2021–2022 N.Y. Reg. Sess. Leg. Bills S.8196, A.9039-A, A.9040-A, and A.9168, into law, thereby blessing her fellow Democrats’ blatant gerrymandering efforts. Patrick Ryan, *Gov. Hochul Signs New State and Congressional Redistricting Maps into Law* WIVB.com (Feb. 3, 2022) (providing signed bills).³⁶

³⁵ Available at https://buffalonews.com/news/new-congressional-map-sparks-gerrymandering-outcry/article_0ab6b528-82e6-11ec-8d7b-07d7c0c217b8.html.

³⁶ Available at <https://www.wivb.com/news/new-york/gov-hochul-signs-new-state-and-congressional-redistricting-maps-into-law/>.

D. The 2022 Maps' Impact On Petitioners

218. The Legislature's blatant gerrymandering has caused grave harm to Petitioners, all of whom want a fair, representative government at both the state and national level, unhindered by partisan interests and egregious gerrymandering.

219. Broadly, this kind of partisan gerrymandering is profoundly undemocratic and cuts deeply into the public's confidence in their representative government. The Legislature's egregious attempt to entrench the majority party's incumbents and political power harms the franchise of all New York voters, Petitioners included.

220. For example, the adopted 2022 congressional and state Senate maps treat Petitioners unequally and dilutes their voting power based on their political beliefs. Through this map, Democrats have essentially guaranteed that they will win more congressional and state Senate districts—and thus more power—than is warranted by the party's popular support. As a result, political representatives will subject Petitioners to laws and policies that do not fairly reflect the public will.

221. Moreover, when incumbents choose their voters—rather than voters electing their chosen representatives—the public's faith in the franchise is diminished.

222. Participation in the democratic process will decrease, as voting holds little appeal to those in gerrymandered districts because their votes cannot change the preordained outcomes of elections. New Yorkers made their will clear when they voted to ban partisan gerrymandering.

223. Enacting these maps deals a crushing blow to the State's representative democracy and the faith of the People in those governing them.

224. More specifically, each of Petitioners suffers directly from these maps, including because they lose the opportunity to vote for their preferred congressional and state Senate candidates, rather than ones selected for them by the Legislature's cynical line-drawing.

225. For example, the new Congressional District 16, a strong Democratic district where Petitioner Marianne Volante lives, moved Republican voters from Congressional District 18, where Petitioner Patricia Clarino lives, decreasing competition and turning District 18 into a safe Democratic district, without jeopardizing the Democratic Party's interests in District 16. As a result, Petitioner Clarino's vote is diluted, while Petitioner Volante and other Congressional District 16 Republicans' votes will never outweigh the Democratic vote that has been gerrymandered around them.

226. In the new Congressional District 23, where Petitioners Tim Harkenrider, Linda Fanton, Jay Frantz, Alan Nephew, and Susan Rowley reside, the Legislature "packed" as many Republican votes into the district as it could. As a result, the Republican votes of Petitioners and similar voters in the District far exceed the amount their candidates need to win in elections. Rather than fairly spreading Republicans through logically constructed districts, the Legislature has ensured that many of their votes are wasted in Congressional District 23.

227. Conversely, in the new Congressional District 10, where Petitioner Stephen Evans resides, and Congressional District 11, where Petitioner Jerry Fishman resides, the Legislature broke up conservative communities of interest, "cracking" and effectively neutralizing Republican voters in these districts. As a result, these Petitioners' votes are diluted, and they are subjected to political policies that do not align with their own views or the will of their communities.

228. Similarly, new Congressional District 17, where Petitioner Lawrence Garvey resides, new Congressional District 19, where Petitioners Guy C. Brought and Lawrence Canning reside, and new Congressional District 22, where Petitioners George Dooher, Jr. and Josephine Thomas reside, each “crack” and neutralize Republican votes by breaking up communities of interest and unnaturally reaching across the state to add Democratic voters to each of these districts. These Petitioners will be forced to endure representatives who do not reflect the communities they represent, enforcing their unwelcome policies.

229. Petitioners face similar harms from the gerrymandered 2022 state Senate map. In state Senate District 41—where Petitioner Patricia Clarino resides—the Legislature gerrymandered the district to lean Democratic, depriving Petitioner Clarino of the representation of her choice.

230. Similarly, in state Senate District 42—where Petitioner Marianne Volante resides—the Legislature drew the boundaries to stretch down into White Plains and create a safely Democratic district, depriving Petitioner Volante of the representation of her choice.

231. In state Senate District 48—where Petitioner Guy C. Brought resides—the Legislature removed more-conservative-voting areas in Montgomery County and Schenectady County, replacing them with more liberal areas in Dutchess and Columbia counties, thereby flipping this district into a somewhat strong Democratic district, thereby forcing upon Petitioner Brought a likely Democratic state Senator whose political policies will not align with his own.

232. In state Senate District 58—where Petitioners Linda Fanton, Jay Frantz, Alan Nephew, and Susan Rowley all reside—and state Senate District 59—where Petitioner Tim Harkenrider resides—the Legislature “packed” Republican voters into these districts, so the

Republican votes of Petitioners and similar voters in the District far exceed the amount their candidates need to win in elections. By doing so, the Legislature has ensured that Petitioners' votes will be wasted in these state Senate Districts.

233. Petitioners regularly vote for Republicans running for Congress and state legislative office and engage in campaign activity for Republicans running for Congress and state legislative office. Thus, the gerrymandering of the 2022 state Senate and congressional maps dilutes the power of their votes and political action efforts.

FIRST CAUSE OF ACTION

(N.Y. Const. art. III, § 4(b); N.Y. Legis. Law § 93(1) – Failure To Follow Constitutional And Statutory Procedures For Redistricting)

234. Petitioners hereby incorporate each of the foregoing paragraphs as if fully set forth herein.

235. Article III, Section 4(e) of the New York Constitution provides that “[t]he process for redistricting congressional and state legislative districts established by this section and sections five and five-b of this article *shall govern* redistricting in this state,” with limited exceptions not relevant here. N.Y. Const. art. III, § 4(e) (emphases added); *see* N.Y. Legis. Law § 93(3) (same).

236. Section 4(b) of Article III requires that, should the Legislature “fail to approve the legislation implementing the first redistricting plan” prepared by the IRC, the IRC then “*shall* prepare and submit to the legislature a second redistricting plan and the necessary implementing legislation for such plan,” and that “[s]uch legislation *shall* be voted upon, without amendment.” N.Y. Const. art. III, § 4(b) (emphases added); *see also* N.Y. Legis. Law § 93(1).

237. Only then, after having considered and rejected such a *second* redistricting plan, or, after the Governor vetoes any such second plan after the Legislature approved it, may the Legislature “introduce” its own “implementing legislation” along with “any amendments” that comply with Article III, Section 4. N.Y. Const. art. III, § 4(b); *see also* N.Y. Legis. Law § 93(1).

238. Because the Legislature never received, let alone considered and acted upon, a second redistricting plan from the Commission, it never obtained redistricting authority under the *exclusive* process established by the New York Constitution for introducing and adopting its own redistricting maps. *See* 2021–2022 N.Y. Reg. Sess. Leg. Bills S.8196, A.9039-A, A.9040-A, and A.9168.

239. After the Legislature rejected the first-round maps introduced by the IRC out of hand, the Commission did not adopt and introduce second-round maps to the Legislature within 15 days, leaving the Legislature with no maps to act on within the scope of its limited constitutional role.

240. As a result, the Legislature did not consider a second map or maps from the IRC, which mandatory consideration was required before the Legislature was constitutionally permitted to adopt its own congressional map. N.Y. Const. art. III, § 4(b).

241. The 2021 legislation enacted by the Legislature and Governor purporting to give the Legislature authority to circumvent the Constitution, to adopt its own maps if the Commission failed to vote on second-round maps, L.2021, c. 633, § 1, is unconstitutional. There is no provision of law that allows the Legislature to sidestep the Constitution’s exclusive process for redistricting in New York via legislative enactment.

242. The Legislature enacted L.2021, c. 633, § 7150 in an effort to avoid the effect of the People voting down a constitutional amendment to provide for what L.2021, c. 633, § 7150(1) purports to do. But, of course, a constitutional amendment is necessary to make the changes to New York's exclusive, constitutionally enshrined redistricting process

243. The Legislature cannot act contrary to the Constitution's restrictions on the respective duties and responsibilities allocated to it and other entities responsible for redistricting. Because the Legislature acted contrary to the Constitution when it enacted L.2021, c. 633, § 7150, the 2022 congressional and state Senate maps are invalid.

244. Since the Legislature had and has no constitutional authority to draw congressional or state Senate districts given the IRC's failure to follow the exclusive, constitutionally mandated procedures, this Court cannot give the Legislature another opportunity to draw curative districts.

245. Thus, this Court should draw its own maps for Congress and state Senate prior to the upcoming deadlines for candidates to gain access to the ballot, just as happened regarding the 2012 congressional map.

SECOND CAUSE OF ACTION

(N.Y. Const. art. III, § 4(c)(2); N.Y. Legis. Law § 93(2)(b) – Unconstitutional Malapportionment)

246. Petitioners hereby incorporate each of the foregoing paragraphs as if fully set forth herein.

247. Article III, Section 4(c)(2) provides that “[t]o the extent practicable, districts shall contain as nearly as may be an equal number of inhabitants,” and that “[f]or each district that

deviates from this requirement,” the entity responsible for drawing the map “shall provide a specific public explanation as to why such deviation exists.” N.Y. Const. art. III, § 4(c)(2).

248. This constitutional requirement establishes a population-equality standard for congressional and state Senate districts, absent a “specific” and “public” explanation from the mapdrawer as to why any deviation is necessary. N.Y. Const. art. III, § 4(c)(2).

249. Therefore, following any decennial census, all congressional and state Senate districts must abide by this equal-population requirement.

250. As explained above, the 2022 congressional and state Senate maps are ultra vires because the Legislature ignored entirely the mandatory, *exclusive* process established by the 2014 constitutional amendments for enacting any such redistricting, as well as applicable substantive requirements for any Legislature-created map. *See supra* First Cause Of Action.

251. That is, the Legislature enacted its congressional and state Senate maps without abiding by the constitutional and statutory requirement that the IRC present a second round of maps following the Legislature’s decision not to approve the first round of maps. N.Y. Const. art. III, § 4(b). Indeed, the Constitution *requires* that the Legislature “vote[] upon” the “second redistricting plan and the necessary implementing legislation” before it may introduce its own plan, and yet the Legislature never complied with these rules. *Id.*; *see also supra* First Cause Of Action.

252. These violations render the 2022 congressional and state Senate maps invalid, leaving only the vestigial maps that the Legislature enacted or the court adopted after the 2010 decennial census. *See* 2011–2012 N.Y. Reg. Sess. Leg. Bills S.6696 and A.9525 (as technically amended by S.6755 and A.9584); *Favors v. Cuomo*, No. 11-CV-5632, 2012 WL 928223 (E.D.N.Y. Mar. 19, 2012).

253. But the 2012 congressional map and 2012 state Senate map, *see id.*, are plainly unconstitutional *today*, following the 2020 census, given New York’s inarguable population shifts, because they do not meet the New York Constitution’s equal-population requirement.

254. That is, following the 2022 Census, none of the previous congressional and state Senate districts “[t]o the extent practicable” “contain as nearly as may be an equal number of inhabitants.” N.Y. Const. art. III, § 4(c)(2); N.Y. Legis. Law § 93(2)(b); *see supra* ¶¶ 61–79.

255. Thus, this Court must now also declare that the Legislature-enacted 2012 state Senate map, and court-adopted 2012 congressional map—the only validly-adopted map in existence, *supra* First Cause Of Action—are invalid, and adopt replacement, constitutional congressional and state Senate maps.

THIRD CAUSE OF ACTION

(N.Y. Const. art. III, § 4(c)(5); N.Y. Legis. Law § 93(2)(e) – Unlawful/Unconstitutional Partisan And Incumbent-Protection Gerrymandering)

256. Petitioners hereby incorporate each of the foregoing paragraphs as if fully set forth herein.

257. Article III, Section 4(c)(5) of the New York Constitution 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).

258. New York Legislative Law § 93(2)(e) 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. Legis. Law § 93(2)(e).

259. New York Legislative Law § 93(4) also provides that “any law establishing congressional or state legislative districts found to violate the provisions of this article shall be invalid in whole or in part.” N.Y. Legis. Law § 93(4).

260. The 2022 congressional and state Senate maps, 2021–2022 N.Y. Reg. Sess. Leg. Bills S.8196, A.9039-A, A.9040-A, and A.9168, violate the clear prohibitions against partisan and incumbent-favoring/disfavoring gerrymandering found in Article II, Section 4(c)(5) of the New York Constitution and New York Legislative Law § 93(2)(e).

261. The Legislature drew the 2022 congressional and state Senate maps “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), as discussed in detail above, *supra* ¶¶ 114–212.

262. Governor Hochul, who signed the maps into law, previously acknowledged that it was her intention “to use [her] influence to help Democrats” by way of “the redistricting process,” and claimed that she fully “embrace[d] that” role as Governor. Glueck & Ferré-Sadurní, *supra*.

263. For that reason, the enacted congressional and state Senate maps violate both the New York Constitution and New York Legislative Law § 93, requiring this Court to strike them as “invalid.” N.Y. Legis. Law § 93(4).

FOURTH CAUSE OF ACTION

(CPLR § 3001 – Declaratory Judgment)

264. Petitioners hereby incorporate each of the foregoing paragraphs as if fully set forth herein.

265. Petitioners seek a declaratory judgment from the Court “as to the rights and other legal relations of the parties,” CPLR § 3001, regarding the substantive and procedural requirements for redistricting in this State.

266. It is imperative that the New York Courts properly construe the recent amendments to Article 3, Section 4 of the New York Constitution and New York Legislative Laws § 93.

267. The 2014 amendments to the New York Constitution prohibit the Legislature and Governor from reapportioning seats for Congress and state Senate in a manner that

- a. disregards the exclusive procedures for redistricting, including the requirement that the IRC submit two rounds of maps for the Legislature’s consideration before the Legislature may undertake the redistricting function itself;
- b. creates districts that fail to contain as nearly as possible an equal number of inhabitants, requiring, as practicable, no deviation from perfect population equality;
- c. creates a partisan gerrymander with the intent to favor of any political party; and
- d. creates an incumbent-protection or incumbent-disfavoring gerrymander with the intent of aiding or hurting any incumbent or candidate.

Each of these violations, alone and in tandem, requires the Court to invalidate the congressional and state Senate maps.

268. Respondents’ actions in violating each of these constitutional requirements come from a determined effort to advance the interests of the Democratic Party by entrenching incumbent Democrats and targeting incumbent Republicans, in direct contravention of the will of

the citizens of the State of New York, who voted in favor of ridding such partisan interests from the redistricting process.

269. Further, the 2021 legislation, L.2021, c. 633, § 7150, enacted by the Legislature and Governor in an attempt to give the Legislature authority to circumvent the Constitution and adopt these unlawful maps, is unconstitutional. The Legislature cannot contravene the Constitution's exclusive process for redistricting in New York through legislative enactment.

270. Each of these constitutional violations has harmed Petitioners, who are now subject to gerrymandered and highly partisan maps for their representatives in Congress and state Senate.

271. This issue is ripe for judicial review.

272. Absent resolution of these constitutional questions, neither Respondents nor the citizens of New York will have adequate guidance regarding the propriety of the enacted maps and the prior legislature-enacted and court-drawn maps, in preparation for impending elections.

273. If each of these fundamental issues regarding the redistricting processes in New York is not resolved in short order, it will be too late to do so without threatening the integrity of upcoming elections.

274. Therefore, this Court should enter judgment declaring that the 2022 congressional and state Senate maps, *see* 2021–2022 N.Y. Reg. Sess. Leg. Bills S.8196, A.9039-A, A.9040-A, and A.9168, violate the New York Constitution, declare that the 2012 congressional and state Senate maps, *see* 2011–2012 N.Y. Reg. Sess. Leg. Bills S.6696 and A.9525 (as technically amended by S.6755 and A.9584); *Favors v. Cuomo*, No. 11-CV-5632, 2012 WL 928223 (E.D.N.Y. Mar. 19, 2012), now violate the New York Constitution in light of the population shifts

identified in the 2020 Census, strike down the 2021 legislation, L.2021, c. 633, § 7150, as unconstitutional, and itself draw a new congressional map cured of all legal infirmities.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully demand that this Court review the constitutionality of the congressional apportionment and enter judgment and order against Respondents as follows:

A. Declaring pursuant to CPLR § 3001 that:

i) the 2022 congressional map and 2022 state Senate map, *see* 2021–2022 N.Y. Reg. Sess. Leg. Bills S.8196, A.9039-A, A.9040-A, and A.9168, both constitute unconstitutional maps enacted without complying with the mandatory constitutional procedures for redistricting in Article III, Section 4(b) of the New York Constitution;

ii) the 2012 congressional map, court-adopted after the 2010 decennial census, *Favors v. Cuomo*, No. 11-CV-5632, 2012 WL 928223 (E.D.N.Y. Mar. 19, 2012), and the 2012 state Senate map, legislatively enacted after the 2010 decennial census, 2011–2012 N.Y. Reg. Sess. Leg. Bills S.6696 and A.9525 (as technically amended by S.6755 and A.9584), are the only validly enacted maps currently in existence, but are now unconstitutionally malapportioned, failing to comply with the mandatory constitutional requirements that each district contain an equal number of inhabitants, found in Article III, Section 4(c)(2) of the New York Constitution;

iii) the 2022 congressional map and 2022 state Senate map, apart and aside from procedural deficiencies, constitute unconstitutional partisan and incumbency-favoring/disfavoring gerrymanders, in violation of Article III, Section 4(c)(5) of the New York Constitution and New York Legislative Law § 93(2)(e);

- iv) the 2012 congressional map and 2012 state Senate map are unconstitutional in light of the population shifts identified in the 2020 census; and
- v) the 2021 legislation, L.2021, c. 633, § 7150, enacted by the Legislature and Governor in an attempt to give the Legislature authority to circumvent the Constitution and adopt these unlawful maps, is unconstitutional.
- B. Enjoining Respondents from conducting any elections under the 2012 congressional map and 2012 state Senate map;
- C. Enjoining Respondents from conducting any elections under the 2022 congressional map and 2022 state Senate map;
- D. Adopting new, legally compliant congressional and state Senate maps;
- E. Alternatively, and only if the Court does not agree with Petitioners' procedural claim, ordering the Legislature to attempt to cure the legal and constitutional infirmities in the 2022 congressional map and 2022 state Senate map and adopt lawful maps for each;
- F. Suspending or enjoining the operation of any other state laws that would undermine this Court's ability to offer effective and complete relief to Petitioners for the November 2022 elections and related primaries, including, if this Court deems necessary, § 3(i) of 2021–2022 S.8172-A and A.9039-A, and § 2 of 2021–2022 S.8185-A and A.9040-A;
- G. Awarding Petitioners all of their reasonable attorneys' fees and costs; and
- H. Awarding such other and further relief as this Court may deem just and proper.

Dated: New York, New York

February 8, 2022

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EXHIBIT B

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Co-Chair

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Douglas A. Kellner
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February 16, 2022

Hon. Patrick F. McAallister
A. Supreme Court Justice
3 East Pulteney Square
Bath, New York 14810

RE: Tim Harkenrider, et. al. v Governor Kathy Hochul, et. al.
Index No: **E2022-0116CV**

Dear Judge McAllister :

The State Board of Elections will not be taking a position on the merits of this matter.

We will be available, however, to provide all parties and/or the Court with any factual information that may be needed regarding the political calendar or any other relevant issue.

Please contact me if you have any questions or require any additional information.

Very truly yours,

s/

Brian L. Quail
Counsel

EXHIBIT C

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STATE OF NEW YORK
SUPREME COURT : COUNTY OF STEUBEN

Index No. E2022-0116CV

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,

Petitioners,

-against-

DECISION and 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.

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

The Petitioners, through their attorneys, are seeking to set aside the newly enacted congressional districts and senate districts. The Petitioners allege that the Respondents did not have the authority under the constitution to create the new congressional and senate 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 pending further development of the record. The court heard testimony of several experts and final arguments were heard on March 31, 2022.

In making this Decision and Order the court has considered all the submissions made in this matter. To specifically innumerate them would needlessly waste pages of paper and lots of ink. The e-file system has them all enumerated.

Background:

Although it has been quite some time since one party controlled the Senate, the Assembly, and held the governorship, New York State has a long history of gerrymandering when it comes to the creation of new voting districts. Whichever major political party has been in power has used the creation of new voting districts to their own advantage and to the disadvantage of their opposition. The result was that 98% of incumbents were getting reelected before the constitutional amendment in 2014.

The scourge of gerrymandering is not unique to New York. In recent years the courts throughout the country have been called on to invalidate gerrymandered districts and to create new fairer districts. League of Women Voters v. Commonwealth, 178 AD3d 737 (Pa. 2018); League of Women Voters of Fla. v. Detzner, 172 So. 3d 363 (Fla. 2015); Rucho v. Common Cause, 204 L.Ed. 2d 931 (2019). In 2014, New York State took major steps to avoid being plagued by gerrymandering by amending Article III §§4 & 5 of the New York State Constitution. The 2020 census was the first time after the constitutional amendment that led New York to draw new districts. Therefore, this is a case of first impression in many respects.

Under New York's very old rule there was a district seat for each county, except for Hamilton County. The Federal Courts found that unconstitutional because some counties were sparsely populated resulting in the citizens of those counties receiving disproportionate representation as compared to the heavily populated counties. Reynolds v. Sims, 377 U.S. 533 (1964); In re Orans, 15 NY2d 339 (1965). The law was changed to create districts that were roughly equal in population. In doing so other redistricting criteria in the Constitution such as not crossing county lines were given less value. See, Wolpoff v. Cuomo, 80 NY2d 70 (1992).

In the past most redistricting challenges were heard in federal court. However, in Rucho v. Common Cause, 139 S.Ct. 2482 (2019) the court ruled that federal courts do not have the authority to strike down maps based on partisan gerrymandering. Hence, this action is brought in state supreme court.

The courts have recognized that redistricting requires a balancing of sometimes competing Federal and State Constitutional requirements. "The test is whether the Legislature has 'unduly departed' from the State Constitution's requirements regarding contiguity, compactness and integrity of counties (Matter of Schneider v. Rockefeller, 31 NY2d 420, 429) in its compliance with federal mandates. It is not our function to determine whether a plan can be worked out that is superior to that set up by the legislature. Our duty is, rather, to determine whether the legislative plan substantially complies with the Federal and State Constitutions." Wolpoff v. Cuomo, (*supra*. at 78). To again quote Wolpoff "This is no simple endeavor". "Balancing the myriad requirements imposed by both the State and the Federal Constitution is a function entrusted to the Legislature. It is not the role of this, or indeed any, court to second-guess the determinations of the Legislature, the elective representatives of the people in this regard. We are hesitant to substitute our own determination for that of the Legislature even if

we would have struck a slightly different balance on our own.” ” Wolpoff v. Cuomo, (*supra*. at 79).

Standing:

The Respondents challenge whether or not the Petitioners in this case have standing to bring this action since the various Petitioners live in only a small number of Congressional and State Senate Districts.

It is the law's policy to only allow an aggrieved person to bring a lawsuit. One not affected by anything a would-be defendant has done or threatened to do ordinarily has no business suing. *New York Practice 6th Ed.* Seigel §136 Pg. 270.

Many of the prior redistricting challenges where the courts have found petitioners do not have standing were cases focused only on a particular district boundary. In those cases if the petitioner did not live in the district he/she did not have standing. The Petitioners in this case are challenging the entire process as being in violation of the Constitutionally prescribed method for redistricting and in particular that the Congressional and State Senate maps were drawn with a political bias that is contrary to the Constitution. In Dairylea Cooperative, Inc. v. Walkey, 38 NY2d 6 (1975) a milk distributor sought to challenge a Commissioner of Agriculture decision which granted a milk dealer license to another entity. The court found there was standing because the Plaintiff was in the “zone of interest.” Further, only when there is a clear lack of injury would standing be denied.

In Society of Plastics Industry, Inc. v. County of Suffolk, 77 NY2d 761 (1991) the court made clear that having an economic interest is not sufficient to find standing if the issue is a non-economic interest. In that case to have standing the Plaintiff needed to show non-economic issues such as environmental or aesthetic reasons to challenge the legislation.

If this court finds the method used in enacting these maps violated the Constitution this would not affect just a handful of districts, but in fact would effect every district in New York. It would be impractical to require someone from every district to serve as a Petitioner. Once one district is invalid it impacts neighboring districts. But if the entire process is invalidated then everyone is impacted. The court finds these Petitioners have standing.

The 2014 Constitutional Amendment:

The 2014 amendment to the New York Constitution includes both a provision to prohibit discrimination against racial or language minority voting groups and a prohibition against creating maps with partisan bias. The prohibition against discriminating against minority voting groups at the least encapsulated the requirements of the Federal Voting Rights Act, and according to many experts expanded their protection. That new provision is not currently being challenged. Therefore, the court will focus on the prohibition against partisan

bias and the process by which redistricting was to take place.

To tell how important the people considered the issue of partisan bias not only was Article III section 4 amended to add “Districts shall not be drawn to discourage competition or for the purpose of favoring or disfavoring incumbents or other particular candidates or political parties”, but the Constitutional process for redistricting was also revised to create an Independent Redistricting Committee (IRC), which was to create non-biased bipartisan maps. This provision creating an IRC was intended to take the creation of proposed redistricting maps out of the hands of a one-sided, partisan legislature as much as possible. This IRC committee was to consist of appointees as follows: two members by the temporary president of the senate, two members by the speaker of the assembly, two by the minority leader of the senate and two by the minority leader of the assembly, plus two additional members which were to be appointed, one by the Democratic committee members and one by the Republican committee members. NY Constitution Art. III §5-b. Although the word “compromise” is not used it is clear from reading the constitutional amendment that the people of the State of New York believed that nonpartisan maps agreed upon as a result of a compromise were the best way to avoid gerrymandering when redistricting. At the very least in the event one party controlled both the senate and the assembly the amended constitution required there to be both support from some of the Democrats on the committee and also by some of the Republicans on the committee in order for the redistricting plan to receive the minimum seven votes necessary for the plan to be submitted to the legislature for approval, and to the governor for signature. NY Constitution Art III §5-b(f).(1) reads as follows:

“In the event that the speaker of the assembly and the temporary president of the senate are members of the same political party, approval of a redistricting plan and implementing legislation by the commission for submission to the legislature **shall** require the vote in support of its approval by at least seven members including at least one member appointed by each of the legislative leaders.” (Emphasis added)

In 2022 the Democrats controlled both the senate and the assembly. Nevertheless, the IRC committee failed to come up with any plan that obtained the minimum seven votes. There was no plan that received bipartisan support. That eventuality was anticipated in the constitution and according to Art. III §5-b(g) the plan or plans receiving the highest vote were to be submitted to the legislature. The Democrat committee and the Republican committee each submitted their own plans known as Plan A and Plan B with an equal number of IRC votes, but only from their own respective subcommittees. The court heard limited testimony concerning both Plan A and Plan B and received copies of those plans as exhibits. Even though a few of the proposed districts seemed to be the same in both plans, the IRC was not able to come up with a bipartisan plan that received seven votes. Both Plan A and Plan B were submitted to the legislature and the legislature quickly rejected both plans. According to the amended constitution, the committee was then to submit to the legislature a second set of redistricting plans. NY Constitution Art. III §4(b).

In 2022 the committee never submitted a second revised redistricting proposal to the legislature. Hence, the legislature went ahead and in a few days drafted and passed their own redistricting maps. A couple of Democrats voted against the legislature's redistricting maps, but otherwise the legislation was passed along party lines. It is these Congressional and Senate redistricting maps that this court must review to determine whether they violate the state and/or federal constitutions.

Before analyzing the specifics of the redistricting plans that were passed, it is important to review what did not happen. The IRC committee never embraced the task of coming up with compromise plans. It was clear from the amended constitution that the people of the State of New York believed the best way to avoid partisan politics in drawing new district lines was for a small group to work together to come up with compromise plans that obtained some bipartisan support. The plans did not have to be unanimously approved by the members of the committee, but at least some members of each subcommittee had to support the plan. The court comes to this conclusion from the following:

1. The Constitution was amended to add Article III §4(c)(5) which now reads as follows: "Districts shall not be drawn to discourage competition or for the purpose of favoring or disfavoring incumbents or other particular candidates or political parties." ;
2. The Constitution created an Independent Restricting Committee (IRC);
3. The IRC was constructed in such a way that neither political party would attain the seven votes necessary without bipartisan support;
4. The Constitution specifically reads that the approved plan had to have support from at least one appointee of each of the political leaders that appointed members to the IRC.
5. That even if the IRC plan was rejected it was the IRC and not the legislature that was authorized to draw a second set of revised maps.
6. That even if the second set of IRC maps was rejected, the legislature could only vary the enacted maps slightly from the IRC maps. There could be no more than a 2% deviation in any district according to the Redistricting Reform Act of 2012.
7. The people of the State of New York rejected the 2021 ballot proposal that would have authorized the legislature to draw the maps in the event the IRC was not able to come with maps.

By contrast the important constitutional amendment that protected racial and language minority voting groups from being discriminated against had only one provision. Article III §4(c)(1). There was no new committee appointed to insure that this amendment to the Constitution was carried out. The court can only conclude that the people of the State of New York thought the creation of a non-biased, nonpartisan IRC committee that must work together to arrive at bipartisan redistricting maps was crucial to avoid gerrymandering - and even though the legislature, under certain circumstances, had the power to create their own redistricting maps, the legislature would have been under scrutiny in rejecting two sets of proposed bi-partisan maps before drawing their own maps, a circumstance that would invite the wrath of the electorate. Further, the law only permits slight alterations of the IRC maps by the legislature.

The legislature is not free to ignore the IRC maps and develop their own.

In a democracy it is rare if ever that one party has all the right answers and all the right policies. A democracy works best when every responsible adult has a voice and when by listening to each other a compromise is worked out that incorporates part of everyone's opinion. Unfortunately, in recent years the idea of "compromise" has gotten the reputation as being something distasteful and something to be avoided. Yet compromise is the foundation upon which the United States Constitution, our political system, and our country was established. It is compromise that is the safest way to avoid the plague of partisan gerrymandering. If gerrymandering is allowed to occur then certain groups of voters will be discriminated against and become disenfranchised. Discrimination comes in many forms whether it be against ones race, sex, age, religion, political party or something else. The New York Constitution specifically says, "When drawing district lines, the commission shall consider whether such lines would result in the denial or abridgement of racial or language minority voting rights, and districts shall not be drawn to have the purpose of, nor shall they result in, the denial or abridgment of such rights. Districts shall be drawn so that, based on the totality of the circumstances, racial or minority language groups do not have less opportunity to participate in the political process than other members of the electorate and to elect representatives of their choice." Art. III §4(c)(1).

Gerrymandering discrimination hurts everyone because it tends to silence minority voices. Then none of us receives the benefit from the input of the silenced. Imagine a society where only Democrats are able to work on cancer research or only Republicans could be board certified as heart surgeons. Imagine all the accomplishments and discoveries that would never come to pass because the majority thought it best to eliminate minority positions or views. Lives and the common good are at stake. When we choose to ignore the benefits of compromise we not only hurt others, we hurt ourselves as well.

There is nothing in the constitution that permits the IRC to just throw up their collective hands. Courts are very familiar with juries who say "We can't come to an agreement" during deliberations. However, the more the court keeps requiring them to go back and try again the more likely they are to finally reach a consensus. It is rare for the court to end up with a hung jury. Here the IRC stopped working well before their deadline. What someone should have done was bring an action to compel the members of the IRC to continue their work or for the political sides of the legislatures that appointed 8 of the 10 members of the IRC to remove and replace any IRC member that did not embrace his/her constitutional role. NY Constitution Art III §5-b(a)(1)-(4). Then either the court could have compelled the IRC to work together until they came up with a plan or the IRC new members could develop new bipartisan maps. Instead the IRC was permitted to throw up their hands and the legislature stepped in. Does the Constitution permit the legislature to take over if the IRC fails to do it's job? By the Constitution the IRC's drop dead date for submitting a plan was February 28th. This action was commenced long before that deadline.

Under the “new” process that was put in place a committee (IRC) was formed to try to create a fair redistricting map. The committee had 4 Democrats, 4 Republicans and 2 people that could not be Democrats or Republicans. The Democrats chose 1 of the 2 and the Republicans chose the other. This year the committee met and considered a number of plans. The Democrats came up with a plan (Plan A) and the Republicans came up with a different plan (Plan B). The IRC could not come up with a compromise plan so both the Democrat and Republican plans were submitted to the legislature, although neither plan had obtained the required seven votes. Seven votes in favor of a plan were required since the Democrats control both the Senate and the Assembly. Both submitted plans were rejected by the legislature and sent back to the committee. The committee could not agree on anything different. They had a 15 day deadline but the IRC stopped working well before the deadline. So the legislature created it’s own map. The legislature’s plan differed significantly from either Plan A or Plan B submitted by the IRC.

Under the 2014 amendment the districts shall not be drawn to discourage competition or for the purpose of favoring or disfavoring incumbents or other particular candidates or political parties. Under constitutional criteria the maps must be compact, contiguous, of equal populations, avoid abridgment of racial or language minority voting rights, maintain cores, and not cross the boundary lines of pre-existing subdivisions such as counties, cities, towns and communities of interest and there was to be no partisan gerrymandering. “The anti-gerrymander provision of the State Constitution is found in article III. Section 4 requires that Senate districts ‘be in as compact form as practicable’ and ‘consist of contiguous territory’; and section 5 provides that Assembly districts shall be formed from ‘convenient and contiguous territory in as compact form as practicable. As we recognized in Matter of Orans, (15 NY2d 339, 351, supra), these constitutional requirements remain binding although they must be harmonized with the first principle of substantial equality of population among districts.” Schneider v. Rockefeller, 31 NY2d 420 (1972).

The Failed 2021 Constitutional Amendment and Subsequent 2021 Legislation:

The political powers realized that the redistricting compromise plan envisioned by our 2014 amended constitution had a flaw. The plan lacked a way to handle the contingency of the committee not coming up with a bipartisan plan(s). Thus another constitutional amendment was proposed and put before the voters in November of 2021, under which the legislature could create and the Governor enact its own redistricting plan in the event the IRC committee failed to carry out its constitutionally prescribed duties. This constitutional amendment was voted down by the people of the State of New York - Republicans, Democrats, and Independents alike. Just three (3) weeks later, the legislature enacted legislation signed by the governor giving themselves the power to do exactly what the people of the State of New York had just voted down three (3) weeks earlier. Even though the proposed 2021 Constitutional Amendment contained other new provisions, none were hot button issues. In part this decision will focus on that legislation that was enacted just three (3) weeks after the proposed 2021 Constitutional Amendment was voted down.

Redistricting Reform Act of 2012 (The 2% Rule):

Another key component of the Redistricting Reform Act of 2012 that directly impacts the subsequent 2014 constitutional amendment was that: **“Any amendments by the senate or assembly to a redistricting plan submitted by the independent redistricting commission, shall not affect more than two percent of the population of any district contained in such plan.”** Redistricting Reform Act of 2012 N.Y. Sess, Laws 17 §3. The currently enacted plans vary by more than 2% from either of the plans submitted by the IRC. The Respondents do not allege that the plans they developed adhere to the 2% modification limit of either IRC map that was submitted. The Respondents contend that the “Notwithstanding any other provision” language of the newly enacted 2021 legislation made it so the legislature was not bound by the 2% rule. Obviously, it could not be compared to a final IRC map as such a map was never submitted. The court finds the 2% variance rule was another important procedural check to avoid partisan gerrymandering. These current maps ignore that procedural requirement. In essence, the legislature through the 2021 legislation, freed themselves from the constitutional process and the 2% limitation.

Analysis:

The New York Constitution Article III §§4 & 5 describes the process for the creation of election districts. Unconsolidated Laws §4221 says the supreme court has the jurisdiction to hear a petition brought by any citizen that wishes to challenge the redistricting law. The court is mandated to give this case the highest priority. The court has 60 days in which to render a decision from when the petition was filed. The Petition was filed February 3, 2022 so a decision must be rendered by April 4, 2022. If the court finds the redistricting plans invalid the legislature shall have a reasonable opportunity to correct their deficiency. Art. III §5. The Petitioners contend that this provision should be ignored by the court because the legislature never properly had jurisdiction to create these maps in the first place, since the IRC never submitted a second map to be considered.

The Petitioners seek to have this court find the 2022 Congressional Map and the 2022 Senate Map to be void *ab initio*. The Petitioners allege the legislature lacked the constitutional authority to enact redistricting maps because the Constitution proscribed an exclusive process, which in 2022 was not followed.

Not only must this court interpret the redistricting process under the 2014 amendment to the Constitution, but must also determine whether or not the legislature had the authority to alter the constitutional process by passing the recent 2021 legislation, when granting that same legislative authority was voted down by the people of the State of New York in the 2021 proposed Constitutional Amendment three weeks earlier.

On the November, 2021 ballot there was a proposed constitutional amendment to Article III Section 4(b) of the New York State Constitution that would have added language that

in the event the IRC redistricting commission fails to vote on a redistricting plan and implementing legislation by the required deadline then each house should introduce a redistricting plan and implementing legislation. When the constitutional amendment was voted down by the People of the State of New York the legislature passed a 2021 amendment to the Redistricting Reform Act of 2012 Section 4 (a) & (c) to provide that if the commission does not vote on any redistricting plan for any reason the legislature shall draft redistricting maps and implementing legislation and submit it to the governor.

In challenging the recently enacted 2021 legislation this court must start with the presumption that the legislation is constitutional. Matter of Moran Towing Corp. v. Urbach, 99 NY2d 443 (2003). Further, facial constitutional challenges like this one are disfavored. Overstock.com, Inc. v. New York State Dept. of Taxation and Fin., 20 NY3d 586 (2013). A challenge to a duly enacted statute requires the challenger to satisfy the substantial burden of demonstrating that in every conceivable application the enacted law suffers wholesale constitutional impairment. Center for Jud. Accountability, Inc. v. Cuomo, 167 AD3d 1406 (Third Dept. 2018); appeal dismissed 33 NY3d 933 (2019). Basically the challenger must establish that there is no set of circumstances under which the legislation could be valid. Overstock.com, Inc. v. New York State Dept. of Taxation and Fin., (*supra*). This court must make every effort to interpret the statute in a manner that otherwise avoids a constitutional conflict. See, People v. Davidson, 27 NY3d 1083 (2016).

The Petitioners contend that the November, 2021 legislation not only amended the Redistricting Reform Act of 2012 but also created a second path for redistricting that is not in the constitution. The constitution envisions the redistricting process to occur through the IRC. Only after the IRC has twice submitted maps that are rejected by the Legislature does the Legislature take up the process. The Constitution uses such words as “the” and “shall” to indicate this was the way and the only way that redistricting maps were to be drawn.

The 2021 legislation purportedly revised the 2012 Redistricting Reform Act so that if the IRC fails for any reason to submit a plan then the legislature shall prepare their own redistricting maps. However, the legislature can not override a constitutional barrier by passing a new law. City of N.Y. v. N. Y. State Div. of Human Rights, 93 NY2d 768 at 774 (1999). Further, this 2021 legislation purportedly negated the 2% variance limitation if the legislature drafted their own maps.

This court finds that by enacting the legislation in November of 2021 the legislature made it substantially less likely that the IRC would ever submit a bipartisan plan when the senate, assembly and governorship are all controlled by the same political party. Since the senate and assembly leaders appoint four of the ten members of the IRC, these four members, and by extension the legislature, would essentially have carte blanche veto power to keep the vote below the seven votes necessary to pass such a bipartisan plan. The intent of the 2014 constitutional amendment is to have bipartisan maps drawn by the IRC commission submitted and passed by the legislature.

Some might argue that whether the IRC failed to twice submit bipartisan maps or whether they did submit bipartisan maps and the legislature voted them down twice that it doesn't make any difference; that the legislature had the power to step in under either scenario. However, this court sees a difference. In this case the Legislature can say the IRC did not come up with bipartisan maps so we had to act. The IRC was a scapegoat for the legislature. If on the other hand the constitutional process were followed, the legislature would be in the awkward political position of having to vote down two sets of proposed bipartisan redistricting maps before drafting their own maps, at the risk of raising the ire of the voters at the next election. In addition the legislature, in drafting their own maps, would be under pressure and scrutiny to adopt a good portion of the proposed bipartisan maps submitted by the IRC commission, and they would also be limited by the no more than 2% alteration rule. The conclusion is that the currently enacted maps would have been substantially different had the constitutional process been followed.

This court finds that the November, 2021 legislation which purported to authorize the legislature to act in the event the IRC failed to act was not a mere enactment of legislation to help clarify or implement the Constitution, but in fact substantially altered the Constitution. Alteration of the Constitution can only be done by constitutional amendment and as recently as November, 2021 the people rejected the constitutional amendment that would have granted the legislature such authority. Therefore, this court finds the recently enacted Congressional and Senate maps are unconstitutional. Further, the enacted maps are void *ab initio*. Under the currently constructed Constitution when the IRC failed to act and submit a second set of maps there is nothing the Legislature has the power to do. Therefore, the court will need to step in. The court would note that not only are the Congressional District Maps and Senate District Maps void but the Assembly District Maps are void *ab initio* as well. The same faulty process was used for all three maps. Therefore new maps will need to be prepared for the Assembly Districts as well.

The People of the State of New York have spoken clearly. First, in the 2014 Constitutional Amendment not only did the People include language to prevent gerrymandering, but they also set forth a process to attain bipartisan redistricting maps through the IRC. The People of the State of New York again spoke loudly when they soundly voted down the proposed 2021 Constitutional amendment that would have granted authority to the Legislature to bypass the IRC redistricting process.

Although the court has already stricken the enacted redistricting maps as unconstitutional the court will discuss the Petitioners' further argument that the congressional and senate redistricting maps were the result of partisan bias. The standard of proof is beyond a reasonable doubt.

When considering redistricting there are two fundamental federal law principles that apply. There is the Equal Protection Clause of the 14th Amendment and the Voting Rights Act. The Equal Protection clause requires districts to be composed of the same number of residents

or within acceptable variance thereof. The Voting Rights Act prohibits drawing lines that deny racial or language minorities a fair opportunity to elect a candidate of their choice. In addition to those federal requirements, the New York constitution adds several other factors which must be considered, including the district being contiguous, compact, drawn so as to not favor or disfavor an incumbent or a political party, trying to keep county and town boundaries within the same district, and trying to maintain the cores of prior districts. Because of the need to make districts equal in population it is not always possible to meet all of the other factors to be considered. Article III §4 (c) 1 - 5 list a number of factors which "shall" be considered. "Shall" is a requirement.

What is compactness? "Reapportionment is one area in which appearances do matter." Shaw v. Reno, 509 U.S. 630 at 647 (1993). Compactness has been described in scientific terms as the extent to which a district's geography is dispersed around its center. In practice many courts use the eyeball test. Bush v. Vera, 517 U.S. 952 at 959 (1996). The Petitioners in this case claim districts that look like snakes or are elongated over hundreds of miles violate the Constitutional requirement of compactness. What the courts have found is that "compactness" may vary depending on whether or not the issue is racial gerrymandering or dilution of vote cases. "Dramatically irregular shapes may have sufficient probative force to call for an explanation." Shaw v. Reno, (*supra*. at 647); Karcher v. Daggett, 462 U.S. 725 at 755 (1983).

A contiguous district requires that all parts of the district be connected. This is usually measured by whether it is possible to travel to all parts of the district without ever leaving the district. In this case, some of these proposed districts you would need a boat to go from one section of the district to another, but at least you do not have to cross district lines, just County lines and other political boundaries.

According to the eyeball test there are some districts that don't look like they are compact. They include Congressional Districts 1, 2, 3, 7, 8, 10, 17, 18, 19, 22 and 24. However, the eyeball test is not proof beyond a reasonable doubt.

The preservation of the cores of prior districts. At least 11 states, including New York, include this as part of the criteria when drawing new maps. The likely theory behind this is that by maintaining continuity of districts you maintain continuity of the representation for the citizens within that group. Obviously, when the number of districts has to change it is impossible to fully comply with this criteria.

According to *Redistricting Law 2020* by Davis, Strigari, Underhill, Wice & Zamarripa 18 states have now included language prohibiting redistricting to be drawn with the intent of favoring or disfavoring an incumbent or a political party, with 12 other states currently in the process of adopting neither favoring or disfavoring language. This language was the new anti-gerrymandering requirement added by the 2014 New York Constitutional Amendment.

Although the Federal Courts no longer have the authority under the First and/or

Fourteenth Amendments to invalidate maps based on partisan gerrymandering, numerous states and state courts have been addressing these issues. Rucho v. Common Cause, (supra.). States have been addressing this through constitutional amendments, the appointments of independent commissions and by prohibiting the drawing of district lines for partisan advantage. Rucho v. Common Cause, (supra.). In recent years both Florida and Pennsylvania courts have found and overturned maps based on partisan gerrymandering. See, League of Women Voters of Pa. v. Commonwealth 644 PA 287 (2018); League of Women Voters of Fla. v. Detzner, 172 So. 3d 363 (2015). In both of these cases the courts interpreted their respective constitutional provision which prohibited redistricting with the intent to favor or disfavor a political party or an incumbent. In the 2014 Constitutional Amendment Art. III §4(c)(5) New York added “Districts shall not be drawn to discourage competition or for the purpose of favoring or disfavoring incumbents or other particular candidates or political parties.” The meaning of this portion of the constitution and how it applies to the recently enacted Congressional and State Senate maps is key. Courts have for a long time struggled with being able to adequately define a standard to apply in such situations. Everyone agrees that politics plays some part in redistricting. In Davis v. Bandemer, 478 U.S. 109 (1986). At what point does permissible partisanship become unfair or unconstitutional? How much is too much? Comm. for a Fair & Balanced Map v. Ill. State Bd. of Elections, No. 11 C 5065 2011 U.S. Dist. LEXIS 117656 (2011).

In this case the Petitioners have presented expert testimony through Shawn Trende indicating that he ran at first 5,000 and then 10,000 potentially unbiased simulated redistricting maps. Respondents’ expert Michael Barber testified he ran 50,000 maps attempting to duplicate Trende’s maps. Trende and Barber’s maps came up with the same results. The result according to Trende’s Gerrymandering Index was that the maps adopted by the Legislature and signed by Governor Hochul were the most favorable to Democrats of any of the sample maps. Barber disagreed with Trende’s use of a Gerrymandering Index and concluded that the enacted maps actually favored Republicans. Likewise, Respondents other experts came to the conclusion that the enacted maps actually favored Republicans. The court finds it strains credulity that a Democrat Assembly, Democrat Senate, and Democrat Governor would knowingly pass maps favoring Republicans. Petitioners had two experts testify and Respondents had five experts testify. However, it is not the number of experts that is determinative but the quality and credibility of the expert testimony.

The Respondents’ expert attempted to discredit Trende’s analysis by claiming that a large percentage of Trende’s simulated maps are redundant in that the maps essentially show the same boundaries. It is claimed that as many as one half to three/fourths of the simulated maps are duplicative. Therefore, it was argued that Trende should have eliminated the duplicates as he did when addressing Maryland maps. Duplication or redundancy is claimed to be a common problem with this type of simulation. However, Trende ultimately did 10,000 simulated maps which could be reduced to 2,500 simulated maps if three quarters were redundant maps and were eliminated. Even under this analysis the enacted maps are the worst of 2,500 simulated maps, ie the worst of the worst.

What all the experts agreed upon was that the enacted congressional map would likely lead to the Republicans winning four Congressional seats. The Republicans currently hold 8 of the 27 congressional seats. A majority of the 5,000, 10,000 or 50,000 unbiased maps would have the Republicans winning less than four seats if you use 50.01% Democrats in a given district as the standard for which way a given district is likely to elect a Democrat or a Republican. Thus the Partisan Index used by the Respondents experts conclude the enacted maps favors Republicans because they are likely to receive four seats. However, both Trende and Respondents' expert, Jonathan Katz, testified that historically the Republicans win a district up to 52% Democrat and that incumbent Republicans enjoy an additional 3%, which means the districts would have to be at least 55% Democrats for the Democrats to actually win. The enacted maps gives the Democrats at least 55% in every district except the four that are Republican leaning. Obviously actual elections vary but as a general rule that is what the reliable historical data shows. What Trende's report shows is that the first four districts heavily lean toward the Republicans. See Trende's Gerrymandering Index (graphs pgs. 14 & 15 of the Expert Report dated February 14, 2021). However, in the enacted plans congressional seats 5 - 13 not only favor Democrats but show 55% or higher Democrats in those districts making them noncompetitive and virtually impossible for a Republican to win. However, in the "unbiased" sampling by Trende and Barber as few as 2 seats heavily favor Republicans, but in sample districts 3 - 13, while the Democrats were favored in those samples, their advantage was in most cases substantially less than 55% Democrat leaning and in many cases less than 52% Democrat leaning. That would mean these districts would be competitive and if historical data is accurate would likely result in several of those seats going to Republicans.

The Respondents' experts claim that the Gerrymandering Index should not be recognized by the court. The Petitioners cite Szeliga v. Lamone, C-02-CV-21-001816, a recent Maryland case (March 25, 2022) that recognized the Gerrymandering Index as proof that the maps were biased.

What is clear from the testimony of virtually every expert (Trende, Lavigna, Barber, and Katz) is that at least in the congressional redistricting maps the drawers packed Republicans into four districts thus cracking the Republican voters in neighboring districts and virtually guaranteeing Democrats winning 22 seats. In 5,000, 10,000 or 50,000 unbiased computer drawn maps there were several, and perhaps as many as 10 competitive districts. The enacted congressional map shows virtually zero competitive districts. Trende concludes and the court agrees that this shows political bias. Katz and Barber agree with Trende that creating districts with no competitive districts is a potential sign of political bias. However, both Katz and Barber conclude there is no bias since Republicans are likely to win four seats; and that four seats is higher than most of the projected wins assuming the Democrats win every district that is at least 50.01 % Democrat leaning which is what the Partisan Index is designed to depict.

The court finds that Trende's maps, and those drawn by Katz and by Barber, do not include every constitutional consideration. Katz and Barber testified they attempted to duplicate the maps drawn by Trende using the same variables used by Trende. However, none

of Respondents' experts attempted to draw computer generated maps using all the constitutionally required considerations. Katz said to do so would have significantly increased the time it would take to draw the maps. Both Katz and Barber thought that by including every constitutional consideration the maps would have been different, but they could not say how or by how much they would have differed. If they had done so and could thus demonstrate that the additional constitutional factors not considered in Trende's maps cause a representative sample that differed appreciably from Trende's sample then the court could have considered those maps against the enacted map to see whether or not the same political bias was shown. Since no such computer generated maps were provided to the court the court must use the evidence before it.

According to Rucho (supra.) the fundamental difficulty in formulating a standard to adjudicate whether or not partisan gerrymandering has occurred is for the court to determine what is "fair". Is fairness formulating a greater number of competitive districts? Whitford v. Gill, 218 F. Supp.3rd 837 (W.D. Wis 2016). Does fairness require as many safe seats for each party as possible? Davis v. Brademer, 478 U.S. 109 (1986). This court concludes that generating a map that significantly reduces the number of competitive seats is a clear sign of bias.

The court finds by clear evidence and beyond a reasonable doubt that the congressional map was unconstitutionally drawn with political bias in violation of Art. III §4(c)(5). One does not reach the worst of 2,500, 5,000, 10,000 or 50,000 maps by chance. Therefore, the court agrees with the Petitioners that the congressional map was unconstitutionally drawn with political bias in violation of Art. III §4(c)(5) of the New York Constitution.

The court will next consider the newly enacted senate map. The Petitioners presented credible evidence that this map also was gerrymandered. However, Todd Breitbart testified in-depth that many of the changes found between the 2012 enacted senate map and the 2022 enacted senate map were attempts by the legislature to correct malapportionment, and other constitutional deficiencies in the 2012 map. The court finds that testimony sufficiently credible. However, the court does not accept Breitbart's premise that the Republicans essentially gerrymandered the 2012 senate map since in 2012 the Assembly and Governorship were controlled by the Democrats and so the Republicans and Democrats had to work together to enact the maps. Therefore Petitioners could not show that the enacted 2022 senate map was drawn with political bias beyond a reasonable doubt. However, since this map was already struck down as void *ab initio* a new map will need to be drawn.

Having declared the recently enacted 2022 maps unconstitutional where do we go from here. It was clear from the testimony that not only is the 2012 congressional map not useable because New York State now only has 26 instead of 27 Congressional districts, but the 2012 senate map is also not useable because as a result of population shifts that map is now constitutionally malapportioned. Therefore, that leaves no maps. At this point in time, the candidates have been collecting signatures for over a month to get on the ballot for districts that

no longer exist. The end of the signature gathering process will occur within a few days. Yet Petitioners urge the court to have the parties quickly submit new maps and create new election time-lines so that the election can proceed on properly drawn redistricting maps that are free of partisan bias. The Respondents contend it is too late in the election cycle to try to draft new maps and then hold elections based on the new maps.

The Respondents point out that the U.S. Supreme Court has long ruled that Congressional elections can proceed even under defective lines. Merrill v. Milligan, 142 S. Ct. 879(2022); Abbott v. Perez, 138 S. Ct. 2305 (2018); Wells v. Rockefeller, 394 U.S. 542 (1969). In Wells v. Rockefeller the court faced a similar time deadline when on March 20, 1968 the primary election was three months away and yet the court permitted the election based on the redistricting maps that were constitutionally infirm, rather than delay the primaries and redraw the redistricting maps. Therefore, the Respondents urge this years election to proceed under the unconstitutional maps.

The Petitioners urge the court to strike down these constitutionally infirm maps and have new maps prepared. This of course will require revision of the election schedule since candidates would not even know what district he/she would run in before most of the current deadlines would have expired. The Petitioners urge moving the primary back to as late as August 23, 2022. The Petitioners cite other states that have recently moved their primaries to a later date because of challenges to the redistricting maps. See, Harper v. Hall, 865 S.E.2d 301, 302 (N.C. 2021); In re 2022 Legislative Districting of the State of Maryland, No. COA-MISC-0025-2021 (Md. Mar. 2022).

This court is well aware that this Decision and Order is only the beginning of the process and not the end of the process. There will likely be appeals to the Appellate Division and the Court of Appeals in addition to what ever time it takes to draw new maps. Then once the maps are drawn the County Boards of Election need time to apply the new redistricting maps to the precincts within their respective borders.

On March 3, 2022 when the court initially denied Petitioners application to stay the election process the court was not at all sure that the Petitioners could overcome the extremely high hurdle of demonstrating the maps violated the constitution. Thus, the court did not see a substantial likelihood for ultimate success by the Petitioners. Therefore the request for a temporary stay was denied. The court was also unaware of the prior courts ruling with regard to not permitting new elections in Congressional races in 2023 even when the maps were found to be unconstitutional. Having now determined that the various redistricting maps are unconstitutional the court is still concerned about the relatively brief time in which everything would need to happen to draw new maps, complete the appellate review process, revise the election process guidelines, and give the county election commissioners time to do their jobs.

However, this court's deadline of April 4, 2022 to make a decision was set by law (60 days to render a decision) in order to allow time for elections under newly drawn maps.

As the court sees it the drop dead date for sending out overseas military ballots is forty-five days before the November 8, 2022 general election. Thus, the ballots have to be finalized and mailed out no later than September 23, 2022. Between the primary election and that September 23rd date the votes have to be counted, the elections need to be certified, candidates need time to challenge election results, and the ballots need to be prepared. Thus, August 23, 2022 is the last possible date to hold a primary. An earlier August date would be preferred from the stand point of providing sufficient time from the holding of the primary to the completion of the November ballot. However, the same 45 day rule applies with regard to sending out overseas primary ballots. Thus, the primary ballots would have to be sent out no later than July 8, 2022. That only leaves about 100 days from today for the drawing of new maps, the candidates to gather signatures, the preparation of the primary ballots, the appellate review process, etc.

The court is mindful that in the Maryland case decided on March 25, 2022 that court threw out the recently enacted gerrymandered maps and ordered new maps to be drawn. This court finds that although it will be very difficult this court must require new maps to be drawn and the current maps are void and unusable. The court will leave it to the legislature and governor to develop new time frames for gathering signatures, how many signatures will be required to be on the ballot, whether signatures already gathered can be counted toward meeting the quota to appear of the ballot, etc.

N.Y. Constitution Art III §5 states as follows:

“In any judicial proceeding relating to redistricting of congressional or state legislative districts, any law establishing congressional or state legislative districts found to violate the provisions of this article shall be invalid in whole or in part. In the event that a court finds such a violation the legislature shall have a full and reasonable opportunity to correct the law’s legal infirmities.” (Emphasis added)

Therefore, the Constitution requires the Legislature to be given another chance to pass maps that do not violate the Constitution. Part of the problem is these maps were void *ab initio* for failure to follow the constitutional process of having bipartisan maps presented by the IRC. The second problem was the Congressional map that was presented was determined to be gerrymandered. The Legislature could correct the gerrymander issue, but they can not correct the constructional failure to have IRC present bipartisan maps for Congressional, State Senate, and State Assembly Districts. Therefore, the court will require any revised maps generated by the Legislature to receive bipartisan support among both Democrats and Republicans in both the senate and the assembly. The maps do not have to be unanimously approved, but they must enjoy a reasonable amount of bipartisan support to insure the constitutional process is protected. This they will need to do quickly. In Maryland the court gave their legislature 5 days in which to submit appropriate new maps for the court to review. The court will give the legislature until April 11, 2022 (which is slightly more time than they took to prepare the

enacted maps) to enact new bipartisan supported proposed maps that meet the constitutional requirements. This court will review those maps. If the maps do not receive bipartisan support or if no revised maps are submitted, then I will retain an expert at the States expense to draw new maps. Not only would the process be expensive it is possible that New York would not have a Congressional map in place that meets the Constitutional requirements in time for the primaries even with moving the primary date back to August 23, 2022.

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

ORDERED, ADJUDGED, and DECREED the Petitioner are found to be in the zone of interest and therefore having standing to bring this action; and it is further

ORDERED, ADJUDGED, and DECREED that the Governor and Lt. Governor are necessary parties to this action; and it is further

ORDERED, ADJUDGED, and DECREED that the process used to enact the 2022 redistricting maps was unconstitutional and therefore void *ab initio*; and it is further

ORDERED, ADJUDGED, and DECREED that with regard to the enacted 2022 Congressional map the Petitioners were able to prove beyond a reasonable doubt that the map was enacted with political bias and thus in violation of the constitutional prohibition against gerrymandering under Article III Sections 4 and 5 of the Constitution; and it is further

ORDERED, ADJUDGED, and DECREED that the maps enacted by 2021-2022 N.Y. Reg. Sess. Leg. Bills S8196 and A.9039-A (as technically amended by A.9167) be, and are hereby found to be void and not usable; and it is further

ORDERED, ADJUDGED, and DECREED that the maps enacted by 2021-2022 N.Y. Reg. Sess. Leg. Bills S9040-A and A.9168 be, and are hereby found to be void and not usable; and it is further

ORDERED, ADJUDGED, and DECREED that congressional, state senate and state assembly maps that were enacted after the 2010 census are no longer valid due to unconstitutional malapportionment and therefore can not be used; and it is further

ORDERED, ADJUDGED, and DECREED that the legislation enacted in November, 2021 purporting to create a way to bypass the IRC is unconstitutional and in clear violation of the Peoples' express desire to not amend the Constitution to permit the Legislature to act in the event the IRC failed to submit maps; and it is further

ORDERED, ADJUDGED, and DECREED that the enacted legislation L. 2021 c. 633 §1 be and is hereby found to be void and not usable and shall be stricken from the books; and it

is further

ORDERED, ADJUDGED, and DECREED that the Petitioners and others have been injured as a result of the unconstitutional enacted maps; and it is further

ORDERED, ADJUDGED, and DECREED that in order to grant appropriate relief the court hereby grants to Petitioners a permanent injunction refraining and enjoining the Respondents, their agents, officers, and employees or others from using, applying, administering, enforcing or implementing any of the recently enacted 2022 maps for this or any other election in New York, included but not limited to the 2022 primary and general election for Congress, State Senate and State Assembly; and it is further

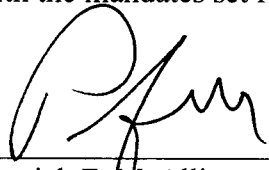
ORDERED, ADJUDGED, and DECREED that the Legislature shall have until April 11, 2022 to submit bipartisanly supported maps to this court for review of the Congressional District Maps, Senate District Maps, and Assembly District Maps that meet Constitutional requirements; and it is further

ORDERED, ADJUDGED, and DECREED that in the event the Legislature fails to submit maps that receive sufficient bipartisan support by April 11, 2022 the court will retain a neutral expert at State expense to prepare said maps; and it is further

ORDERED, ADJUDGED, and DECREED that any request for attorneys' fees and costs is denied; and it is further

ORDERED, ADJUDGED, and DECREED that this Court retains jurisdiction to issue any and all further orders which shall be necessary to comply with the mandates set forth herein.

Dated: March 31, 2022



Hon. Patrick F. McAllister
Acting Supreme Court Justice

ENTER

EXHIBIT D

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STATE OF NEW YORK
SUPREME COURT : COUNTY OF STEUBEN

Index No. E2022-0116CV

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,

Petitioners,

-against-

PRELIMINARY 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.

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

The Court of Appeals Opinion dated April 27, 2022 declared the recently enacted Congressional and State Senate redistricting maps to be unconstitutional and further directed this Court to have an independent special master develop both new Congressional and State Senate maps. This court appointed Dr. Jonathan Cervas to serve as the special master. Based on the current time pressure and after consulting with special master Cervas and the State Board of Elections this court is issuing the following preliminary order with regard to when the redistricting maps will be completed; when the primary for the Congressional and State Senate will be held; and when the military and other overseas ballots will need to be mailed. A further more detailed order will follow with regard to ballot access and other issues.

This order will only pertain to the Congressional and State Senate primary elections. It will be up to the Legislature to determine whether or not to continue the June primary for all

other offices or whether the Legislature will want to change the currently scheduled June primary to coincide with the Congressional and State Senate primary.

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


ORDERED that the new 2022 impartial redistricting maps for the Congressional and State Senate districts to be prepared by Special Master Dr. Jonathan Cervas will be available by May 20, 2022; and it is further

ORDERED that the 2022 primary for the Congressional and State Senate elections will be held on Tuesday, August 23, 2022; and it is further

ORDERED that the deadline for military and overseas ballots to be mailed will be July 8, 2022.

Dated: April 29, 2022

ENTER



Hon. Patrick F. McAllister
Acting Supreme Court Justice

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EXHIBIT E

RETRIEVED FROM DEMOCRACYDOCKET.COM

STATE OF NEW YORK
SUPREME COURT : COUNTY OF STEUBEN

Index No. E2022-0116CV

TIM HARKENRIDER, GUY C. BROUGHT,
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FANTON, JERRY FISHMAN, JAY FRANTZ,
LAWRENCE GARVEY, ALAN NEWPHEW,
SUSAN ROWLEY, JOSEPHINE THOMAS, and
MARIANNE VOLANTE,

Petitioners,

-against-

SECOND
AMENDED 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.

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

Based on the Court of Appeals Opinion dated April 27, 2022 this Court was directed to have an independent special master develop both new Congressional and State Senate maps. By Order dated April 18, 2022 this court appointed Dr. Jonathan Cervas to serve as the special master. In that same Order the court set forth a time line for the parties and other interested persons to submit proposed congressional maps. By this Order those time lines will be modified. The Order further provides everyone time to respond to each others submissions and to have a hearing before the court and Jonathan Cervas on May 6, 2022. Based on the current time pressure and after consulting with special master Cervas and the State Board of Elections this court is issuing this scheduling order with regard to submission of proposed Senate maps.

This second amended order is in response to the letters from Eric Hecker, Esq. dated April 28th & 29th and the letter from Misha Tseytlin, Esq. dated April 29, 2022.

The time for filing proposed Congressional maps has already expired except that the Appellate Division and Court of Appeals orders gave the Respondents until April 30, 2022 to submit proposed Congressional maps;

The parties, any other interested parties, and any person seeking to participate as an intervenor or *amicus curiae* shall file and submit any proposed complete State Senate Maps or any proposed single Senate district map, or any community of interest map to the court and Dr. Cervas for consideration by **May 4, 2022**:

The parties, any other interested parties, and any person seeking to participate as an intervenor or *amicus curiae* shall appear before Dr. Jonathan Cervas for a hearing on May 6, 2022 at 9:30 a.m. in person at the Steuben County Courthouse in Bath, New York. At that time anyone wishing to voice opposition to any previously submitted proposed Congressional or State Senate map may do so;


Dr. Jonathan Cervas shall complete his proposed 2022 preliminary Congressional and Senate redistricting map by May 16, 2022;

The parties, and any other interested parties and any person seeking to participate as an intervenor or *amicus curiae* shall submit to the court and Dr. Cervas any written opposition to the proposed maps by May 18, 2022; and

The final non-partisan Congressional and State Senate redistricting maps shall be issued by May 20, 2022.

Dated: April 29, 2022

ENTER



Hon. Patrick F. McAllister
Acting Supreme Court Justice