

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ALBANY

-----X
Anthony S. Hoffmann; Courtney Gibbons; Lauren Foley;
Seth Pearce; and Nancy Van Tassel,

Index No. 904972-22

Petitioners,

For an Order and Judgment Pursuant to Article 78 of the
New York Civil Practice Law and Rules,

-against-

The New York State Independent Redistricting
Commission; Independent Redistricting Commission
Chairperson David Imamura; Independent Redistricting
Commissioner Ross Brady; Independent Redistricting
Commissioner John Conway III; Independent Redistricting
Commissioner Ivelisse Cuevas-Molina; Independent
Redistricting Commissioner Elaine Frazier; Independent
Redistricting Commissioner Lisa Harris; Independent
Redistricting Commissioner Charles Nesbitt; and
Independent Redistricting Commissioner Willis H.
Stephens,

Respondents.

-----X

AARON M. MUKERJEE, an attorney admitted to practice in the courts of this State, and
not a party to this action, affirms the following to be true under the penalties of perjury pursuant
to CPLR § 2106:

1. I am an attorney at law duly admitted to practice before this Court and associate
with the law firm of Elias Law Group LLP.

2. I submit this Affirmation in support of Petitioners' motion for an order (1)
authorizing substituted service on Respondents pursuant to New York Civil Practice Law and
Rules ("CPLR") § 308(5) and (2) granting Petitioners leave to file an Amended Verified Petition.

I. Request for Authorization of Substituted Service

3. Petitioners have been diligent in their efforts to complete personal service on all Respondents in this action. Petitioners have served six (6) of the eight (8) Commissioners of the New York Independent Redistricting Commission (the “IRC”), including the IRC Chairperson David Imamura. Despite repeated attempts at service at their last known addresses, Petitioners have been unable to personally serve IRC Commissioners John Conway and Lisa Harris. However, upon information and belief, each IRC Commissioner is a “public officer” under the New York Public Officers Law and therefore is entitled to defense by the State of New York, and service has been completed on the New York State Office of the Attorney General (“OAG”).

4. As of the submission of this filing, none of the Respondents in this action have appeared through counsel or advised Petitioners that they are represented by counsel.

5. Given the unique circumstances, as well as the urgency of the matter, Petitioners request that the Court authorize and order, pursuant to CPLR § 308(5), service of the initiating papers and Amended Order to Show Cause by electronic mail or first-class mail on those Respondents for which attempts at personal delivery of process have been unsuccessful, i.e., IRC Commissioner John Conway and IRC Commissioner Lisa Harris; and that the Court further authorize such expedient method of service for any subsequent papers filed in this action pending the appearance of counsel on behalf of Respondents.

6. The specific details of Petitioners’ efforts to serve the Petition on Respondents are set forth below.

7. Personal service of the Petition has been completed on IRC Chairperson David Imamura; IRC Commissioners Ross Brady, Elaine Frazier, Charles Nesbitt, and Willis H.

Stephens; and the OAG. IRC Commissioner Ivelisse Cuevas-Molina has waived personal service and accepted service via electronic mail.

8. Petitioners completed personal service of the Order to Show Cause (Doc. [12](#)), Verified Petition (Doc. [1](#)), and related initiating papers, upon the OAG on July 1, 2022. A true and correct copy of the corresponding Affidavit of Service, dated July 5, 2022 (Doc. [19](#)), is annexed hereto as “Ex. 1.”

9. Assistant Attorney General Kelly Munkwitz subsequently agreed on July 12, 2022, to accept electronic service on behalf of the OAG in this matter. Petitioners served a copy of the Amended Order to Show Cause dated July 6, 2022 (Doc. [15](#)), via electronic mail upon the OAG on July 12, 2022.

10. On July 12, 2022, the OAG informed Petitioners’ counsel that, at this time, it has not determined whether it will appear on behalf of the Respondent IRC and/or the individual Respondent Commissioners in this matter, and will not accept service of papers on behalf of those parties.

11. Petitioners completed personal service of the Order to Show Cause (Doc. [12](#)), Verified Petition (Doc. [1](#)), and related initiating papers, upon IRC Chair David Imamura on July 5, 2022. A true and correct copy of the corresponding Affidavit of Service, dated July 6, 2022 (Doc. [17](#)), is annexed hereto as “Ex. 2.”

12. On July 12, 2022, Chair Imamura subsequently accepted service via electronic mail of the Amended Order to Show Cause dated July 6, 2022 (Doc. [15](#)).

13. Petitioners completed personal service of the Order to Show Cause (Doc. [12](#)), Verified Petition (Doc. [1](#)), and related initiating papers, upon IRC Commissioner Ross Brady on

July 5, 2022. A true and correct copy of the corresponding Affidavit of Service, dated July 6, 2022 (Doc. [20](#)), is annexed hereto as “Ex. 3.”

14. On July 12, 2022, Petitioners also sent a copy of the Amended Order to Show Cause dated July 6, 2022 (Doc. [15](#)), to Commissioner Brady via overnight mail.

15. Petitioners completed personal service of the Order to Show Cause (Doc. [12](#)), Verified Petition (Doc. [1](#)), and related initiating papers, upon IRC Commissioner Elaine Frazier on July 5, 2022. A true and correct copy of the corresponding Affidavit of Service, dated July 6, 2022 (Doc. [18](#)), is annexed hereto as “Ex. 4.”

16. On July 12, 2022, Petitioners also sent a copy of the Amended Order to Show Cause dated July 6, 2022 (Doc. [15](#)), to Commissioner Frazier via overnight mail.

17. Petitioners completed personal service of the Order to Show Cause (Doc. [12](#)), Verified Petition (Doc. [1](#)) and related initiating papers, upon IRC Commissioner Charles Nesbitt on July 1, 2022. A true and correct copy of the corresponding Affidavit of Service, dated July 1, 2022 (Doc. [16](#)), is annexed hereto as “Ex. 5.”

18. On July 12, 2022, Petitioners also sent a copy of the Amended Order to Show Cause dated July 6, 2022 (Doc. [15](#)), to Commissioner Nesbitt via overnight mail.

19. Petitioners completed personal service of the Amended Order to Show Cause dated July 6, 2022 (Doc. [15](#)), along with the Verified Petition (Doc. [1](#)), and related initiating papers, upon IRC Commissioner Willis H. Stephens on July 11, 2022. A true and correct copy of the corresponding Affidavit of Service, dated July 12, 2022 (Doc. [21](#)), is annexed hereto as “Ex. 6.”

20. Petitioners attempted personal service upon IRC Commissioner Ivelisse Cuevas-Molina on three occasions but were not able to complete personal service. A true and correct copy

of an Affidavit of Attempted Service on Commissioner Cuevas-Molina, dated July 13, 2022, is annexed hereto as “Ex. 7.”

21. On July 11, 2022, Commissioner Cuevas-Molina accepted service via electronic mail of the Amended Order to Show Cause dated July 6, 2022 (Doc. [15](#)), the Verified Petition (Doc. [1](#)), and related initiating papers.

22. Petitioners attempted personal service upon IRC Commissioner Lisa R. Harris on five occasions but have not been able to complete personal service. A true and correct copy of an Affidavit of Attempted Service on Commissioner Harris, dated July 13, 2022, is annexed hereto as “Ex. 8.” A true and correct copy of a second Affidavit of Attempted Service on Commissioner Harris, dated July 13, 2022, is annexed hereto as “Ex. 9.”

23. On July 11, 2022, Petitioners emailed Commissioner Harris’s official IRC email account to ask if Commissioner Harris would accept electronic service. Petitioners have not received a response to said request.

24. Petitioners have attempted personal service upon IRC Commissioner John Conway III on four occasions but have not been able to complete personal service. A true and correct copy of an Affidavit of Attempted Service on Commissioner Conway, dated July 13, 2022, is annexed hereto as “Ex. 10.”

25. On July 11, 2022, Petitioners emailed Commissioner Conway’s official IRC email account to ask if Commissioner Conway would accept electronic service. Petitioners have not received a response to said request.

26. As demonstrated above, Petitioners have made diligent efforts to complete personal service upon Respondents at their last known addresses.

27. Accordingly, as proposed in the accompanying Order to Show Cause, Petitioners request that the Court exercise its discretion pursuant to CPLR § 308(5) to authorize an expedient method of service of the initiating papers and Amended Order to Show Cause by electronic mail or first-class mail on those Respondents for which attempts at personal delivery of process have been unsuccessful, i.e., IRC Commissioner John Conway and IRC Commissioner Lisa Harris; and that the Court further authorize such expedient method of service for all Respondents for service of any subsequent papers filed in this action pending the appearance of counsel on behalf of Respondents.

II. Request For Leave to File Amended Verified Petition

28. Petitioners request leave to file an Amended Verified Petition, a true and correct copy of which is annexed hereto as “Ex. 11.”

29. A Memorandum of Law in Support of Petitioners’ motion for leave to file an amended petition and for authorization of substituted service, dated July 13, 2022, is annexed hereto as “Ex. 12.”

30. The Amended Verified Petition differs in two respects from Petitioners’ original Verified Petition filed on June 28, 2022 (Doc. [1](#)). First, the Amended Verified Petition adds new Petitioners Marco Carrión, Mary Kain, Kevin Meggett, Reverend Clinton Miller, and Verity Van Tassel Richards, each of whom are New York residents and voters and at least two of whom submitted comments to the IRC regarding New York’s congressional plan. These Petitioners’ claim and requested relief are identical to those asserted by the original Petitioners.

31. Second, in the Amended Verified Petition, Petitioners no longer seek to compel the IRC to submit to the legislature a second set of plans for state legislative district plans. Petitioners

only seek to compel the IRC to submit a second set of congressional district plans for consideration by the Legislature.

32. On June 29, the Supreme Court of New York County ordered the parties in *Nichols v. Hochul*, No. 154213-22, 2022 WL 2080172 (Sup. Ct. New York Cnty., June 29, 2022), to propose the proper means by which to draw the State Assembly map that will be used for the remainder of the decade following the 2022 elections. A true and correct copy of that order, dated July 29, 2022, is annexed hereto as “Ex. 13.” Petitioners understand that the *Nichols* litigation may result in an order requiring the IRC to comply with its constitutional redistricting duties as to the State Assembly Plan.

33. Accordingly, Petitioners seek leave to amend given their particular interest in their congressional districts and to avoid the possibility of duplicative and conflicting proceedings in different courts.

34. A true and correct copy of Petitioners’ original Verified Petition, dated June 28, 2022 (Doc. [1](#)), is annexed hereto as “Ex. 14.”

35. A true and correct copy of a redline document comparing Petitioners’ Amended Verified Petition, dated July 8, 2022, with Petitioners’ original Verified Petition, dated June 28, 2022, is annexed hereto as “Ex. 15.”

Dated: July 14, 2022
Arlington, Virginia

By: /s/ Aaron M. Mukerjee
Aaron M. Mukerjee