

EXHIBIT 12

RETRIEVED FROM DEMOCRACYDOCKET.COM

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ALBANY

-----X
Anthony S. Hoffmann et al.,

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
et al.,

Respondents.

-----X

**PETITIONERS' MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR LEAVE
TO AMEND PETITION AND FOR AUTHORIZATION OF SUBSTITUTED SERVICE**

RETRIEVED FROM DEMOCRACYDOCKET.COM

Petitioners submit this memorandum of law in support of their motion for leave to file an Amended Verified Petition (attached to Affirmation of Aaron M. Mukerjee (July 14, 2022) (“Mukerjee Aff.”) as Ex. 12), and for authorization of substituted service on Respondents pursuant to New York Civil Practice Law and Rules (“CPLR”) § 305(5).

I. Request for Leave to File Amended Verified Petition

Petitioners in Article 78 proceedings may file amended petitions with leave of the court. *See* CPLR § 7804(d) (“The court may permit such other pleadings as are authorized in an action upon such terms as it may specify.”); *Hendricks v. Annucci*, 116 N.Y.S.3d 443, 444–45 (3d Dep’t 2020). Similarly, after a special proceeding has commenced, new parties may be added with leave of the court. *See* CPLR § 401 (“After a proceeding is commenced, no party shall be joined . . . except by leave of court.”); *Barrett v. Dutchess Cnty. Leg.*, 831 N.Y.S.2d 540, 543 (2d Dep’t 2007).

The Amended Verified Petition differs in two respects from Petitioners’ original Verified Petition filed on June 28, 2022.

First, the Amended Verified Petition includes 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. *See* Ex. 11 ¶ 15. At least two of the new Petitioners also submitted comments to the Independent Redistricting Commission (the “IRC”) regarding New York’s congressional plan. *See id.* ¶¶ 18-19. The new Petitioners’ claim and requested relief are identical to those asserted by the original Petitioners.

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 districts. Instead, Petitioners seek to compel the IRC to submit only a second set of congressional districting plans for

consideration by the Legislature. After the filing of Petitioners' original Verified Petition, on June 29, the Supreme Court of New York County ordered the parties in *Nichols v. Hochul* to propose the proper means to draw the State Assembly map that will be used for the remainder of the decade following the 2022 elections. *See* Order, *Nichols v. Hochul*, No. 154213-22, 2022 WL 2080172 (Sup. Ct. New York Cnty., June 29, 2022) (attached to Mukerjee Aff. as Ex. 13). That litigation might result in an order requiring the IRC to comply with its constitutional redistricting duties as to state legislative plans. Given this development, Petitioners seek to narrow this action to the IRC's failure to submit a second set of congressional maps for consideration by the Legislature in order to avoid the possibility of duplicative and conflicting proceedings in different courts.

Accordingly, Petitioners respectfully request that this Court grant their motion for leave to file the Amended Verified Petition.

II. Request for Authorization of Substituted Service

Petitioners have made diligent efforts to complete personal service upon all Respondents, as set forth in the Affirmation of Aaron M. Mukerjee. *See* Mukerjee Aff. ¶¶ 3-27. 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. *Id.* ¶ 3. 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. *Id.* ¶ 4. 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"). *Id.* ¶ 3.

New York courts have permitted alternate forms of service, including service by electronic mail, where traditional service attempts were unsuccessful. *See Synder v. Alternate Energy Inc.*, 857 N.Y.S.2d 442 (Civ. Ct. 2008) (authorizing service of summons on defendant by email and regular mail where traditional service attempts were unsuccessful); *Safadjou v. Mohammadi*, 964 N.Y.S. 801, 802 (4th Dep't 2013) (upholding service of summons with notice by email as reasonably calculated to apprise foreign defendant of lawsuit); *N.Z. v. A.G.*, 968 N.Y.S.2d 355, 356 (Fam. Ct. 2013) (holding that service on party at his “most recent e-mail address . . . [wa]s deemed acceptable” to inform him of the proceeding); *see Hollow v. Hollow*, 747 N.Y.S.2d 704, 707 (Sup. Ct. 2002) (finding that service was “impracticable” under CPLR §§ 308(1), (2), and (4) and authorizing alternative service by e-mail); *Baidoo v. Blood-Dzraku*, 5 N.Y.S.3d 709, 716 (Sup. Ct. 2015) (holding that service of a divorce summons via Facebook constituted an appropriate “form of service that most comports with the constitutional standards of due process” after a wife was “unable to effect personal service”).

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.

Dated: July 14, 2022

EMERY CELLI BRINCKERHOFF
& ABADY, LLP

ELIAS LAW GROUP LLP

/s/ Matthew D. Brinckerhoff
Matthew D. Brinckerhoff
Andrew G. Celli
600 Fifth Avenue, 10th Floor
New York, New York 10020
Tel.: (212) 763-5000
mbrinckerhoff@ecbawm.com
acelli@ecbawm.com

/s/ Aria C. Branch
Aria C. Branch*
Harleen K. Gambhir*
Aaron M. Mukerjee
10 G Street NE, Suite 600
Washington, D.C. 20002
Tel.: (202) 968-4490
abranh@elias.law
hgambhir@elias.law
amukerjee@elias.law

DREYER BOYAJIAN LLP

/s/ James R. Peluso
James R. Peluso
75 Columbia Street
Albany, New York 12210
Tel.: (518) 463-7784
jpeluso@dblawnny.com

Jonathan P. Hawley*
1700 Seventh Avenue, Suite 2100
Seattle, Washington 98101
Tel.: (206) 656-0179
jhawley@elias.law

**Pro hac vice applications forthcoming*

CERTIFICATION OF WORD COUNT

I hereby certify that the word count of this memorandum of law complies with the word limits of 22 New York Codes, Rules and Regulations § 202.8-b(a). According to the word-processing system used to prepare this memorandum of law, the total word count for all printed text exclusive of the material omitted under 22 N.Y.C.R.R. § 202.8-b(b) is 906 words.

Dated: July 14, 2022

/s/ Aaron M. Mukerjee
Aaron M. Mukerjee