

THE STATE OF NEW YORK  
SUPREME COURT

COUNTY OF ALBANY

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Anthony S. Hoffman; Courtney Gibbons;  
Lauren Foley; Seth Pearce; and Nancy  
Van Tassel, Marco Carrión, Mary Kain,  
Kevin Meggett, Reverend Clinton Miller,  
and Verity Van Tassel Richards,

Petitioners,

DECISION AND ORDER  
Index No. 904972-22  
RJI No. 01-22-ST2408  
(Hon. Lynch, J.)

-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.

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INTRODUCTION

This is an Article 78 proceeding in the form of mandamus (CPLR § 7803(1)) to compel Respondents to prepare and submit to the Legislature a second redistricting plan corresponding to the 2020 census in accord with Article III, Sections 4 and 5(b) of the New York Constitution. Any such plan, if adopted by the Legislature would be effective following the 2022 election.

Tim Harkenrider, Guy C. Brought, Lawrence Canning, Patricia Clarino, George Dooher, Jr., Stephen Evans, Linda Fanton, Jerry Fishman, Jay Frantz, Lawrence Garvey, Alan Nephew,

Susan Rowley, Josephine Thomas, and Marianne Violante's, moved to intervene in this proceeding.<sup>1</sup> Intervenors were the successful Petitioners in Matter of Harkenrider v. Hochul, 204 A.D. 3d 1366 [4<sup>th</sup> Dept. 2022], modified 2022 N.Y. LEXIS 874 [2022].

In Harkenrider v. Hochul, the Court held that that the 2022 congressional redistricting map adopted by the Legislature was unconstitutional and remitted the matter to Supreme Court (McAllister, J.), which, in turn, by Decision and Order dated May 20, 2022, corrected by Decision and Order dated June 2, 2022, certified the 2022 Congressional Maps prepared by the Special Master "as being the official approved 2022 Congressional map...."<sup>2</sup> Intervenors claim that limiting the 2022 Congressional Map to the 2022 election, would undermine the integrity of the relief granted in Harkenrider v. Hochul.

### **MOTION TO INTERVENE**

Movants seek to intervene as a matter of right, or by permission of the Court. CPLR §1012 Intervention as of right..., provides, inter alia:

- (a) "Intervention as of right. Upon timely motion, any person shall be permitted to intervene in any action:
  2. when the representation of the person's interest by the parties is or may be inadequate and the person is or may be bound by the judgment"

Since Respondents, Independent Redistricting Commissioners: Ross Brady; John Conway III; Lisa Harris; Charles Nesbitt and Willis H. Stephens, filed a motion to dismiss the Petition on essentially the same grounds as the Intervenors, the Court cannot readily determine whether Intervenor's interests would not be adequately protected.<sup>3</sup> Since permissive intervention is

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<sup>1</sup> NYSCEF Doc. No. 74.

<sup>2</sup> See Harkenrifer et al v. Hochul et al, Supreme Court, Steuben County Index No. E2022-0116CV – NYSCEF Doc. No. 670 @ p. 5 and NYSCEF doc. No. 696.

<sup>3</sup> NYSCEF Doc. Nos. 106-111.

appropriate, however, it is not necessary to determine whether intervention by right has been established.

CPLR §1013 Intervention by permission, provides:

“Upon timely motion, any person may be permitted to intervene in any action when a statute of the state confers a right to intervene in the discretion of the court, **or when the person’s claim or defense and the main action have a common question of law** or fact. In exercising its discretion, the court shall consider whether the intervention will unduly delay the determination of the action or prejudice the substantial rights of any party.” (Emphasis added)

Here, Intervenor claim that the 2022 Congressional Map adopted by the Court in Harkenrider v. Hochul remains in full force and effect until a new redistricting plan is adopted following the 2030 census. In stark contrast, Petitioners contend that the 2022 Congressional Map should be limited to the 2022 election, and the IRC should be compelled to submit a second redistricting plan based on the 2020 census to the Legislature for consideration. In such event, the Legislature would have to vote to approve or disapprove. If disapproved, the Legislature would then be able to propose and adopt its own redistricting plan for successive elections after 2022. In fine, the common question of law is whether the IRC has authority to propose a second redistricting plan to the Legislature in the first instance.

Since Intervenor are ready to file a motion to dismiss the Petition herein, intervention will not unduly delay the determination of the action.<sup>4</sup> Intervention will not prejudice the rights of any party since the disputed issue has already been squarely raised by the pending motion to dismiss.<sup>5</sup>

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<sup>4</sup> NYSCEF Doc. Nos. 69 and 70.

<sup>5</sup> NYSCEF Doc. Nos. 106-111.

## CONCLUSION

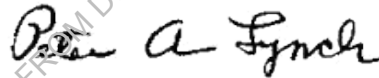
For the reasons more fully stated above, Intervenor's motion for permission to intervene is granted, and it is further,

ORDERED, that Intervenors are granted leave to file the documents attached to the Affirmation of Bennet Moskowitz In Support Of Motion For Leave To Intervene, and it is further,

ORDERED, that the caption shall be amended to add Tim Harkenrider, Guy C. Brought, Lawrence Canning, Patricia Clarino, George Dooher, Jr., Stephen Evans, Linda Fanton, Jerry Fishman, Jay Frantz, Lawrence Garvey, Alan Nephew, Susan Rowley, Josephine Thomas, and Marianne Violante's, as Intervenor-Respondents.

This memorandum constitutes both the decision and order of the Court.<sup>6</sup>

Dated: Albany, New York  
September 1, 2022




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PETER A. LYNCH, J.S.C

### PAPERS CONSIDERED:

All e-filed pleadings, with exhibits.

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<sup>6</sup> Compliance with CPLR R 2220 is required.

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