

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF STEUBEN

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:
TIM HARKENRIDER, GUY C. BROUGHT, :
LAWRENCE CANNING, PATRICIA CLARINO, :
GEORGE DOOHER, JR., STEPHEN EVANS, :
LINDA FANTON, JERRY FISHMAN, JAY :
FRANTZ, LAWRENCE GARVEY, ALAN :
NEPHEW, SUSAN ROWLEY, JOSEPHINE :
THOMAS, AND MARIANNE VIOLANTE, :

Petitioners, :

v. :

GOVERNOR KATHY HOCHUL, LIEUTENANT :
GOVERNOR AND PRESIDENT OF THE :
SENATE BRIAN A. BENJAMIN, SENATE :
MAJORITY LEADER AND PRESIDENT PRO :
TEMPORE OF THE SENATE ANDREA :
STEWART-COUSINS, SPEAKER OF THE :
ASSEMBLY CARL HEASTIE, NEW YORK :
STATE BOARD OF ELECTIONS, AND THE :
NEW YORK STATE LEGISLATIVE TASK :
FORCE ON DEMOGRAPHIC RESEARCH AND :
REAPPORTIONMENT, :

Respondents. :

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Index No.: E2022-0116CV

**PROPOSED ANSWER TO
AMENDED PETITION WITH
ADDITIONAL CAUSE OF ACTION
SEEKING TO INVALIDATE
STATE ASSEMBLY
MAPS**

PLEASE TAKE NOTICE that Petitioner-Intervenor Gavin Wax (“Petitioner-Intervenor”) alleges as follows and for his Proposed Answer to the Amended Petition with Additional Cause of Action Seeking to Invalidate State Assembly Maps:

1. Admit paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9, 11, 32-119, 121-217, 219-223, and 234-274.

2. Admit paragraph 10, but deny the second sentence of footnote 6, and with respect to footnote 7, (a) deny the allegations that “Petitioners do not challenge [the state Assembly] map or ask for its invalidation” and (b) deny the allegations that, “Therefore, the Court need not

consider any procedural failures related to enactment of the 2022 state Assembly map.”

3. Admit paragraph 120, but deny the content of footnote 23.
4. Deny paragraph 27.
5. Upon information and belief, admit paragraphs 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 28, 29, 30, 31, 218, and 224-233.

NEW CAUSE OF ACTION SEEKING TO INVALIDATE STATE ASSEMBLY MAPS

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

6. Petitioner-Intervenor incorporates each of the foregoing paragraphs as if fully set forth herein.

7. 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).

8. 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).

9. 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).

10. 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.

11. 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.

12. 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).

13. 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.

14. 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.

15. 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 state Assembly maps are invalid.

16. Since the Legislature had and has no constitutional authority to draw state Assembly 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.

17. Thus, this Court should draw its own state Assembly district maps.

18. This Court should enter judgment declaring that the 2022 state Assembly maps violate the New York Constitution.

PRAYER FOR RELIEF

WHEREFORE, Petitioner-Intervenor respectfully demands that this Court enter judgment and order against Respondents as follows:

A. Declaring, pursuant to CPLR § 3001, that the 2022 congressional map, 2022 state Assembly 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, all constitute unconstitutional maps enacted without complying with the mandatory constitutional procedures for redistricting in Article III, Section 4(b) of the New York Constitution, and that 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, 2012 state Senate map, or 2021 state Assembly map;

C. Enjoining Respondents from conducting any elections under the 2022 congressional map, 2022 state Senate map, or 2022 state Assembly map;

D. Adopting new, legally compliant congressional, state Senate, and state Assembly maps;

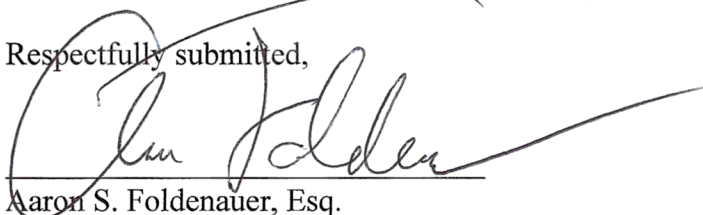
F. Suspending or enjoining the operation of any other state laws that would undermine this Court's ability to offer effective and complete relief to Petitioner-Intervenor for the November 2022 elections and related primaries;

G. Awarding Petitioner-Intervenor all of his reasonable attorneys' fees and costs; and

H. Awarding such other and further relief as this Court may deem just and proper.

Dated: May 1, 2022
New York, NY

Respectfully submitted,



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