

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF STEUBEN

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,

Index No.
E2022-0116CV

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.

THOMAS CONNOLLY, being duly sworn, says under penalties of perjury
as follows:

1. I serve as Director of Operations for the New York State Board of
Elections (“State Board”). I have held this position since 2017. From 2011 to
2017, I was Deputy Director of the Public Information Office at the State Board of
Elections. In my previous position I worked with the State Board Counsel’s Office

to monitor the transmission of military ballots within the federally mandated time periods and as such am intimately familiar with that transmission system and process. In my current capacity, the Operations Unit of the New York State Board of Elections supports and provides guidance to county boards of elections and the commissioners of each county board of elections pertaining to the administration of elections. Accordingly, I am familiar with state requirements and county board of elections’ practices regarding redistricting, election procedures, election district creation, ballot creation, absentee voting, poll sites and poll worker training and assignment. I am fully familiar with the facts and circumstances set forth herein. This affidavit is based on my personal knowledge.

2. I make this affidavit to describe the disruption to the electoral process that would result from altering Congressional or State Senatorial district lines in 2022 for the primary and general election in 2022. The New York State Board of Elections has taken no position in this litigation, so my affidavit is my own and is not made in a representative capacity for the agency.

Ballot Access Is Underway

3. The district boundaries for the offices of Member of United States House of Representatives and New York State Senator (“Legislative Offices”) for the primary on June 28, 2022 and general election on November 8, 2022 were

enacted into law on February 3, 2022 as Chapters 13 through 16 of the Laws of 2022.

4. Pursuant to New York’s Election Law candidates seeking the nomination of the Democratic, Republican, Conservative and Working Families parties for Legislative Offices obtain access to the primary ballot and ultimately the general election ballot by first filing designating petitions. A valid Congressional designating petition requires 1,250 signatures from enrolled members of the relevant party from the district or the number of signatures that is at least 5% of the enrollees in the district, whichever is less. A State Senate petition requires 1,000 such valid signatures or the signatures of 5% of the party enrollment in the district, whichever is less (Election Law § 6-136).

5. Designating petitioning for statewide offices (Governor, Attorney General, Comptroller) and the Legislative Offices at issue in this proceeding along with many other state and local offices began on March 1, 2022 as provided for in Election Law § 6-134 (4). As of March 1, 2022, parties had endorsed candidates, candidates had printed designating petitions and campaigns had mobilized volunteers and/or paid workers to solicit for signatures.

6. As of Monday March 21, 2022 more than half of the designating petitioning period has elapsed, with only two weeks and two days remaining until the last day to file designating petitions on Thursday April 7, 2022.

7. If the court were to order a halt to the designating process now, it would cause substantial disruption to candidates, political parties and boards of elections. The logistical difficulties would be magnified by the fact that any such order would assuredly be appealed creating a further period of uncertainty.

The Political Calendar

8. As provided by New York law applicable to the June 28, 2022 primary, there are 82 days between the last day to file designating petitions on April 7, 2022 and the date of the June 28, 2022 primary. The latest objections to petitions can be filed is on or about April 11 and specifications and hearings at the state or local boards of elections rapidly to follow. The last day to commence a court challenge to a designating petition is April 21, 2022. The primary election ballot pursuant to Election Law 4-110 *et seq.* must be certified by May 4, 2022, allowing time for boards to then print ballots and begin distribution of absentee ballots. Military and overseas ballots pursuant to law must be sent no later than May 13, 2022. See New York State Political Calendar, <https://www.elections.ny.gov/NYSBOE/law/2022PoliticalCalendar.pdf>.

9. Under ideal circumstances it is difficult for boards of elections to settle the ballot in time for the certification deadline and the military and overseas ballot transmittal deadlines. If the court ordered new district lines to be applicable this year, assuming boards would need multiple weeks to make adjustments to lines and assuming ballot access processes would need to start over again on the new lines (the petition period is typically 37 days and the post-petition review and litigation process takes about a month beyond that), there is no imaginable scenario where the primary could occur on June 28, 2022 for the Legislative Offices as provided for in current law.

10. No planning has been made for any added or alternative primary date. A new, additional primary would require finding poll sites available on the new date as well as early voting sites that would be available for nine days in the lead up to the election and scheduling thousands of poll workers for the postponed or additional primary. If a new additional primary were ordered, boards of elections would need to prepare simultaneously to provide for new ballot access for a new primary, run the June 28, 2022 primary for the state and local offices not impacted by this proceeding and prepare for the running of an additional primary that may not occur depending on the disposition of this case as well as any appeals.

11. While New York had held a federal primary in June pursuant to a federal court order and a separate state and local primary in September for four

federal election cycles prior to and including 2018, New York did not hold two primaries in the same year with intervening redistricting between the dates of the two primaries being necessary. The federal court order giving rise to the bifurcated primary schedule in New York in 2012 was issued in January 2012 before any ballot access procedures had even begun.

12. In 2012, the congressional, state senate and assembly lines were in place by mid-March. Any remedy in this case involving new lines would not be known until much later and would actually stop ballot access procedures already underway for some offices and not others.

13. The majority of the current voter registration systems used by county boards are simply incapable of maintaining multiple sets of the same district, further complicating any effort to prepare for an additional primary.

14. Under normal circumstances, in the context of a special election for Congress, Public Officer's Law § 42 recognizes that a single congressional special election requires at least seventy days lead time and preferably eighty days from the day of the proclamation of the election to have a primary that complies with federal law requirements related to transmission of overseas and military ballot. This timeframe is for a special election reflects only one contest on the ballot and party ballot access is not by petition (a document with hundreds of signatures

subject to objection) but instead by a streamlined party committee nomination (essentially a single document wherein the party notifies the board of elections as to the identity of the candidate), *and* in the special election context the district lines are already established. In contrast a multi-office primary with ballot access by petitions subject to challenge is far more complicated, and alteration of district office lines and election district lines would take additional time (likely weeks) before the actual ballot access process for a new primary could even begin again.

Redistricting Process for Boards of Elections

15. New York is not a top-down state in terms of its voter registration system. Accordingly, each of New York's 58 boards of elections (one board of elections for the City of New York and one for each county outside of the City of New York) is responsible for applying new district lines in their jurisdiction to their voter records and then sending to the statewide voter registration list (NYSVoter) the updated official voter records.

16. When the new lines became effective on February 3, 2022, New York's boards of elections turned their full attention to translating the new district boundaries into their voter registration systems so that New York's 12,982, 819 voters would be assigned to their correct districts. This is necessary to create poll books for elections, allow voters to receive the correct absentee ballots and to

provide data for candidates to create lists of voters from whom to seek petition signatures and to determine the correct number of designating petition signatures required for various offices. This work was largely but not completely done by March 1, 2022.

17. Upon receiving the shapefiles for the new Legislative Office districts, many boards of elections required roughly a month to prepare the local and state registration system for the beginning of petitioning. And in the time since, various latent errors and problems have arisen. Redoing any portion of redistricting introduces the risk of new errors, and the closer to an election event the changes must be made the less likely the problems are to be found and remedied without a disenfranchising impact.

Election Districts

18. For boards of elections, redistricting involves not simply reassigning millions of voter records to the appropriate new political geography, it often involves drawing new election district boundaries before that can occur. Election Districts are drawn by New York's 58 boards of elections.

19. The election district is the foundational unit of political geography that defines a voter's ballot (every general voter in an election district has the same ballot). Each election district is assigned to a poll site, which may have one or

more election districts. There are 15,587 election districts in New York, as of 2021 assigned to 5,354 poll sites managed by New York's 58 boards of elections. Redrawing election districts to reflect redistricting is a significant undertaking.

20. When a larger political subdivision boundary change bisects an existing election district, the election district must be redrawn before voter records can be finally updated. For every bisected election district impacted by redistricting, at least one other adjacent election districts necessarily must also be adjusted or a new additional election district must be designated. This micro-redistricting task of drawing election districts requires considerations of available polling locations, map analysis and consideration of other practicalities related to how voters are impacted.

21. Further, because New York's political parties are comprised of party committees whose representatives are elected from election districts, changes in election districts impact party committees. In many counties petitions are being circulated for member of county committees from election districts. If new Legislative District lines were to be drawn for 2022 some unknown number of election districts will need to be redrawn for the reasons described herein and those election district changes will nullify petitions being circulated for the impacted party positions of member of county committee.

22. Given that so many election related processes depend on the definition of election districts (election district definition defines ballots, defines where a voter votes and defines how party committees are constituted), the normal statutory deadline for altering election district boundaries is one of the earliest deadlines in the unfolding of the political process. Election district changes are required to be made by February 15 of any given year, with certain exceptions. And the last date for local boards to assign poll sites was March 15, 2022. See Election Law § 4-104.

Technical Issues

23. Making changes to the underlying architecture of the voter registration systems of the counties after the election process is underway (as it is now) could impair ballot access and voter registration and absentee ballot assignment functions (absentee voters are applying and being assigned to election districts already). If new lines were ordered at this juncture, it is simply not clear how compliance would be possible without significant risk to the integrity of the electoral process.

Voter and Candidate Confusion

24. Newly registered voters and transferred voters are receiving informational notifications required by law that state their election district and

other district designations and their polling locations. This information will prove false in many instances if a remedy is ordered this year involving altered district lines or a new election.

25. Imminently, as required by Election Law § 4-117, boards of elections will be sending all of New York's 11,905,886 active voters an annual informational mailing informing them of their poll site, the primary date and their political geography. A change to district boundaries would create significant voter confusion potentially even requiring these notices to be reissued.

26. At this point hundreds of candidates have engaged in petitioning based on the new lines, created campaign committees and expended funds to seek office based on the new lines.

27. Stopping the ballot access process and restarting it on revised as yet unknown lines and adding an additional primary will cause confusion as well as financial, logistical and administrative burdens on boards of elections.

Dated: March 21, 2022


THOMAS CONNOLLY

Sworn to before me this 21st day of March 2022


Notary Public
BRIAN L. QUAIL, Esq.
Notary Public, State of New York
No. 02QU6071886
Qualified in Schenectady County
Commission Expires 8/5/23