

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. _____

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

**PETITIONERS' MEMORANDUM OF LAW IN SUPPORT OF PETITION PURSUANT
TO ARTICLE 78 OF THE CPLR**

TABLE OF CONTENTS

PRELIMINARY STATEMENT 1

LEGAL BACKGROUND 4

FACTUAL BACKGROUND..... 6

 I. The IRC failed to fulfill its constitutional duties. 6

 II. The Legislature and Governor enacted new district maps..... 8

 III. The Court of Appeals invalidated the 2021 Legislation and the Legislature’s plans. 10

 IV. Despite widespread objections, the Steuben County Supreme Court adopted a congressional plan that unnecessarily shifts residents into new districts and divides long-recognized communities of interest. 11

 V. Petitioners seek to compel the IRC to submit a second round of redistricting plans to the Legislature for consideration, as required by Article III, Sections 4 and 5 of the New York Constitution..... 14

LEGAL STANDARD 15

ARGUMENT..... 15

CONCLUSION..... 17

CERTIFICATION OF WORD COUNT 19

Petitioners submit this memorandum of law in support of their Petition for relief pursuant to Article 78 of the New York Civil Practice Law and Rules (“CPLR”) and Article III, Sections 4 and 5 of the New York Constitution. Petitioners seek a judgment compelling Respondents to “prepare and submit to the legislature a second redistricting plan and the necessary implementing legislation for such plan” as required by Article III, Section 4(b) of the New York Constitution, in order to ensure that a lawful plan is in place immediately following the 2022 elections and can be used for subsequent elections this decade.

PRELIMINARY STATEMENT

In 2014, New York voters approved constitutional amendments (the “Redistricting Amendments”) to reform the congressional and state legislative redistricting processes. The amendments, now codified in Article III, Sections 4 and 5(b) of the New York Constitution, altered many aspects of the redistricting process, from changing the legislative procedures used to approve new districts and mandating new substantive criteria for maps to creating a process for judicial review of adopted plans. Notably, the Redistricting Amendments provided for the creation of an independent redistricting commission (the “IRC”), whose members would be appointed in a bipartisan fashion and would reflect the diversity of the state. The Redistricting Amendments require the IRC to submit proposed redistricting plans for consideration by the Legislature in accordance with a carefully crafted process that includes extensive public comment.

Following the 2020 census, the IRC held numerous public hearings both virtually and in person across the State of New York, as required by Article III, Section 4(b). Following this months-long process, the Democratic and Republican members of the IRC could not agree on a single redistricting plan, and so each delegation submitted a first set of redistricting maps in

January 2022. The Legislature rejected both sets of maps, as it was entitled to do under Article III, Section 4.

At that point, the IRC abandoned its constitutional duty. Rather than prepare and submit a second round of plans, as was constitutionally required by Article III, Section 4(b), the members of the IRC instead declared that they could not reach agreement. Although the option of sending separate plans to the Legislature—as they had done the first time around—remained available, certain members of the IRC refused to meet, thereby denying a quorum. Paralyzed, the IRC failed to send a second round of plans to the Legislature.

The Legislature had anticipated this possibility and passed legislation in 2021 (“the 2021 Legislation”) authorizing the Legislature to pass a redistricting plan in the event that the IRC failed to submit redistricting plans. *See* L 2021, ch 633. Pursuant to that statutory authority, the Legislature stepped into the void left by the IRC’s inaction, introducing and adopting congressional, State Senate, and State Assembly maps to ensure that New York’s 2022 primary elections could proceed as scheduled.

But on April 27, 2022, the New York Court of Appeals held the 2021 Legislation unconstitutional to the extent that it allowed the Legislature to pass a redistricting plan in the absence of a second set of plans submitted by the IRC. Consequently, the Court of Appeals invalidated the statute as well as the Legislature’s congressional and State Senate plans. *See Harkenrider v. Hochul*, 2022 N.Y. Slip Op. 02833, 2022 WL 1236822, at *1 (N.Y. Apr. 27, 2022) (nullifying districting maps because IRC failed to complete “mandatory process for submission of electoral maps to the legislature”). The Court of Appeals’ decision makes clear that the IRC did not complete its constitutionally required redistricting duties. And by striking down the 2021 Legislation, the Court of Appeals also made clear that the Legislature was powerless to enact a

new redistricting plan once the IRC refused to submit a second set of plans. The State Assembly plan was invalidated on similar grounds soon thereafter, though the Legislature's State Assembly map will remain in effect for the 2022 elections due to timing issues. *See Nichols v. Hochul*, 2022 Slip Op. 03809, 2022 WL 2080172, at *1 (1st Dep't June 10, 2022).

Through the Redistricting Amendments, New Yorkers demanded that the state's redistricting process be democratic, transparent, and conducted by the IRC and the Legislature pursuant to procedural and substantive safeguards. They did so to ensure that their voices would be heard in the redistricting process—directly through the IRC public-input process and indirectly through their elected legislators. The Redistricting Amendments' process was crafted to ensure the substantive outcomes the voters sought; namely, maps drawn without partisan intent that reflect New York's diversity and its communities of interest. *See* N.Y. Const. art. III, § 4(c)(5). Instead of achieving this result during the past redistricting cycle, New Yorkers ended up with a judicial map-drawing process for congressional and State Senate districts that was not transparent, did not adequately consider the views of minority voters, and tore apart long-standing communities of interest.¹

In other words, as a direct result of the IRC's refusal to carry out its constitutional duty, New York voters, including Petitioners, one of whom submitted comments and testimony to the IRC during its public hearing process, have yet to vindicate their rights under the Redistricting Amendments. The Court of Appeals has already determined which district plans will be in place during the 2022 elections. But subsequent elections this decade should occur under plans adopted

¹ On June 10, 2022, the Court of Appeals invalidated the State Assembly map passed by the Legislature and remanded to the Supreme Court of New York County “for consideration of the proper means for redrawing” the map. *See Nichols*, 2022 WL 2080172, at *1-2. The Supreme Court has not yet determined how the State Assembly map will be created.

pursuant to the constitutionally mandated process for the IRC and Legislature. Accordingly, Petitioners ask this Court to issue a writ of mandamus ordering the IRC and its commissioners to fulfill their constitutional duty under Article III, Sections 4 and 5 of the New York Constitution by submitting a second round of proposed congressional and state legislative districting plans for consideration by the Legislature, in order to ensure that a lawful plan is in place immediately following the 2022 elections and can be used for subsequent elections this decade.

LEGAL BACKGROUND

Every ten years, the district lines for New York's congressional, State Senate, and State Assembly seats are redrawn to adjust for population variances based on the results of the decennial U.S. census. *See* N.Y. Const. art. III, § 4(a). Newly drawn maps must be approved by the Legislature and signed by the Governor before they become effective. *See id.* art. III, § 4(b). In 2014, New York voters amended the state constitution, establishing new procedural and substantive requirements for redistricting.

The Redistricting Amendments created an independent redistricting commission, the IRC, with authority to draw district plans and submit those plans to the Legislature for its approval, rejection, or amendment. *Id.* art. III, §§ 4(b), 5-b. The IRC is comprised of ten commissioners who are appointed in bipartisan fashion. Each party's legislative leaders must appoint four commissioners. *Id.* art. III, § 5(b). A bipartisan majority of the resulting eight commissioners must then appoint the remaining two. *Id.* The Redistricting Amendments require that "to the extent practicable," commissioners "reflect the diversity of the residents of this state with regard to race, ethnicity, gender, language, and geographic residence." *Id.* art. III, § 5-b(c).

When both houses of the Legislature are controlled by the same political party, a seven-vote majority in the IRC is required to approve a redistricting plan and send it to the Legislature,

with one exception. *Id.* If the IRC “is unable to obtain seven votes to approve a redistricting plan on or before January first . . . or as soon as practicable thereafter,” it must submit to the Legislature the plan or plans that received the most votes. *Id.* art. III, § 5-b(g).

The IRC must submit its first approved plans to the Legislature for a vote “on or before January first or as soon as practicable thereafter but no later than January fifteenth.” *Id.* art. III, § 4(b). Each house of the Legislature must then vote on the IRC’s submissions “without amendment.” *Id.* If the Legislature does not approve the IRC’s first proposed maps, then the IRC must repeat the process again. The Redistricting Amendments provide that “[w]ithin fifteen days of [the] notification [of disapproval of the first plan] and in no case later than February twenty-eighth, the redistricting commission shall prepare and submit to the legislature a second redistricting plan and the necessary implementing legislation for such plan.” *Id.* Upon receipt of the second round of IRC maps, the Legislature must vote on the maps “without amendment.” *Id.* Should that vote fail, the IRC process is complete, and the Legislature assumes the redistricting pen to draw its own plans “with any amendments each house of the legislature deems necessary.” *Id.*

The Redistricting Amendments are silent on what should occur if the IRC fails to submit a second set of maps to the Legislature. The 2021 Legislation provided that “if the [IRC] d[oes] not vote on any redistricting plan or plans, for any reason, by the date required for submission of such plan,” the Legislature could proceed to introduce redistricting legislation. *See* L 2021, ch 633; *see also Harkenrider*, 2022 WL 1236822, at *9 (describing the statute as “authorizing the legislature to move forward on redistricting even if the IRC fails to submit maps”). The 2021 Legislation also required that “the [IRC] . . . submit to the legislature all plans in its possession, both completed

and in draft form, and the data upon which such plans are based,” L 2021, ch 633, presumably to ensure that the Legislature could benefit from the IRC record in adopting new redistricting plans.

The Redistricting Amendments also included several new substantive requirements that map-drawers must consider when drawing district lines. Districts shall not result “in the denial or abridgement” of minority voting rights and “shall not be drawn to discourage competition or for the purpose of favoring or disfavoring incumbents or other particular candidates or political parties.” N.Y. Const., art. III, §§ 4(c)(1), (5). Additionally, map-drawers must consider “the maintenance of cores of existing districts,” “pre-existing political subdivisions,” and “communities of interest.” *Id.* art. III, § 4(c)(5).

Finally, the Redistricting Amendments also created a process for remedying legal deficiencies in redistricting plans. The Redistricting Amendments provide that “[a]n apportionment by the legislature, or other body, shall be subject to review by the supreme court, at the suit of any citizen.” *Id.* art. III, § 5. The Redistricting Amendments also provide that “[i]n any judicial proceeding relating to redistricting of congressional or state legislative districts, any law establishing congressional or state legislative districts found to violate the provisions of [Article III] shall be invalid in whole or in part.” *Id.* Furthermore, “[i]n the event that a court finds such a violation, the legislature shall have a full and reasonable opportunity to correct the law’s legal infirmities.” *Id.* (emphasis added).

FACTUAL BACKGROUND

I. The IRC failed to fulfill its constitutional duties.

The newly established IRC convened in the spring of 2021, pursuant to the requirements of the Redistricting Amendments. Pet. ¶ 32. The IRC held hearings in the summer and fall of 2021 to aid its drawing of the state’s congressional and state legislative boundaries. *Id.* On January 3,

2022, following months of meetings, hearings, and legwork, the IRC voted on plans to submit to the Legislature. *Id.* ¶ 33. No map garnered the seven required votes, and, consistent with the New York Constitution, the IRC submitted the plans that received the most votes—a Republican-proposed set of maps and a Democratic-proposed set of maps, each of which received five votes.² On January 10, 2022, the Legislature rejected both sets of maps and notified the IRC. Pet. ¶ 33.

Subsequently, the IRC refused to submit a second set of redistricting plans and the necessary implementing legislation “[w]ithin fifteen days of such notification and in no case later than February twenty-eighth,” as required by Article III, Section 4(b) of the New York Constitution. Pet. ¶ 34. On January 24, 2022, Chair Imamura announced that the IRC was deadlocked and would not submit a second round of recommended plans to the Legislature. *Id.* ¶ 35. Republican Vice Chair Martins claimed that the IRC’s Democratic commissioners refused to develop a new proposal.³ Meanwhile, Chair Imamura stated that the Republican commissioners simply refused to meet.⁴ The Democratic commissioners said in a statement, “We have repeatedly attempted to schedule a meeting by [January 25, 2022], and our Republican colleagues have refused. This is the latest in a repeated pattern of Republicans obstructing the Commission doing its job. We have negotiated with our Republican colleagues in good faith for two years to achieve a single consensus plan. At every step, they have refused to agree to a compromise.”⁵ They added,

² Letter from Karen Blatt to Legislative Leaders, N.Y. State Indep. Redistricting Comm’n (Jan. 3, 2022), https://www.nyirc.gov/storage/plans/20220103/planA_cover_letter.pdf; Letter from Jack Martins et al., N.Y. State Indep. Redistricting Comm’n (Jan. 3, 2022), https://www.nyirc.gov/storage/plans/20220103/planB_cover_letter.pdf.

³ See Joshua Solomon, *Independent Redistricting Commission Comes to a Likely Final Impasse*, Times Union (Jan. 24, 2022), <https://www.timesunion.com/state/article/Independent-Redistricting-Commission-comes-to-a-16800357.php>.

⁴ See Rachel Vick, *Redistricting Deadline Leaves Electoral Lines in Limbo*, Queens Daily Eagle (Jan. 25, 2022), <https://queenseagle.com/all/redistricting-deadline-leaves-electoral-lines-in-limbo>.

⁵ *Id.*

“The Republicans are intentionally running out the clock to prevent the Commission from voting on second maps by its deadline.”⁶

Ultimately, January 25, 2022 and February 28, 2022 came and went without any action by the IRC. Pet. ¶ 37. At that point, it was not clear whether the redistricting process had failed, as the 2021 Legislation appeared to give the Legislature the opportunity to pass new redistricting plans.

II. The Legislature and Governor enacted new district maps.

Following the IRC’s failure to vote on and submit a second round of maps, the Legislature assumed control over the redistricting process.⁷ Pursuant to the 2021 Legislation, the Legislature passed a new congressional plan, State Senate plan, and State Assembly plans on February 3, 2022. Pet. ¶ 38. Governor Hochul signed the three plans into law later that day. *See* A9167/S8196, A9039-A/S8172-A, A9168/S8197, S8185-A/A9040-A, 2022 Leg., Reg. Sess. (N.Y. 2022).

That same day, a group of Republican voters filed a petition in the New York Supreme Court in Steuben County, claiming that the new congressional plan was unconstitutional. *See generally* Pet., *Harkenrider v. Hochul*, No. E2022-0116CV (Steuben Cnty. Sup. Ct. Feb. 3, 2022), NYSCEF Doc. No. 1 (attached to Affirmation of James R. Peluso (June 28, 2022) (“Peluso Aff.”) as Ex. 1). The *Harkenrider* petitioners alleged that the plan was procedurally defective because the Legislature lacked the authority to enact it after the IRC failed to submit a second set of proposed plans to the Legislature. *Id.* ¶¶ 186-197. The Petitioners alleged that because the enacted congressional plan was procedurally invalid, New York’s prior congressional map remained in

⁶ *Id.*

⁷ *See* Nick Reisman, New York Lawmakers to Draw Redistricting Maps, Expect Vote Next Week, Spectrum News (Jan. 26, 2022), <https://spectrumlocalnews.com/nys/central-ny/ny-state-of-politics/2022/01/26/new-york-lawmakers-to-draw-redistricting-maps--expect-vote-next-week>.

place, rendering the state’s congressional districts unconstitutionally malapportioned. *Id.* ¶¶ 198–207. The petitioners also alleged that the legislatively enacted congressional plan was a partisan gerrymander in violation of the New York Constitution. *Id.* ¶¶ 208–15. They later amended their petition to challenge the Legislature’s State Senate plan on the same bases. *See generally* Am. Pet., *Harkenrider*, No. E2022-0116CV (Steuben Cnty. Sup. Ct. Feb. 14, 2022), NYSCEF Doc. No. 33 (attached to Peluso Aff. as Ex. 2).

On March 31, 2022, the Steuben County Supreme Court enjoined use of the legislatively enacted congressional, State Senate, and State Assembly plans for the 2022 elections. *See* Decision & Order at 17–18, *Harkenrider*, No. E2022-0116CV (Steuben Cnty. Sup. Ct. Mar. 31, 2022), NYSCEF Doc. No. 243 (attached to Peluso Aff. as Ex. 3). The court held that the Legislature violated the New York Constitution by enacting redistricting legislation after the IRC had failed to submit a second round of proposed maps. *Id.* at 10. It also held that the enacted congressional plan was drawn with unconstitutional partisan intent under Article III, Section 4(c)(5) of the New York Constitution. *Id.* at 14.

The Steuben County Supreme Court ordered that “the Legislature shall have until April 11, 2022 to submit bipartisanly supported maps to this court for review,” and further ordered that it would appoint a neutral expert to draw new maps if the Legislature failed to produce bipartisan maps by that date. *Id.* at 18. Soon after, the Fourth Department of the New York Supreme Court, Appellate Division stayed the Steuben County Supreme Court’s order, allowing primary processes and petitioning to continue under the Legislature’s congressional and State Senate plans. *See* Order, *Harkenrider v. Hochul*, No. CAE 22-00506 (4th Dep’t Apr. 8, 2022) (attached to Peluso Aff. as Ex. 4). Two weeks later, on April 21, the Fourth Department reversed the Steuben County Supreme Court’s holding that the new plans were procedurally invalid – but nonetheless struck

down the congressional map as an unconstitutional partisan gerrymander. *See Harkenrider v. Hochul*, 204 A.D.3d 1366, 1369–70, 1374 (4th Dep’t 2022).

III. The Court of Appeals invalidated the 2021 Legislation and the Legislature’s plans.

On April 27, 2022—one week before the New York State Board of Elections’ deadline to certify ballots for the state’s primary elections—the New York Court of Appeals held that the 2021 Legislation was unconstitutional and invalidated the enacted congressional and State Senate plans. The Court of Appeals explained that “the legislature and the IRC deviated from the constitutionally mandated procedure” required by the “plain language” of the Redistricting Amendments. *Harkenrider*, 2022 WL 1236822, at *5.

The Court described the “mandatory process for submission of electoral maps to the legislature,” as follows:

The IRC “shall prepare” and “shall submit” to the legislature a redistricting plan with implementing legislation, that IRC plan “shall be voted upon, without amendment,” by the legislature, and—in the event the first plan is rejected—the IRC “*shall* prepare and submit to the legislature a second redistricting plan and the necessary implementing legislation,” which again shall be voted upon, without amendment.”

Id. at *1, *6 (quoting N.Y. Const. art. III, § 4(b) (emphasis in original)). The Court of Appeals emphasized that “the detailed amendments leave no room for legislative discretion regarding the particulars of implementation.” *Id.* at *8.

The Court of Appeals explained that the 2021 Legislation was unconstitutional because “the drafters of the [Redistricting Amendments] and the voters of this state intended compliance with the IRC process to be a constitutionally required precondition to the legislature’s enactment of redistricting legislation.” *Id.* at *9. In other words, “the IRC’s fulfillment of its constitutional obligations was unquestionably intended to operate as a necessary precondition to, and limitation

on, the legislature’s exercise of its discretion in redistricting.” *Id.* at *7. The Court of Appeals ordered the Steuben County Supreme Court to draw new congressional and State Senate maps for the 2022 elections with the help of a special master. *See id.* at *13. In so ordering, the Court of Appeals explained that “it will likely be necessary to move the congressional and senate primary elections to August.” *Id.* at *12.

Even though the Redistricting Amendments included a provision requiring that the Legislature be given a “full and reasonable opportunity to correct . . . legal infirmities,” N.Y. Const. art. III, § 5, the Court of Appeals held that “[t]he procedural unconstitutionality of the congressional and senate maps is, at this juncture, incapable of a legislative cure” because the IRC had not sent a second set of maps. *Harkenrider*, 2022 WL 1236822, at *12.

More than a month later, on June 10, the First Department of the Appellate Division relied on the Court of Appeals’ *Harkenrider* decision to invalidate the Legislature’s State Assembly plan based on “procedural infirmities in the manner in which it was adopted.” *Nichols*, 2022 WL 2080172, at 1. The court declined to delay the June 28, 2022, State Assembly primary election, however, and remanded the case to the New York County Supreme Court “for consideration of the proper means for redrawing the state assembly map.” *Id.*

IV. Despite widespread objections, the Steuben County Supreme Court adopted a congressional plan that unnecessarily shifts residents into new districts and divides long-recognized communities of interest.

Two days after the Court of Appeals decision invalidating the legislatively enacted congressional and State Senate plans, the Steuben County Supreme Court ordered that New York’s congressional and State Senate primary elections would occur on August 23, 2022. Prelim. Order at 2, *Harkenrider*, No. E2022-0116CV (Steuben Cnty. Sup. Ct. Apr. 29, 2022), NYSCEF Doc. No. 301 (attached to Peluso Aff. as Ex. 5).

Unlike the constitutionally mandated IRC and legislative redistricting process, the Steuben County Supreme Court’s process for adopting new congressional and State Senate plans provided no meaningful opportunity for the public to comment on maps submitted to the court without traveling to Bath *in person*—a hardship for the vast majority of New Yorkers, including minority voters who live hours away in New York City, voters who do not own cars, and voters who were not able to take an entire day off work to participate in the court’s hearing. Pet. ¶ 51.

Article III, Section 5-b(c) of the New York Constitution requires that IRC commissioners “reflect the diversity of the residents of this state with regard to race, ethnicity, gender, language, and geographic residence” and mandates that “to the extent practicable the appointing authorities shall consult with organizations devoted to protecting the voting rights of minority and other voters concerning potential appointees to the commission.” By contrast, the Steuben County Supreme Court’s special master was not selected on diversity-related criteria. *Id.* ¶ 52. And his map-drawing process took place exclusively in Steuben County, which is both geographically removed from New York’s major metropolitan areas and is one of the *least* racially diverse areas of the state. *Id.* ¶ 51. Indeed, while New York State’s non-Hispanic White population is 55.3%, Steuben County’s is 93.4%.⁸ And while the IRC public comment process played out over the course of many months as part of an iterative map-drawing process, comments regarding the Steuben County Supreme Court’s special master’s proposed map were due just two days after it was released – which was followed by the map’s ordered implementation just two days later, on May 20, 2022. Pet. ¶ 53.

⁸ Compare *Quick Facts: Steuben County, New York*, U.S. Census Bureau, <https://www.census.gov/quickfacts/steubencountynewyork> (last visited June 15, 2022), with *QuickFacts: New York*, U.S. Census Bureau, <https://www.census.gov/quickfacts/NY> (last visited June 15, 2022).

In a report justifying his map, the special master stated that “[c]ommunities of interest are notoriously difficult to precisely define. Even within a specific minority community there may be issues of what are the boundaries of particular neighborhoods and which neighborhoods most appropriately belong together.” Rep. of the Special Master at 20, *Harkenrider*, No. E2022-0116CV (Steuben Cnty. Sup. Ct. May 21, 2022), NYSCEF Doc. No. 670 (attached to Peluso Aff. as Ex. 6). The special master went on to state that it was “impossible to incorporate most of the suggestions” he received due in part to his desire to minimize county splits. *Id.* at 17. And while the special master apparently considered the comments previously submitted the IRC, he also considered unidentified “suggestions given directly to [him] prior to [his] drafting of a preliminary map.” *Id.* at 18. Those comments were apparently not part of the public record, further underscoring the lack of transparency in the judicial map-drawing process.

It is no surprise, then, that the failure to follow New York’s constitutionally required map-drawing process resulted in a congressional plan that splits longstanding minority communities of interest for reasons that remain unclear. For example, the special master’s congressional plan split Prospect Heights, a predominantly working-class Black community in Brooklyn, and combined part of that community with wealthy Manhattan residents in the Financial District and Tribeca. Pet. ¶ 55. The special master’s congressional plan also failed to keep Bedford-Stuyvesant, Fort Greene, East New York, and Canarsie together, even though those areas had historically been grouped together in a single congressional district once represented by Shirley Chisholm, the first Black woman elected to Congress. *Id.* And even though “hundreds of citizens” requested that Co-Op City—historically the largest housing cooperative in the world—be placed in the Sixteenth Congressional District, the special master declined to do so based in part on unspecified “other criteria.” Ex. 6 at 20.

In short, the IRC's failure to send a second set of maps to the Legislature not only stymied the constitutional procedure enacted by New York voters, but also resulted in a map that does not properly reflect the substantive redistricting criteria contained in the Redistricting Amendments.

V. Petitioners seek to compel the IRC to submit a second round of redistricting plans to the Legislature for consideration, as required by Article III, Sections 4 and 5 of the New York Constitution.

Petitioners Anthony S. Hoffmann, Courtney Gibbons, Lauren Foley, Seth Pearce, and Nancy Van Tassel (collectively, the "Voter Petitioners") are New York voters. Pet. ¶ 15. Petitioner Anthony S. Hoffmann provided public comment to the IRC in 2021 under the procedures outlined in Article III, Section 4(b). *Id.* ¶ 16. Mr. Hoffmann, a resident of Greenwich Village for over fifty years, testified at a public meeting on July 26, 2021, that the residents on the East and West Sides of Manhattan had different interests, and encouraged the IRC to keep the Tenth Congressional District—which previously included much of Manhattan's West Side—intact.⁹ Mr. Hoffmann again testified on November 10, 2021 in support of one proposed map and against another map, and once again encouraged the IRC to recognize the West Side of Manhattan as a community of interest distinct from that of the East Side of Manhattan.¹⁰ Petitioners have been and continue to be injured by the IRC's failure to submit a second set of redistricting plans to the Legislature for consideration.

⁹ See NYS Independent Redistricting Commission, *Bronx and New York Counties Public Meeting*, YouTube (July 26, 2021), https://www.youtube.com/watch?v=WQo4aFhIH_E (video at 49:40–53:00).

¹⁰ See New York State Independent Redistricting Commission: New York County Public Hearing, Part 2 (Nov. 10, 2021), <https://totalwebcasting.com/view/?func=VIEW&id=nysirc&date=2021-11-10&seq=1> (video at 33:24–38:10).

LEGAL STANDARD

New York law provides for a writ of mandamus where a government “body or officer failed to perform a duty enjoined upon it by law.” N.Y. C.P.L.R. 7803. Petitioners must establish “‘a clear legal right to the relief demanded’ by demonstrating the ‘existence of a corresponding nondiscretionary duty’ on the part of the” relevant body. *Waite v. Town of Champion*, 106 N.E.3d 1167, 1171 (N.Y. 2018) (quoting *Scherbyn v. Wayne-Finger Lakes Bd. of Co-op. Educ. Servs.*, 573 N.E.2d 562 (N.Y. 1991)); see also *George F. Johnson Mem’l Libr. v. Springer*, 783 N.Y.S.2d 138, 139 (3rd Dep’t 2004) (granting petition for mandamus under Article 78 because government official did not have “any discretion to refuse” to perform relevant duty); *League of Women Voters of N.Y. v. N.Y. State Bd. of Elec.*, No. 535511, 2022 WL 2070888, at *2 (3rd Dep’t June 9, 2022) (indicating that petitioner could demonstrate “clear legal right to the relief demanded” and “corresponding nondiscretionary duty on the part of respondent” with “an express judicial order invalidating the [state] assembly map” (cleaned up)). “[T]o the extent that [petitioners] can establish that defendants are not satisfying nondiscretionary obligations to perform certain functions, they are entitled to orders directing defendants to discharge those duties.” *Klostermann v. Cuomo*, 463 N.E.2d 588, 596 (N.Y. 1984).

ARGUMENT

The IRC has a nondiscretionary duty to submit a second set of redistricting plans to the Legislature if its first set of plans are rejected by legislative vote or gubernatorial veto. Article III, Section 4(b) of the Constitution mandates that, “[i]f either house shall fail to approve the legislation implementing the first redistricting plan, or the governor shall veto such legislation and the legislature shall fail to override such veto . . . the redistricting commission shall prepare and submit to the legislature a second redistricting plan and the necessary implementing legislation for such

plan.” In contravention of this constitutional duty, the IRC publicly refused to submit a second set of redistricting plans after the Legislature rejected its first proposals in January 2022. Pet. ¶¶ 33-37. At that time, the 2021 Legislation was in operation and authorized the Legislature to move forward with redistricting even if the IRC failed to submit proposed plans. *Id.* at ¶¶ 27-28 (quoting L 2021, ch 633). The Legislature did just that, adopting congressional and state legislative plans that were signed into law in February 2022. *Id.* ¶ 38.

The Court of Appeals rejected this process on April 27, 2022 in its *Harkenrider* decision, declaring the 2021 Legislation “unconstitutional to the extent that it permits the legislature to avoid a central requirement of the” Redistricting Amendments. 2022 WL 1236822, at *9. The Court also invalidated the Legislature’s congressional and State Senate plans because “the IRC’s fulfillment of its constitutional obligations was unquestionably intended to operate as a necessary precondition to, and limitation on, the legislature’s exercise of its discretion in redistricting.” *Id.* at *7. The Court’s invalidation of the 2021 Legislation eliminated any doubt as to the mandatory nature of the IRC’s obligation to submit a second round of redistricting plans.

The IRC has a clear, nondiscretionary duty to follow these constitutional procedures. It is of no moment that the drawing of district plans itself involves the exercise of discretion; “[m]andamus may ‘compel acts that officials are duty-bound to perform, regardless of whether they may exercise their discretion in doing so[.]’” *Nat. Res. Def. Council, Inc. v. N.Y.C. Dep’t of Sanitation*, 630 N.E.2d 653, 654 (N.Y. 1994) (quoting *Klostermann*, 463 N.E.2d at 596). Here, the Court of Appeals has made clear that “the detailed [Redistricting Amendments] leave no room for legislative discretion regarding the particulars of implementation” of the redistricting process. *Harkenrider*, 2022 WL 1236822, at *8. The IRC thus has a constitutional obligation to submit a second round of redistricting plans for consideration by the Legislature.

That obligation continues even where a court has imposed judicially drawn plans to prevent elections from being held under a malapportioned plan. State high courts have recognized in similar circumstances that when a redistricting body “fails to enact a new redistricting plan [within the timeframe provided by the state constitution], it is neither deprived of its authority nor relieved of its obligation to redistrict.” *In re Below*, 855 A.2d 459, 462 (N.H. 2004) (per curiam); *see also Lamson v. Sec’y of Commonwealth*, 168 N.E.2d 480, 486 (Mass. 1960) (explaining that while failure of redistricting body to act “thwarts the intention of the Constitution,” an “even more serious nullification of constitutional purpose will result under a construction which would” prohibit redistricting body from “return[ing] to reapportion”); *Harris v. Shanahan*, 192 Kan. 183, 213, 387 P.2d 771, 795 (1963) (“[T]he duty to properly apportion legislative districts is a continuing one, imposed by constitutional mandate . . . , notwithstanding the failure of any previous session to make such a lawful apportionment.”). Indeed, the New York Constitution specifically contemplates that an existing reapportionment plan may be “modified pursuant to court order” prior to the end of a decade. N.Y. Const. art. III, § 4(e). This Court can and should issue a judgment compelling the IRC to submit a second set of redistricting plans to the Legislature so that it can adopt redistricting plans for the remainder of the decade.

CONCLUSION

The people of New York adopted the Redistricting Amendments to “ensur[e] that the starting point for redistricting legislation would be district lines proffered by a bipartisan commission following significant public participation, thereby ensuring each political party and all interested persons a voice in the composition of those lines.” *Harkenrider*, 2022 WL 1236822, at *9. The IRC derailed this process by refusing to comply with its constitutional duty to submit a second set of districting plans. As a result, during the 2022 elections, New Yorkers will be subject

to court-drawn congressional and state legislative plans that were adopted in a rushed, opaque process—exactly what the Redistricting Amendments were intended to prevent. Petitioners respectfully request that the Court grant their Petition to ensure that New Yorkers can vote under maps drawn pursuant to the constitutionally prescribed process during the remaining elections this decade.

Dated: June 28, 2022

EMERY CELLI BRINCKERHOFF
& ABADY, LLP

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

DREYER BOYAJIAN LLP

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

ELIAS LAW GROUP LLP

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

Jonathan P. Hawley*
1700 Seventh Avenue, Suite 2100
Seattle, Washington 98101
Tel.: (206) 656-0177
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 5,386 words.

Dated: June 28, 2022

/s/ James R. Peluso
James R. Peluso