FILED: APPELLATE DIVISION - 4TH DEPT 04/18/2022 12:17 PM CAE 22-00506
NYSCEF DOC. NO. 47 RECEIVED NYSCEF: 04/18/2022

New York Supreme Court

Appellate Division—Fourth Department

IN THE MATTER OF

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

Petitioners-Respondents,

– 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 and NEW YORK STATE LEGISLATIVE TASK FORCE ON DEMOGRAPHIC RESEARCH AND REAPPORTIONMENT,

Respondents-Appellants.

Docket No.:
CAE 2022-00506

BRIEF OF *AMICUS CURIAE* THE LEAGUE OF WOMEN VOTERS OF NEW YORK STATE IN SUPPORT OF PETITIONERS

HOLWELL SHUSTER & GOLDBERG LLP
James M. McGuire, Esq.
Attorneys for Amicus Curiae
425 Lexington Avenue
New York, New York 10017
(646) 837-5151
jmcguire@hsgllp.com

Steuben County Clerk's Index No. E2022-116CV

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

Cases:

Statutes & Other Authorities:

INTEREST OF THE AMICUS

Amicus the League of Women Voters of New York State (the "League") is a nonpartisan, not-for-profit organization dedicated to promoting the informed and active participation of citizens in government. As part of its mission to empower citizens and strengthen public participation in government, the League works to increase voter registration and turnout, encourages its members and the people of New York to exercise their right to vote as guaranteed by the Constitution, and strives to protect that right from unnecessary barriers to full participation in the electoral process. Formed in 1919 after the passage of a constitutional amendment granting women's suffrage, the League has evolved to become a guardian of the voting rights of all eligible voters in New York. The League is affiliated with the League of Women Voters of the United States and has 45 local leagues throughout New York.

In March 2012, the League and Citizens Union of the City of New York (the "Citizens Union"*)* issued a joint press release calling on Governor Cuomo and the Legislature to negotiate a constitutional amendment on redistricting that would achieve the permanent reform that those groups had sought for decades. As discussed below, after a substantial public campaign led by the League and Citizens Union, that reform was achieved.

QUESTION PRESENTED

Whether the Independent Redistricting Commission's undisputed violation of its obligations under Article III, Section 4, which sets out the exclusive process for redistricting congressional and state legislative districts, permits the Legislature to disregard the process and assume power over redistricting that the People denied it in 2014, or whether the Judiciary should remedy the Commission's violation, as required by Article III, Section 4 of the Constitution.

PRELIMINARY STATEMENT

This appeal raises a question of monumental importance: whether the courts will enforce the procedural requirements adopted by the People in the New York Constitution to prevent partisan gerrymandering, which were designed to sharply curtail the Legislature's power over redistricting. Here, that constitutionally mandated process was indisputably vitiated by a combination of the Independent Redistricting Commission's ("IRC") abrogation of its constitutional responsibilities and the Legislature's brazen disregard of the required process—with predictable consequences.

The problem of partisan gerrymandering has long been recognized in New York. As far back as 1966, the League announced its Statement of Position that "whoever is responsible for districting should utilize an impartial commission for drawing the lines." In 2007, the Committee on Election Law of the Association of the Bar of the City of New York called for a "comprehensive amendment of the reapportionment and redistricting provisions of the New York State Constitution."[1] As the Committee stated:

> Under the current system of redistricting, as practiced during the last three decades of divided partisan control of the Legislature, individual legislators find themselves more beholden to their leaders for re-election than to their constituents. This form of incumbency protection produces noncompetitive elections, permanent legislative deadlock, and a Legislature unresponsive to the will and interests of the voters. A constitutional amendment is necessary to mandate redistricting criteria, and to guarantee a process for decennial redistricting that will foster electoral competition and responsive government.[2]

[1] New York City Bar Committee on Election Law, A Proposed New York State Constitutional Amendment to Emancipate Redistricting from Partisan Gerrymanders: Partisanship Channeled for Fair Line-Drawing, at 1 (Mar. 2007), *available at* https://www.nycbar.org/pdf/report/redistricting_report03071.pdf.

[2] *Id.*

In 2014, historic reform at long last came when the People approved a comprehensive and meticulously crafted amendment to the reapportionment and redistricting provisions of Article III of the Constitution (the "Amendment"). For the first time, the Constitution outright banned partisan gerrymandering. As a critical part of its scheme to combat partisan gerrymandering, moreover, the Amendment curtailed the role and authority of the Legislature—composed of the officials elected under the adopted electoral maps—in the redistricting process. It did so by, *inter alia*, establishing an Independent Redistricting Commission charged with the duty of developing redistricting plans for submission to the Legislature, and by prescribing in detail how redistricting maps are to be effectuated. The principal limitation, as stated in the official text of the ballot question presented to the voters, is that "the legislature may *only* amend the redistricting plan if the commission's plan is rejected twice by the legislature."[3]

The courts have now been called upon to address the consequences of the IRC's flagrant failure to carry out the obligation the People entrusted it to perform under Article III, Section 4(b). That is the duty to "prepare and submit to the legislature a second redistricting plan and the necessary implementing legislation for such a plan" within fifteen days of being notified that its first redistricting plan or

[3] NYLS Constitutional History, *2014 Ballot Proposal 1*, at 15 (hereinafter "Amendment Hist.") (emphasis added). The ballot text is also available at https://ballotpedia.org/New_York_Redistricting_Commission_Amendment,_Proposal_1_(2014).

plans and implementing legislation had not become law. There is no question the IRC failed to do this. Thus, this Court must decide whether the Amendment prescribes what is to happen as a result—and, if so, whether the Legislature complied with that prescription.

The answer is clear: the plain language of the Amendment prescribes what must happen here. The Amendment added a new subsection (e) to Article III, Section 4 that provides as follows:

> *The* 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 *except* to the extent that a court is required to order the adoption of, or change to, a redistricting plan as a remedy for a violation of law.

Article III, §4(b) (emphases added). The Amendment thus makes clear beyond cavil both that the process it ordains is the exclusive process for effectuating redistricting and that the Judiciary is empowered to remedy redistricting plans that violate the law.

The Amendment also allowed a limited remedial power for the Legislature (thus qualifying the Judiciary's remedial power to this extent) by adding the following two sentences at the end of Section 5:

> In 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 this article shall be invalid in whole or in part. In 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.

Article III, §5.

The Amendment contemplates two possible scenarios—one in which the Legislature is able to correct a legal infirmity and one in which it cannot—and allocates remedial power to the legislative and judicial branches accordingly. Thus, the Legislature is authorized to correct legal infirmities in redistricting laws that it is capable of correcting. In such instances, it has "a full and reasonable opportunity" to do so. But where, as here, a legal infirmity *cannot* be corrected by the Legislature, subsection (e) of Section 4 provides that the Judiciary—not the Legislature— is "required" to remedy the violation of law. Such a remedy is what the Supreme Court adopted here by providing for, albeit conditionally, the appointment of a special master to draw non-gerrymandered maps consistent with the Amendment's requirements.

Respondents below ask that this careful scheme be tossed aside, such that the Legislature be permitted to step into the breach created by the failure of the IRC. Respondents would have the Legislature, upon the failure of the IRC to comply with its mandate, originate and enact a second set of redistricting maps of the Legislature's own design. That approach would manifestly undo the deliberate two-tiered allocation of remedial power established by the Amendment, and with it the Amendment's very purpose. That is, Respondents below would have this Court

restore to the Legislature the plenary power it had before the Amendment curtailed that power—which the Amendment curtailed precisely in order to reduce the opportunities for its abuse. Indeed, as is evident from the Amendment's text, the very purpose of the IRC's creation and duties was exactly to check and limit the Legislature's power over redistricting. That is why the Amendment unmistakably entrusted the remedy for the IRC's violation of Section 4(b)'s procedural strictures to the non-political branch, the Judiciary.

THE AMENDMENT'S PROCESS PROVISIONS

As this Court is fully aware of the background facts and the nature of the violation of the Amendment, the League will only summarize briefly certain key provisions that are designed to produce bipartisan or at least less partisan redistricting legislation. They do so by enhancing the accountability of the members of the IRC to the legislative leaders and thus, critically, the accountability of the leaders for their appointees' performance.

- *Accountability through appointment*. Eight of the IRC's ten members are directly accountable to the legislative leaders who appointed them, and the leaders are accountable to the people for the performance of their appointees; the two other members, appointed by the members in a manner so as to effectively ensure that each is appointed by the leaders of one party, are

thereby also accountable to these leaders. Section 5-b(a)(1)-(5). In addition, the Amendment stipulates that, "[t]o the extent practicable, the members of the [IRC] shall reflect the diversity of the residents of this state with regard to race, gender, language, and geographic residence and 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." Section 5-b(c).

- *Accountability through public education and participation*. No less than twelve hearings around the state are required so that the public is able "to review, analyze, and comment upon [draft redistricting] plans and . . . develop alternative redistricting plans for presentation to the commission at the public hearings." Moreover, the draft plans and "relevant data, and related information" must be made "widely available to the public, in print form and using the best available technology." Section 4(c)(6).
- *Accountability by prohibiting amendment*. The Legislature not only must vote on the IRC's proposed redistricting legislation, it must vote without amendment. Section 4(b) of the Amendment thus prevents legislators from diluting their accountability for their mandatory votes on the IRC's proposed legislation. That requirement also imposes accountability on the Governor (in the event that the Legislature adopts the IRC's proposed legislation) because

her veto power becomes tantamount to an up-or-down vote on the IRC's proposed maps and implementing legislation.

- *Accountability through transparency*. The Amendment requires a "record of the votes taken" by the members of the IRC whenever the commission is unable to obtain seven votes to approve a redistricting plan. Section 5-b(g). By requiring the votes of the members to be recorded when the proposed legislation does not command significant bipartisan support, the Amendment encourages the members to work toward obtaining broad bipartisan support. And it also enhances the accountability of the legislative leaders for the performance by their appointees of their duties.

Senator Nozzolio, who spoke on the Senate floor as the representative for the joint resolution, concisely stated, albeit in part, the critical importance of the Amendment's process provisions:

> Mr. President, … this measure is establishing an independent process, a process that is requiring individuals to put together a product, a product that must be voted on by the Legislature. And those votes [have] consequences … [T]here will be an enormous amount of citizen input, an enormous amount of process that the public will have an opportunity to engage in.
>
> For the Legislature then to … as well as the Governor—to ignore that process in any way I believe certainly would be contrary to the public interest.

Senate Debate, January 23, 2013, on Assembly Print Number 2086, Concurrent Resolution of the Senate and Assembly, at 227-28.

ARGUMENT

I. The Amendment Requires The Judiciary To Remedy The Failure Of The IRC And The Legislature To Adhere To the Process The Amendment Mandates.

The parties do not dispute that the Amendment—specifically, Article III, Section 4(b)—was violated when the IRC failed to submit a second redistricting plan and implementing legislation to the Legislature and the Legislature responded by enacting a redistricting plan of its own design. Rather, the parties disagree with respect to the legal consequences of this violation. The ultimate question for this Court is whether the Amendment requires the Judiciary to adopt redistricting maps as a result of this violation or to disregard the violation by permitting the Legislature's maps to stand.[4] As shown below, the text of the Amendment establishes both that the process it prescribes for effectuating redistricting maps is the exclusive process for redistricting and that, because the IRC's violation cannot be corrected by the Legislature, the Judiciary is required to adopt redistricting maps. In other words, as the Amendment sets forth, the Legislature can adopt a redistricting plan and enact implementing legislation only if implementing legislation submitted

[4] Nothing in the Amendment suggests that the answer to this question turns on a judicial resolution of the dispute between the parties about which appointees should be blamed. The League takes no position on *that* issue.

by the IRC twice fails to become law. The foregoing conclusions are compelled not only by the Amendment's plain text, but also by the Amendment's purpose and by the history surrounding the Amendment's adoption.

A. The Text of the Amendment Clearly Requires a Judicial Remedy For Procedural Violations.

"In the construction of constitutional provisions the language used, if plain and precise, should be given its full effect." *People v. Rathbone*, 145 N.Y. 434, 438 (1895). Indeed, "[i]t must be very plain—nay, absolutely certain—that the people did not intend what the language they have employed, in its natural signification, imparts, before a court will feel itself at liberty to depart from the plain reading of a constitutional provision." *Id*. at 440.

The full effect of the "plain and precise" words of the new subsection (e) of Section 4 is not open to question. "*The process*" for redistricting "*established*" by Section 4, 5, and 5-b "*shall govern*" redistricting unless a court is "*required*" to order the adoption of or changes to, a redistricting plan as a remedy for a violation of law." Art. III, Section 4(b) (emphasis added). And "[t]he process" "established" by the other parts of the Amendment is phrased in equally unqualified terms: "[T]he redistricting commission *shall* prepare a second redistricting plan and the necessary implementing legislation for such plan." Art. III, Section 4(b) (emphasis added). And "[s]uch legislation *shall* be voted upon, without amendment, by the senate or assembly and, if approved by the first house voting upon it, such legislation *shall* be

delivered to the other house immediately to be voted upon without amendment." *Id.* (emphasis added). Indeed, the same unqualified language applies to the IRC's obligation to submit its first redistricting plan and implementing legislation. Thus, this is the exclusive process for redistricting set forth in the Constitution.

As to remedies for violations of that process, the "full effect" of the "plain and precise" constitutional text is also apparent. The remedy for a violation is the exclusive province of the legislature when the violation is curable by the legislature, and the exclusive province of the courts when the violation is not so curable. Section 5, as amended, also makes clear when a court is "*required*" to remedy such a violation and when the legislature "*shall*" have a full and fair opportunity to correct the law's legal infirmities." *Id.* Pursuant to Section 4(e), the courts are charged with ordering one of two specified remedies for a violation of law (the adoption of a new redistricting plan or a change to a pre-existing plan). In turn, under Section 5, when a redistricting law is found to violate the provisions of Article III, the law "*shall* be invalid in whole or in part." Art. III, Section 5. Unquestionably, moreover, when the Amendment was framed the members of the Legislature knew that violations of these process requirements could occur.

Because the violation at issue here cannot be corrected by the Legislature—which cannot, of course, modify the constitutional deadlines so as to permit the IRC to perform its constitutional duty—the foregoing "plain and precise" language of

Sections 4(b) and 5 sets forth what this Court must do. "Here the language of the constitutional provision speaks its meaning with sufficient clarity to make further inquiry unnecessary." *People v. Carroll*, 3 N.Y. 2d 686, 689 (1958). That is, because Supreme Court was "required to order the adoption of . . . a redistricting plan as a remedy," this Court must affirm so much of Supreme Court's order that provides for the appointment by the court of a neutral expert to prepare redistricting maps.[5]

Thus, the reliance of Respondents below on *Cohen v. Cuomo*, 19 N.Y.3d 196 (2012), is misplaced. The linchpin of the Court of Appeals' decision in *Cohen* was "the Constitution's silence" with respect to the formula for calculating the size of the Senate. *Id.* at 202. But the Amendment is *not* silent here—as discussed, it clearly prescribes when the Judiciary must remedy a violation of law, including of the Amendment's procedural requirements. For the same reason, the Legislature's invocation of the 2021 statute (L. 2021, C. 633.01) in order to ignore the IRC's failure to submit a second set of redistricting maps and implementing legislation, and instead draw maps of the Legislature's own design, violates the Amendment and is therefore unconstitutional.

[5] The Amendment makes clear that so much of Supreme Court's order that permitted the legislature to submit maps for its review is unconstitutional. The same is true of so much of the order that required the maps to "receive sufficient bipartisan support," as it imposes a non-justiciable (and unauthorized) standard.

B. The Amendment's Prescribed Procedure Is a Critical Protection Against Partisan Gerrymandering

The clarity of the text is reason enough to enforce it. But enforcement of the Amendment's plain terms is all the more important because the process mandated by the Amendment is no mere nicety. The two-step procedure guarantees the People a full opportunity to obtain the benefits of nonpartisan—or at least less partisan—redistricting whenever the legislation implementing the IRC's first redistricting plan does not become law. It is a two-fold check, imposing on the IRC the obligation, in the event that partisanship, bad faith, or lassitude creeps into its first deliberation, to try again. The IRC's work thus becomes all the more visible, and its members all the more accountable—in line with the accountability provisions described above. *Supra* pp. 7-9. These reasons, among others, are why the official ballot described the proposal as providing that "the legislature *may only* amend the redistricting plan if the commission's plan is rejected twice by the legislature." Amendment Hist. at 15. (emphasis added).

By necessary implication, if the Legislature can originate and vote on legislation implementing its own redistricting plan despite the failure of the IRC to perform its constitutional duty to submit a second redistricting plan and implementing legislation, the People will be irrevocably deprived of the second opportunity conferred by the process mandated by the Amendment. That is to say, the check on the Legislature's power—the check that is the very purpose of the IRC

and the duties entrusted to it by the Amendment—would vanish at this important stage of the redistricting process.

It gets worse. Because the obligation on the IRC to submit a second redistricting plan and implementing legislature is set forth in terms as unqualified as the IRC's obligation to submit the first, then whatever holding this Court reaches will apply equally to a failure by the IRC to submit a *first* redistricting plan and implementing legislation. In other words, as a matter of logic and text, what is true of the remedy for a failure at the second step must also be true at the first step—there is no textual basis for distinguishing them. Thus, should this Court permit the Legislature's arrogation to itself of power over redistricting in the circumstances here, the Legislature would necessarily be free to originate and vote on legislation implementing its own redistricting plan despite a failure by the IRC to submit a first redistricting plan and implementing legislation. The position of Respondents below leads ineluctably to the nullification of the Amendment—indeed, what is at stake here is whether the check the Amendment created the IRC to supply will exist *at all*. *Cf. Samuels, Kramer & Co. v. C.I.R.*, 930 F.2d 975, 991-92 (2d Cir. 1991) (rejecting interpretation that "would render many of the Constitution's provisions superfluous").

By contrast, consider the salutary effect on the constitutional design and structure if this Court were to hold, as it should consistent with the text of Section

4(e) and Section 5, that because the Legislature cannot correct such a constitutional violation, the courts must adopt a redistricting plan. By insisting that the remedial provisions of the Amendment must be enforced as written, this Court would give the members of the IRC a powerful incentive to perform their constitutional duties, and give the legislative leaders who appoint them a powerful incentive to spur them to do so. Surely the uncertain contours of a judicial reapportionment plan would encourage political compromises, compromises that, perforce, would reduce the possibility of abusive gerrymandering. *Cf.* 3 James Boswell, Boswell's Life of Johnson, entry for September 19, 1777, p. 167 (1934) (Dr. Samuel Johnson) ("Depend upon it, sir, when a man knows he is to be hanged in a fortnight, it concentrates his mind wonderfully.").[6]

Respondents below have raised the concern that, if the procedural strictures of the Amendment are enforced by a court, then disturbing consequences could follow. Specifically, they object that four members of the IRC could force redistricting to the courts by faithlessly refusing to meet or otherwise failing to fulfill their obligations. For this reason, as two of the Respondents say, enforcing the Amendment's procedural requirements as contemplated in the Amendment itself and Section 4(e) would be "absurd."[7]

---

[6] *Available at* https://www.bartleby.com/73/369.html.

[7] Memorandum of Law of the Senate Majority Leader and Speaker of the Assembly in support of Appellants' Motion to Clarify that the Trial Court's Order is Not in Effect Or, In The Alternative, For A Stay Pending Appeal at 15.

That argument is remarkable. Because, these Respondents say, members of the IRC *could* conceivably act in bad faith, therefore the Judiciary should simply throw up its hands and permit the Legislature to jettison the Amendment's redistricting procedure entirely. This makes no sense, and is tantamount to nullifying the Amendment. Indeed, courts should not deem a statutory provision absurd based on assumptions that public officers will act improperly. *See Hirshfield v. Craig*, 239 N.Y. 98, 109 (1924) (rejecting proposed interpretation of statute and observing "[t]he Courts will not assume that public officers will act dishonestly or dishonorably"). This precept surely applies with even greater force in the interpretation of a constitutional provision. And to indulge Respondents' alarmism is inconsistent with the respect the courts owe to other constitutional officials. *See People ex rel. Spitzer v. Cuomo*, 42 A.D.3d 126, 138 (1st Dep't 2007) ("A due respect for the competence of the Legislature requires us to conclude that the . . . choices it made were considered choices."), *aff'd*, 11 N.Y.3d 64 (2008). Moreover, the fundamental purpose of the Amendment is to assign to the ***IRC*** the primary role in designing a redistricting plan and implementing legislation. That the IRC may not function perfectly is no reason to refuse to enforce the process required by the Amendment. Perhaps, as anticipated by two of the Amendment's advocates, the

process is not perfect.[8] But the solution—if there is to be one—to purported imperfections can only be an amendment of the Constitution in accordance with another constitutional process, the amendment process set forth in Article XIX, Section 1. There is certainly no warrant for the courts to nullify the Amendment on the basis of concern that it will not work perfectly.

In any event, if, as Respondents claim to fear, IRC members might not fulfill their duty to attend, a simple solution is available. The last meeting before a constitutional deadline can be set for a day—perhaps as little as one day—before the meeting. Then, if a quorum is not obtained because of the refusal of a sufficient number of IRC members to attend, a writ of mandamus can be issued to compel those members "to perform [the] duty enjoined upon [them] by law." CPLR 7803(1). Of course, however, a warning that the writ would be sought likely would be sufficient to induce members not to shirk their constitutional obligation.

II. By Enforcing The Procedure Required By The Amendment, This Court Would Reflect The Understanding Conveyed To The People Before They Adopted It

The available evidence from the period leading up to the adoption of the Amendment—including the official ballot putting the question to the People—

[8] Five Reasons To Vote Yes For the Redistricting Reform Constitutional Amendment, League of Women's Voters of New York State and Citizens Union of the City of New York, at 4 ("While the redistricting constitutional amendment is not perfect, it is a significant improvement over the current flawed process that produced gerrymandered lines in 2012 and every decade before that going back to the 1970s.").

confirms what the text and logic of the Amendment make clear. The text of the official description—the "Form of Submission"—of the Amendment that voters saw when they cast their votes, the Assembly Memorandum and the Senate Introducer's Memorandum in support of the Joint Resolution and description of the anti-gerrymandering proposal that would become the Amendment by the Legislature circulated by advocates like the League and others, all show that the People understood the Amendment to require that the two-stage IRC redistricting process would be followed. Indeed, the public debate repeatedly emphasized that the Legislature would be prohibited from drawing up its own redistricting plan until the IRC had proposed two plans of its own, and those two plans had been publicly rejected by the Legislature in up-or-down votes.

First and foremost, the Form of Submission described the Amendment to the voters, in relevant part, as follows:

> The proposed amendment to Sections 4 and 5 and addition of new section 5-b to Article 3 of the State Constitution revises the redistricting procedure for state legislative and congressional districts. The proposed amendment … provides that the legislature may *only* amend the redistricting plan according to the established principles if the commission's plan is rejected *twice* by the legislature.[9]

[9] Amendment Hist. at 15 (emphasis added). The Election Law requires such a form, Election Law Section 4-108(2), as well as an abstract of the proposed amendment, Elec. Law § 4-108(1)(d). The Attorney General is required by subsection (3) of Section 4-108 to advise the Board of Election "in the preparation and submission of such abstract and such form of submission."

One must ask: How could the voters possibly have understood the Amendment to mean that the Legislature need *not* twice reject the commission's redistricting plan before the Legislature could amend the commission's plan?

The Assembly Memorandum and the Senate Introducer's Memorandum in support of the Concurrent Resolution both state that the IRC "shall submit to the legislature its proposed district plans, and the legislature[] shall vote upon them without amendment. *If* the legislature fails to pass such plans *twice* it may amend such plans and then vote upon them." (emphasis added). There is a wealth of other supporting materials.[10]

In the face of this clear evidence—in addition to the equally if not more clear text of the Amendment the People adopted on the basis of the understanding above—to nevertheless permit the IRC to fail to do its duty and the Legislature to exploit that failure to step into the breach would be to nullify the process at the heart of the anti-gerrymandering protection and express limitation on the power of the Legislature that the People understood they adopted and imposed in 2014. And, to boot, the members of the Legislature would avoid all accountability to the electorate

[10] *See, e.g.*, League of Women Voters of New York State & Citizens Union, *2014 Constitutional Amendment on New York State Redistricting* ("The legislature will only be able to amend the lines of a Commission's plan(s) if it fails to achieve legislative approval after **two** "up or down" votes without amendments[.]") (emphasis in original); Citizens Union Foundation, *Rigged To Maintain Power: How NYS' 2012 Redistricting Protected Incumbents and Continued Majority Party Control* 7 (Oct. 2014) ("If the legislature twice failed to approve a commission's plan, it would not be permitted to start over."), *available at* https://nyelectionsnews.files.wordpress.com/2014/10/cu-report-rigged-to-maintain-power.pdf.

for the votes the Amendment requires them to cast on the second redistricting plan. This Court should not countenance such a betrayal of the will of the People of New York.

CONCLUSION

For all of the foregoing reasons, the League respectfully submits that this Court should modify Supreme Court's order by reversing so much of the order that permits the Legislature to submit redistricting maps and, instead, directing the Supreme Court to retain forthwith a neutral expert to prepare redistricting maps.

Dated: New York, New York
April 14, 2022

Respectfully submitted,

HOLWELL SHUSTER & GOLDBERG, LLP
Attorneys for Amicus Curiae
League of Women Voters of New York State

By: James M. McGuire

James M. McGuire
425 Lexington Avenue
New York, New York 10017

JAMES M. McGUIRE
DANIEL SULLIVAN
GREGORY DUBINSKY
Of Counsel

PRINTING SPECIFICATIONS STATEMENT

I hereby certify pursuant to 22 NYCRR 1250.8(j) that the foregoing brief was prepared on a computer using Microsoft Word.

Type. A proportionally spaced typeface was used, as follows:

Name of typeface:	Times New Roman
Point size:	14
Line spacing:	Double

Word Count. The total number of words in this brief, inclusive of point headings and footnotes and exclusive of pages containing the table of contents, table of citations, proof of service and this Statement is 4, 781.