

STATE OF NEW YORK
SUPREME COURT COUNTY OF ALBANY

Anthony S. Hoffmann; Courtney Gibbons;
Lauren Foley; Seth Pearce; Nancy Van Tassel,

Petitioners,

-against-

Index No.:
904972-22

The New York State Independent Redistricting
Commission; Independent Redistricting
Commission Chairperson David Imamura;
Independent Redistricting Commissioner
Ivelisse Cuevas-Molina; Independent
Redistricting Commissioner Elaine Frazier;
Independent Redistricting Commissioner Ross
Brady; Independent Redistricting Commissioner
John Conway III; Independent Redistricting
Commissioner Lisa Harris; Independent
Redistricting Commissioner Charles Nesbitt;
Independent Redistricting Commissioner
Willis H. Stephens,

Respondents,

-and-

Tim Harkenrider; Guy C. Brought; Lawrence
Canning; Patricia Clarino; George Doohar, Jr.;
Stephen Evans; Linda Fanton; Jerry Fishman;
Jay Frantz; Lawrence Garvey; Alan Nephew;
Susan Rowley; Josephine Thomas; Marianne
Violante.

Intervenors-Respondents.

ORAL ARGUMENT

Albany County Courthouse
16 Eagle Street
Albany, NY 12207
September 12, 2022

BEFORE: HON. PETER A. LYNCH
Supreme Court Justice

A P P E A R A N C E S

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1 THE COURT: This is the matter of Hoffmann, et
2 al. against the New York State Independent Redistricting
3 Commission, et al., Respondents, and the Harkenrider
4 Intervenor-Respondents.

5 What I'm going to do first of all is, Counsel,
6 would you put your respective appearances on the record.

7 MS. BRANCH: Yes. Good afternoon. My name is
8 Aria Branch, I represent the Petitioners in this action.

9 THE COURT: Are you going to put yours on?

10 MS. GAMBHIR: Yes, Your Honor. Good afternoon.
11 My name is Harleen Gambhir, I also represent the
12 Petitioners.

13 MS. RING AMUNSON: Good afternoon, Your Honor.
14 Jessica Ring Amunson, I represent Respondents
15 Commissioners Imamura, Frazier and Cuevas-Molina.

16 MR. HILL: Good afternoon, Your Honor. My name
17 is Timothy Hill, I represent Respondent Commissioners
18 Brady, Conway, Harris, Nesbitt and Stephens.

19 THE COURT: Okay. Feel free to use the
20 microphone too. You don't have a microphone.

21 MR. TSEYTLIN: Your Honor, I will attempt to
22 speak loudly.

23 THE COURT: Okay. Put your appearance on the
24 record.

25 MR. TSEYTLIN: Misha Tseytlin for the

1 Harkenriders. The Harkenrider Intervenors-Respondents.

2 THE COURT: What's the fairness? Everybody else
3 has a microphone except for you, Misha. What is that?

4 MR. TSEYTLIN: Your Honor, I raised it with
5 staff and I made clear that I could speak as loud as
6 necessary.

7 THE COURT: Okay. Before we get going, just a
8 housekeeping thing. I have an email request from Vaughn
9 Golden. Is Vaughn Golden here?

10 MR. GOLDEN: Yes.

11 THE COURT: Okay, Vaughn, come on up. So the
12 request was sent to my law clerk. And you're requesting
13 the right to record this proceeding via audio and take
14 still photos; is that correct?

15 MR. GOLDEN: Yes, sir.

16 THE COURT: And you're a member of the media?

17 MR. GOLDEN: Yes, sir.

18 THE COURT: In what capacity?

19 MR. GOLDEN: I'm a reporter-producer for WSKG
20 Public Media.

21 THE COURT: Okay. And could you tell us why you
22 think this is a matter of public importance that would
23 justify the audio recording as well as the photographs
24 that you seek to take?

25 MR. GOLDEN: Yes. Given the requested remedy

1 brought by petitioners would greatly impact several
2 million people in the State of New York, I think it is of
3 the public's best interest to have a reporter in these
4 proceedings.

5 I also previously was allowed to record the
6 Harkenrider case in Steuben County and was able to produce
7 audio and still photographs of that case as well.

8 THE COURT: Okay. So before I make a
9 determination, under Part 131 of the Rules of the Chief
10 Judge I do have to give all the parties an opportunity to
11 be heard.

12 Aria, for the Petitioners?

13 MS. BRANCH: We do not oppose the request, Your
14 Honor.

15 THE COURT: Okay. Jessica?

16 MS. RING AMUNSON: No objection, Your Honor.

17 THE COURT: Tim?

18 MR. HILL: No objection, Your Honor.

19 THE COURT: Misha?

20 MR. TSEYTLIN: No objection.

21 THE COURT: Okay, then the application is
22 granted. What do you need to do to set up?

23 MR. GOLDEN: I have to run downstairs to get my
24 recorders and come back. It will take me a good five
25 minutes.

1 THE COURT: They didn't let you in with them?

2 MR. GOLDEN: They did not.

3 THE COURT: Really? Okay. Go ahead. We'll
4 take a couple-minute break.

5 MR. GOLDEN: I appreciate it.

6 (There was a short suspension of the
7 proceedings.)

8 THE COURT: This is the matter of Anthony
9 Hoffmann, Petitioners -- Anthony Hoffmann, et al.,
10 petitioners, against the New York State Independent
11 Redistricting Commission, et al., Respondents, and the
12 Harkenrider Intervenor-Respondents.

13 What I would like counsel to do is to put your
14 respective appearances on the record, please. And we'll
15 start with the petitioner.

16 MS. BRANCH: Good afternoon. Aria Branch for
17 the Petitioners.

18 MS. GAMBHIR: Good afternoon. Harleen Gambhir
19 for the Petitioners.

20 MS. RING AMUNSON: Good afternoon. Jessica Ring
21 Amunson for Respondents Imamura, Frazier and
22 Cuevas-Molina.

23 MR. HILL: Good afternoon. Timothy Hill for
24 Respondent Commissioners Brady, Conway, Harris, Nesbitt
25 and Stephens.

1 MR. TSEYTLIN: Misha Tseytlin for the
2 Harkenrider Intervenors.

3 THE COURT: Okay, so this matter is on today for
4 oral argument. I do note that we have -- the proceeding
5 has been commenced. I do note that there are two separate
6 motions to dismiss which are really at issue here today.
7 And I have thoroughly reviewed all of the papers.

8 What I would invite you all to do is to focus on
9 what I think is really the critical issue here. And when
10 you are making your arguments, the issue that jumps off
11 the page is essentially what authority exists for the
12 Redistricting Commission to prepare a second set of plans
13 based on the 2020 census.

14 And if such authority exists with respect to the
15 mandamus to compel issue, would such an order be doable
16 based upon the demonstrated lack of a bipartisan effort
17 this year.

18 So what I'm going to do, we're going to start
19 off with the first movant. Misha, you made the motion
20 initially to dismiss on behalf of the intervenors. Go
21 ahead.

22 MR. TSEYTLIN: Thank you, Your Honor. I will
23 train my remarks to what you're saying, but first I'd like
24 to create a little context for why we're here.

25 In Harkenrider we brought a lawsuit in Steuben

1 County --

2 THE COURT: I know all about Harkenrider.

3 MR. TSEYTLIN: That's right, Your Honor, but
4 it's very important that we brought under -- the relief we
5 sought was under Article III, Section 4E.

6 We obtained a particular remedy from that court
7 and then it went up to the Court of Appeals and then we
8 went back down and ultimately there was a particular
9 remedy that was adopted, which was a judicially adopted
10 map.

11 That remedy was for the same constitutional
12 violation that petitioners seek to raise here. It was not
13 the only remedy that anyone suggested in that proceeding.
14 Judge Troutman of the Court of Appeals suggested a remedy
15 that in many ways is similar to what the petitioners are
16 asking here.

17 The petitioners here in Steuben County during
18 their remedial proceedings suggested a remedy very close
19 to what they're asking here which is limit the map to 2022
20 and then let the Legislature, speaking for the people they
21 claim, adopt the new map going forward.

22 THE COURT: Well, wasn't the judicial remedy
23 built into the constitutional structure here?

24 MR. TSEYTLIN: That was, of course, our
25 position.

1 THE COURT: And wasn't the constitutional
2 structure here that an approved map be in place until the
3 next census in 2030?

4 MR. TSEYTLIN: That's exactly what Section 4E
5 provides. That is the argument that we raised throughout
6 the proceedings. Judge Troutman had a different view
7 about the way the judicial remedy would work.

8 In footnote 20 of the Harkenrider decision we
9 could read the Court of Appeals in Harkenrider as having
10 adopted our argument that is exactly like you say, Your
11 Honor, if there is a constitutional violation of the
12 procedure, the 4E remedy is a judicially adopted map.

13 It is not reenlisting the IRC. It is not the
14 procedure that Judge Troutman floated at the Court of
15 Appeals. And I think the remedy that they're asking for
16 is doubly hard. Not only is it not the one in 4E, the
17 constitution actually provides only two circumstances when
18 the Commission can act. One is before that February
19 deadline --

20 THE COURT: Well, February 28th has come and
21 gone.

22 MR. TSEYTLIN: That's right, Your Honor.

23 THE COURT: They were not able to do the second
24 set of redistricting maps for consideration by the
25 Legislature. What would their authority be to reconvene

1 now?

2 MR. TSEYTLIN: They have no authority. The
3 constitution only provides one other circumstance where
4 the Commission can reconvene.

5 THE COURT: And what would that be?

6 MR. TSEYTLIN: That is when a court orders an
7 amendment to a map. That is provided in the
8 constitutional amendment very specifically. And we
9 thought that that's what they were asking for initially in
10 their original papers. Well, this is the only way the
11 Commission can be brought back, it has to be this
12 provision that says you can bring the Commission back.
13 It's under Section Article III 5B(1) (a).

14 They did not say that they are basing it under
15 that. And the reason they didn't say that is because then
16 they would have to be asking this Court to amend the
17 Steuben County Supreme Court's map which, of course, would
18 be a collateral attack and, frankly, absurd.

19 THE COURT: There was no direct appeal from
20 that, was there?

21 MR. TSEYTLIN: That's right, Your Honor, nobody
22 appealed. Well, there was an appeal initially when we won
23 on the merits.

24 THE COURT: I'm talking about after the judge
25 with the benefit of the special master approved the 2022

1 maps. That final decision was not appealed.

2 MR. TSEYTLIN: That's correct, your Honor. And
3 my friends, the petitioners, almost all of them
4 participated in that proceeding and in fact --

5 THE COURT: Well, kind of. They wrote a letter
6 to the judge.

7 MR. TSEYTLIN: It wasn't just like a, you know,
8 hey, like signed by citizens letter, it was a --

9 THE COURT: They weren't parties.

10 MR. TSEYTLIN: That is true, they could have
11 moved to intervene. But it was a letter on the letterhead
12 of the Elias Law Group, one of the premiere election law
13 law firms in the country representing the D Triple C and
14 almost all of the petitioners here. They raised the same
15 argument. And certainly they could have perfected any
16 conversion of an interested party to an interventional (sic)
17 status in order to appeal if they so wanted to do that.

18 THE COURT: But just for purposes of this
19 record, Justice McAllister's final decision and order
20 making some amendments to the 2022 congressional map that
21 he approved was dated June 2, 2022. From my review of the
22 record, it appears that no appeal was taken from that
23 decision and order; is that correct?

24 MR. TSEYTLIN: That is exactly correct, Your
25 Honor. And there were criticisms lodged against that map,

1 some of the same ones that my friends lodged in their
2 petition here. We thought there might be an appeal. We
3 had that docketed on all of our calendars waiting for that
4 appeal to come and that appeal never came. So the
5 judgment was final.

6 There is, of course, a mechanism to reopen a
7 final judgment that's very common. Our respectful
8 submission is that if they want to reopen that final
9 judgment, they should go back to Steuben County. We think
10 that should not be successful because nothing has changed.
11 And also that the relief they're asking for would be
12 unconstitutional as determined by the Harkenrider Court of
13 Appeals. That's the proper procedure to reopen a final
14 judgment that no one appealed from.

15 And by the way, to reopen a CPLR provision
16 allows non-parties to move to reopen if they so choose.

17 THE COURT: Okay. Tim, you're up.

18 MR. HILL: Thank you, Your Honor. I won't
19 repeat some of the arguments that are on line with what my
20 colleague just mentioned, but I would emphasize that it's
21 really of those twofold defect, both the date and the fact
22 that the Steuben County went through the constitutional
23 process and arrived at that judicial remedy, which is
24 really the end phase. That is the last part of that
25 judicial process, that being the constitutional process,

1 when it results in a court-ordered plan.

2 That has happened here. So as far as -- and
3 this petition concerns only the congressional maps. So
4 with respect to the congressional maps, those maps have
5 gone through the constitutional process. That defect, to
6 the extent it was identified, to be remedied through the
7 only procedure that's available to it and the result is
8 that final determination which, Judge, you just pointed
9 out has not been appealed from.

10 THE COURT: Would it be doable to send this back
11 to the Commission for the drawing of a second set of
12 redistricting maps based on the 2022 census -- excuse me,
13 based on the 2020 census, when the Commission already
14 demonstrated on their first set of maps they couldn't come
15 to terms, they submitted two separate maps to the
16 Legislature which were rejected and then they deadlocked
17 well in advance of February 28th saying they weren't going
18 to be able to come forward with redistricting -- a second
19 set of redistricting maps?

20 So wouldn't an order in the form of a mandamus
21 to compel them to act, wouldn't that be an exercise in
22 futility?

23 MR. HILL: That might be a fair assessment from
24 a political calculation. I don't know from a legal
25 standpoint if it went back if you would just be sending it

1 back for the purpose of winding up in the same impasse
2 that it was stuck in from perhaps the outset, but
3 certainly the end.

4 So I don't know -- I appreciate the inquiry. I
5 don't know personally, you know, how to forecast that
6 except to say I think that's a very fair assessment based
7 on how the IRC proceeded to date. I don't know that that
8 has to be reached because I think what Your Honor
9 identified as the first issue that jumps off the page is
10 so conclusively in favor of not permitting the release
11 sought by this petition that I don't know that you need to
12 reach the futility question.

13 THE COURT: Okay. Jessica, it appears to me
14 that on behalf of your clients, who are Commissioners
15 David Imamura, Ivelisse Cuevas-Molina and Elaine Frazier,
16 that you were not opposed to the relief sought in the
17 petition; is that correct?

18 MS. RING AMUNSON: That's correct, your Honor.

19 THE COURT: Other than supporting the petition,
20 before I hear from the petitioners is there anything that
21 you would like to add?

22 MS. RING AMUNSON: I would just like to briefly
23 address the futility question that Your Honor just
24 directed to Mr. Hill.

25 THE COURT: Yes, go ahead.

1 MS. RING AMUNSON: Which is to say that my
2 clients do not believe that it would be an exercise in
3 futility. The Commission is fully staffed. All 10
4 commissioners are on the Commission now. There are no
5 staffing shortages that would preclude the Commission from
6 expeditiously undertaking the redrawing of a second set of
7 maps. And, of course, the situation would have changed in
8 that the Commission would be under a court order to submit
9 a second set of maps to the Legislature.

10 At the time that the Commission was last --

11 THE COURT: Hasn't the -- in the Harkenrider
12 case on remittal the court did approve the 2022
13 redistricting map predicated on the 2020 census which has
14 been utilized for the election process in 2022.

15 Didn't the constitutional structure contemplate
16 that when you have an approved congressional map, whether
17 it be by the process outlined in the constitution, that is
18 the Legislature adopting either a map presented by the
19 Commission, or in the event the Legislature rejects the
20 maps proposed by the Commission, as well as a second set
21 of maps proposed by the Commission, if the Legislature
22 adopted -- rejected both sets of maps and then went
23 forward, did their own redistricting map and approved it
24 as contemplated by the constitution, or as here where the
25 approved maps were based under the judicial remedy built

1 into the structure under paragraph B, whatever process is
2 utilized in the adopting of the maps, doesn't the
3 constitution contemplate by its structure that those maps
4 are to be in place for a 10-year period and that only
5 after the 2030 census is generated would the Commission
6 then be in a position to prepare new maps?

7 So no matter how you got the maps approved this
8 year, doesn't the constitution require that those maps
9 stay in place for the next 10 years?

10 MS. RING AMUNSON: Your Honor, I will defer to
11 petitioners for addressing the legal issues. I believe
12 their position is that this is an interim judicial remedy
13 for the 2022 elections and that the defect of the
14 Commission submitting a second map can be remedied by a
15 mandamus action to our clients.

16 I would simply point out, Your Honor, that the
17 situation has changed in that at the time that the
18 Commission was last attempting to send a second set of
19 maps to the Legislature there was legislation then in
20 place that specifically contemplated what would happen if
21 the Commission was unable to vote.

22 THE COURT: You're talking about the 2021
23 legislation that the Court of Appeals rejected?

24 MS. RING AMUNSON: Yes, Your Honor. And my
25 clients were attempting to schedule a vote on a second set

1 of maps. Mr. Hill's clients were refusing to hold a
2 meeting and refusing to have a vote on a second set of
3 maps, which is ultimately what precluded the Commission
4 from being able to vote.

5 I'm merely addressing Your Honor's question
6 about futility in that if it were sent back to the
7 Commission and the Commission were under order from this
8 Court demanding this order to submit a second set of maps
9 to the Legislature, presumably the Commission would comply
10 with this Court's order.

11 THE COURT: Okay. For the petitioners, Aria, I
12 want you to answer this question: Does the constitutional
13 structure contemplate -- the intent of the constitutional
14 structure contemplate that any approved map, regardless of
15 whether it was approved by the Legislature under the
16 structure defined in the constitution or by the court,
17 also a recognized remedy in the constitution, does the
18 constitutional intent require that that approved map be in
19 place for 10 years?

20 MS. BRANCH: So with respect to the remedy that
21 was put in place by Steuben County, I think the answer is
22 clearly no. The New York Constitution, the 2014
23 amendments that the People of New York approved, clearly
24 intended for the Commission to send two proposed maps to
25 the Legislature that would then be approved or rejected by

1 the Legislature.

2 The people of New York intended for the
3 Commission to get two chances to send those maps, and that
4 didn't happen. So that is the sort of background.

5 THE COURT: Right. It didn't happen.

6 MS. BRANCH: Exactly. And so we brought a
7 mandamus action to ask the court to compel the
8 commissioners to pick up where they left off. To send the
9 second set of maps to the Legislature since that is the
10 action that didn't take place.

11 THE COURT: Do I have the authority to tell them
12 to agree?

13 MS. BRANCH: You do, Your Honor, because --

14 THE COURT: What if they don't?

15 MS. BRANCH: What did you say?

16 THE COURT: What if they don't?

17 MS. BRANCH: You don't have the authority to
18 tell them to agree, but I think that under Section 4E you
19 have the authority to issue a writ of mandamus, which is
20 the relief we're requesting here.

21 THE COURT: Why would I issue a writ of mandamus
22 directing the Commission to meet anew for the purposes of
23 coming forth with a second redistricting plan based on the
24 2020 census when that issue has not only already been
25 resolved in the Harkenrider litigation, culminating in the

1 McAllister mess in June, but also in context of the fact
2 that the constitutional structure necessitates that any
3 approved map be in place for 10 years until the next
4 census in 2030?

5 So where is the authority to order interim
6 relief, as you're requesting, when it would appear to
7 violate the constitutional intent that approved maps be in
8 place for 10 years?

9 MS. BRANCH: So I don't think that the
10 constitution intends for remedial maps drawn pursuant to
11 Section 4E to be in place for the remainder of --

12 THE COURT: What do you base that on?

13 MS. BRANCH: So if you look at Section 4E,
14 literally the text of it, there's nothing in the text of
15 that provision that states that it's a single-use
16 provision. There's nothing that says that maps drawn
17 according to that provision must be in place for the
18 remainder of the decade.

19 THE COURT: Can you read Section 4E without
20 reading Section 4B, for example? Don't they have to be
21 read in context where 4B is clearly recognizing the need
22 for maps to be in place for 10 years.

23 MS. BRANCH: Your Honor, if you look at section
24 5B, subsection A, it states on or before February 1st of
25 each year ending in zero, and at any other time a court

1 orders that a congressional or state legislative districts
2 be amended.

3 So there you clearly see that the IRC can be
4 reestablished later in the decade pursuant to court order.
5 That is the intent of the Commission. The people of New
6 York intended for the IRC to get two chances to propose
7 their map to the Legislature.

8 THE COURT: Yeah, they did, and they didn't do
9 it.

10 MS. BRANCH: And because that didn't happen, the
11 remedial map that's in place is not required to be in
12 place for the remainder of the decade. This has
13 happened --

14 THE COURT: That's your interpretation of it.
15 So if you have let's say annual revisits, would that
16 section 5B(a) allow for the court to order the
17 redistricting maps to be amended annually?

18 MS. BRANCH: Your Honor, I think Section 4E is
19 the provision under which this Court has authority to
20 issue a writ of mandamus. And under that provision there
21 must be a violation of law.

22 Here the violation of law is clear. The IRC
23 failed to set the second set of maps. If there is no
24 violation that has occurred with respect to the remedial
25 map or the interim map that's put in place, then there can

1 be no redistricting anew. So there couldn't be annual
2 redistricting without an underlying violation of law.

3 THE COURT: Okay. So you've got a
4 constitutional amendment in 2014 where it really kicks in
5 for the first time this year. And you've got a structure
6 laid out for the Redistricting Commission to really have
7 two opportunities to submit maps. Here the Legislature
8 rejected the first submission, which, by the way, were two
9 separate maps.

10 The Commission deadlocks and does not set forth
11 or submit to the Legislature a second redistricting plan.
12 Didn't the Legislature, when they contemplated the
13 amendments in 2014 which were ultimately adopted, wasn't
14 it contemplated that this type of deadlock is a realistic
15 possibility? And isn't that why the amendment provides
16 for judicial relief under 4E to prepare a map? Isn't that
17 the entire structure?

18 So in context of that question -- and I'll let
19 you respond in a moment -- is there any difference between
20 a map approved judicially under 4E versus a map that is
21 approved under 4B by the Legislature, is there any real
22 difference as to the length of time that those maps have
23 to be in place, recognizing that there has to be a
24 reasoned period, here 10 years in the constitution, to
25 provide stability in the election process as distinguished

1 from an annual or a periodic review which could
2 potentially wreak havoc in the election process? So what
3 do you think?

4 MS. BRANCH: I understand your question and the
5 concern about, you know, having frequent redistricting.
6 But I think it goes back to the point I was raising
7 earlier, which is when there is a legal violation and
8 Section 4E provides for a remedy, that is appropriate for
9 the court to provide that remedy. I think that --

10 THE COURT: But the court already did that.

11 MS. BRANCH: The court provided a remedy with
12 respect to the malapportionment of the prior map, right?
13 So in Harkenrider the issue was that the map that was in
14 place -- so the map that had been passed was declared
15 constitutionally invalid and so the 2012 map was the only
16 map that was in place for the congressional districts and
17 that map was malapportioned, so the court had to put in
18 place a new map in order to run the 2022 elections.

19 But the court in Steuben County never said that
20 that map was to govern for the entire period. For the
21 entire decade.

22 THE COURT: Was the issue even raised?

23 MS. BRANCH: The issue was not raised as far as
24 I understand it and the court --

25 THE COURT: Wait. Hold on one second. I'm

1 sorry. I think that some of the petitioners in the letter
2 to Judge McAllister had made a comment to the effect that
3 whatever map he approved be limited to the 2022 election.
4 And in reviewing Judge McAllister's decisions, I don't
5 think that issue was addressed.

6 MS. BRANCH: I should say the issue was raised
7 by outsiders, it wasn't raised by the parties. And the
8 issue was never addressed, as you stated.

9 So I think the default with respect to remedial
10 maps is that they're put in place for an interim period.
11 If you look at other states -- we cited a couple of cases
12 in our brief. In New Hampshire, for example, in 2000 the
13 Legislature hit an impasse. There was a court-drawn map
14 that was in place for the 2002 elections. And then
15 following that -- subsequent to that the Legislature came
16 back and was able to pass a map that was then in place for
17 the remainder of the decade.

18 There isn't anything in the New York
19 Constitution that prohibits the IRC and the Legislature
20 from engaging in that process at this point. Yes, there
21 are deadlines in the constitution, but Section 4E
22 specifically states that the New York constitutional
23 deadlines are to govern redistricting process except for
24 when a court orders the adoption of a map. And that is
25 where we are. So Section 4E provides the mechanism for

1 this court to order mandamus.

2 And I would also point the court to what
3 happened in the 2000 cycle in New York with the *Rodriguez*
4 *v. Pataki* case. In that case and in that scenario the
5 court issued a remedial map because it appeared that there
6 was going to be a legislative impasse and a map was not
7 going to be in place for the fast-approaching elections.

8 And the Legislature again came back and was able
9 to pass a map. That legislatively passed map is the one
10 that was in place for the remainder of the decade. So I
11 would say it's not uncommon for a remedial map.

12 THE COURT: That was before the 2014 amendments?

13 MS. BRANCH: That was before the 2014
14 amendments. And it was also part of the impetus for the
15 2014 amendments, right?

16 The relief that we're seeking here is very
17 consistent with the 2014 amendments. It is exactly in
18 line with what the people of New York asked for their
19 redistricting process to look like, which is for the IRC
20 and the Legislature, in combination, to implement
21 redistricting maps. It's not for a court to implement a
22 map that would then be in place for the remainder of the
23 cycle. There was a carefully crafted process that the
24 people of New York voted for. And that is what we are
25 asking to begin anew for the 2024 cycle and beyond.

1 THE COURT: You would agree that if the
2 Redistricting Commission had submitted maps to the
3 Legislature for its review and the Legislature approved
4 those maps, then those maps would be in place until the
5 next census in 2030, true?

6 MS. BRANCH: They would, unless they were
7 challenged pursuant to 4E or some other, you know, source
8 of law, right? They could be challenged as part of some
9 gerrymandered or as racially gerrymandered maps. So it's
10 not bad maps that are passed pursuant to the legislative
11 process are, you know, in place for the remainder of the
12 decade regardless of whether they violate the law.

13 THE COURT: They're subject to judicial review?

14 MS. BRANCH: Correct.

15 THE COURT: And if they're upheld on judicial
16 review they stay in place for 10 years?

17 MS. BRANCH: They stay in place for the
18 remainder of the decade, correct.

19 THE COURT: And we have Judge McAllister, on
20 remittal from the Court of Appeals, approving the maps for
21 the 2022 congressional maps, we have a final decision and
22 order without an appeal. Is it your contention that the
23 constitutional intent that redistricting maps be in place
24 for the 10-year period does not apply when the maps are
25 judicially approved as distinguished from being approved

1 or adopted by the Legislature?

2 MS. BRANCH: It is our position that when the
3 maps that are judicially approved were not created
4 pursuant to the process set forth in the 2014 amendments,
5 specifically the combination of the IRC and the
6 Legislature working together to implement constitutional
7 congressional maps, that that map must remain in place for
8 the remainder of the decade.

9 I just don't think that the people of New York
10 meant when they voted for the 2014 amendments that a court
11 in Steuben County, you know, drawn by -- and a map drawn
12 by a special master was meant to be in place for the
13 remainder of the decade. And there's nothing in the
14 constitution that prohibits the remedy and the relief that
15 we're asking for here.

16 THE COURT: So, you keep referring to what the
17 people understood the constitutional amendments to be, but
18 don't we interpret the constitutional mandate by the plain
19 language of its terms?

20 MS. BRANCH: Yes. And the plain language of
21 Section 4E does not prohibit the relief that we're asking
22 for here. It says that a court can order the adoption of
23 or changes to a redistricting plan to remedy a violation
24 of law.

25 There's nothing in that provision or anywhere

1 else in the constitution that says that Section 4E can
2 only be invoked one time in a decade.

3 THE COURT: Is the only violation of law that
4 you are basing your claim on the failure of the
5 Redistricting Commission to submit a second set of
6 redistricting plans prior to February 28th, 2022?

7 MS. BRANCH: The violation of law that our
8 request for mandamus relief is based on is that, yes, that
9 the IRC failed to send a second set of maps and that as a
10 result they did not comply with their mandatory
11 non-discretionary duty, and as a result this is a case
12 that is proper for mandamus relief.

13 And I would point the Court to footnote 10 of
14 the Harkenrider decision which explicitly recognizes that
15 judicial intervention in the form of a mandamus proceeding
16 is a way to compel the IRC to comply with its duties. And
17 this was something that was put in the decision in
18 response to an argument that I think the state respondents
19 and Judge Rivera made which is in future cycles why would
20 the IRC ever do what it is required to do? Why wouldn't
21 maps always be drawn by courts? Because if the IRC
22 doesn't act, the remedial provision will kick in such that
23 the court will draw the map.

24 And the Harkenrider court responded and said
25 judicial intervention in the form of mandamus is one way

1 to compel the IRC to comply with its duties. And that is
2 precisely what we're doing here.

3 We're not asking for relief for 2022. We
4 recognize that the Steuben -- the map that was created by
5 the Steuben County Court is in place for 2022. But
6 there's nothing in that opinion or in the New York
7 Constitution that mandates that that map must be used for
8 the remainder of the decade. And I would contend that
9 that is not consistent with what the people of New York
10 wanted when they passed -- or when they voted for the 2014
11 amendments.

12 THE COURT: Would annual judicial reviews be
13 contrary to the constitutional intent that an approved
14 congressional map, as here we're only talking about the
15 congressional maps, be in place for 10 years? Can we do
16 this every year? Wouldn't that run afoul of the intent
17 defined in the constitution that maps as approved within
18 the structure are to be in place for 10 years?

19 MS. BRANCH: Sure. And I don't think that that
20 is a concern because I don't think that annually there
21 will be a violation of law that will necessitate judicial
22 intervention.

23 THE COURT: Well, how do you know?

24 MS. BRANCH: I mean we don't know, but I
25 think --

1 THE COURT: What if it goes back to the IRC and
2 they do the same thing and they deadlock and then there's
3 a proceeding and then there's a court order for a map?
4 And then it opens up again the following year and once
5 again the IRC because, you know, we had a demonstrated
6 lack of a bipartisan effort here, and couldn't this
7 generate annual reviews, and wouldn't that be contrary to
8 the constitutional intent that maps be in place for 10
9 years to provide stability to the electoral process?

10 MS. BRANCH: Well, so I don't think that there
11 is -- I don't think that the constitution says that maps
12 have to be in place for 10 years if there is a legal
13 violation. Like that is what Section 4E --

14 THE COURT: But the legal violation has been
15 cured.

16 MS. BRANCH: The legal violation hasn't been
17 cured because the map that was put in place by Steuben
18 County was drawn by a special master. It wasn't put in
19 place pursuant to the carefully crafted process that New
20 Yorkers voted for.

21 THE COURT: The carefully crafted process that
22 the Legislature prepared when it proposed the
23 constitutional amendments, the process in adopting Article
24 III when you read Sections 4B and E together recognize the
25 reality that you got a structure for the Legislature to

1 act, but it doesn't happen. It provides for judicial
2 remedy.

3 So what is the violation today that would
4 sustain mandamus relief, whereas here the failure to
5 submit the second set of redistricting plans prior to
6 February 28, 2022, has already been remedied by the
7 McAllister decision approving the 2022 congressional maps?
8 So what's the violation now that necessitates a remedy in
9 the form of mandamus when that relief has already been
10 accomplished?

11 MS. BRANCH: So the Steuben County map has
12 remedied -- so, as I stated before, I don't think that the
13 Steuben County map has remedied the violation that we have
14 identified here. And the reason is because it was not
15 drawn pursuant to the process involving the IRC and the
16 Legislature.

17 THE COURT: But the process contemplates a
18 breakdown legislatively and within the Commission and a
19 judicial remedy.

20 MS. BRANCH: And I think the big difference
21 though between what happened previously and what the
22 current situation is is that previously there was the 2021
23 legislation in place, right? And under that legislation
24 there was this backstop. There was this alternative
25 procedure, such that if the Commission did not send the

1 second set of maps, it was okay for the Legislature to
2 step up and --

3 THE COURT: But didn't the court in Harkenrider
4 rule that as unconstitutional?

5 MS. BRANCH: Right. But when the Commission was
6 determining whether to send the second set of maps, that
7 2021 legislation was still in place. And so what has
8 changed is that that legislation has now been declared
9 invalid and --

10 THE COURT: So absent the 2021 legislation,
11 which has been declared invalid, is it your contention
12 that the Commission would work in good faith together to
13 prepare a second set of redistricting maps for use
14 throughout the balance of the decade?

15 MS. BRANCH: I mean I can't predict the future.
16 But I do think we have on record representations from
17 Ms. Amunson's clients, which includes the chair of the
18 IRC, that if they're ordered to send a second set of maps
19 to the Legislature, they stand ready to do so. The
20 Commission --

21 THE COURT: What if they don't have consensus?
22 You indicated, or someone indicated, I kind of lost track,
23 that -- and I think it was -- Jessica, I think you might
24 have said this earlier, that your clients were willing to
25 work forward in doing the second set of redistricting

1 plans, but that Tim's clients refused to participate at
2 that time. And I believe there was a deadlock in the
3 papers along those lines.

4 MS. RING AMUNSON: Well, Your Honor, I do want
5 to clarify. You used the term deadlocked several times
6 and the constitution does actually contemplate what
7 happens in the event of a deadlock, which is that the
8 commissioners can send two separate sets of plans to the
9 Legislature.

10 THE COURT: They did that the first set.

11 MS. RING AMUNSON: They did that the first time
12 around. What happened the second time around is not just
13 a deadlock but a refusal to meet. Denial of a quorum to
14 meet to even vote such that the Commission was disabled
15 from being able to send either two sets of maps or one set
16 of maps to the Legislature.

17 So, essentially there was no ability to send a
18 second set of maps. At that point, as Ms. Branch pointed
19 out and as Your Honor has acknowledged, the 2021
20 legislation was in place which contemplated that the
21 Legislature would take over in the event that no second
22 set of maps was voted on from the Commission.

23 So that is in fact what happened and that is the
24 violation essentially that was at issue, the Legislature
25 taking over without the Commission having sent a second

1 set of maps, without having voted on a second set of maps.

2 THE COURT: Okay. Well, thank you all for your
3 respective arguments. I will reserve decision. As is my
4 practice, I will be issuing a written decision. Have a
5 nice day.

6 MS. BRANCH: Thank you, Your Honor.

7 MS. RING AMUNSON: Thank you, Your Honor.

8 MR. HILL: Thank you, Your Honor.

9 MR. TSEYTLIN: Thank you.

10 (The proceedings in the above-entitled matter
11 were concluded at approximately 2:16 p.m.)

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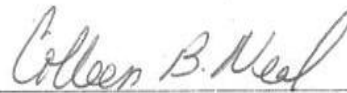
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C E R T I F I C A T E

I, **COLLEEN B. NEAL**, Senior Court Reporter in and for the Third Judicial District, State of New York, **DO HEREBY CERTIFY** that the foregoing is a true and correct transcript of my stenographic notes in the above-entitled matter.



Colleen B. Neal, Senior Court Reporter
Albany County Courthouse
Albany, New York 12207