To Be Argued By:
Misha Tseytlin
Time Requested: 15 Minutes

New York Supreme Court

APPELLATE DIVISION — THIRD DEPARTMENT

Docket No.
CV-22-2265

ANTHONY S. HOFFMANN, MARCO CARRIÓN, COURTNEY GIBBONS, LAUREN FOLEY, MARY KAIN, KEVIN MEGGETT, CLINTON MILLER, SETH PEARCE, VERITY VAN TASSEL RICHARDS, and NANCY VAN TASSEL,

Petitioners-Appellants,

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 KEN JENKINS, 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-Respondents,

(Caption Continued on the Reverse)

BRIEF FOR INTERVENORS-RESPONDENTS

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and

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

Intervenors-Respondents.

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PRELIMINARY STATEMENT

In early 2022, Intervenors here successfully challenged the Legislature's 2022 congressional map as violating the New York Constitution, including—as relevant here—on the ground that the Legislature purported to adopt the map without receiving a second-round submission from the Independent Redistricting Commission ("IRC") under N.Y. Const. art. III, § 4(b). That lawsuit culminated in a Court of Appeals decision that ordered a process of "judicial oversight of remedial action in the wake of [the] determination of unconstitutionality." *Harkenrider v. Hochul*, 38 N.Y.3d 494, 523 (2022). The Steuben County Supreme Court followed those instructions, adopting a constitutional remedial map that all understood controls congressional elections "for the next 10 years." *Id.* at 527 (Troutman, J., dissenting in part).

The Petitioners in the present lawsuit, represented by some of the same counsel that is representing them here, undertook several legal maneuvers to frustrate the adoption and use of a constitutional congressional map in *Harkenrider*. Five of the Petitioners filed a detailed submittal during the remedial mapdrawing process, urging the Steuben County Supreme Court to limit its adopted map to only one election—just the 2022 congressional election—after which Petitioners requested that the Steuben County Supreme Court return the redistricting process to the IRC and Legislature, "who are best equipped to consider the interests of local

populations and to weigh the specific equities involved," to have them "enact a congressional map that complies with both the United States and New York Constitutions to be used for the rest of the decade." R.328, 337–38. Another one of the Petitioners here, acting in parallel and represented by the same counsel, ran to federal court, seeking to have the court order New York to hold elections under the already-declared-unconstitutional congressional map, a request the federal judge rejected as "imping[ing] . . . on the public perception of" both "free, open, rational elections" and "respect for the courts." Transcript of May 4, 2022, Hearing at 40, *De Gaudemar, et al. v. Kosinski, et al.*, No.1:22-cv-3534 (S.D.N.Y. May 4, 2022), Dkt.38. One action that Petitioners here never took was timely filing a lawsuit in January 2022, asking the courts to require the IRC to fulfill its constitutional duty to submit a second map to the Legislature within the timeframe that the New York Constitution provides.

Yet, after Petitioners saw the Steuben County Supreme Court's remedial map and determined that they did not like that map's substance, they belatedly filed this lawsuit in late June 2022, asking the Albany County Supreme Court to re-remedy the procedural constitutional violation that *Harkenrider* already remedied. As a new remedy for this already-remedied constitutional violation, Petitioners asked the Albany County Supreme Court to order the IRC to complete the process that it had

failed to complete five months previously, then allow the Legislature to adopt that new IRC map, revise it, or enact a different one, and then have that map replace the one that Intervenors obtained in *Harkenrider*. The Albany County Supreme Court refused to take part in Petitioners' cynical and obviously legally meritless gambit and dismissed their lawsuit. This Court should affirm that dismissal for four independently sufficient reasons.

First, the relief that Petitioners seek—an order compelling the IRC to propose a second set of congressional maps for legislative consideration—is not constitutionally available because *Harkenrider* already remedied the procedural constitutional violation that Petitioners invoke. In January 2022, after the Legislature rejected the IRC's first redistricting plan, Article III, Section 4(b) required the IRC to submit to the Legislature second-round maps "[w]ithin fifteen days"—i.e., by January 25, 2022, in this case—and, in any event, no "later than February twenty-eighth." N.Y. Const. art. III, § 4(b). The IRC failed to do so, but the Legislature tried to adopt a congressional map anyway. *Harkenrider* already remedied this violation of law through a judicially adopted map, 38 N.Y.3d at 523, and that map "shall be in force until the effective date of a plan based upon the subsequent federal decennial census taken in a year ending in zero," N.Y. Const. art. III, § 4(e). Notably, the Court of Appeals in *Harkenrider* had before it other

proposed remedies for that same constitutional violation—including (1) Judge Troutman's proposal that "the legislature should be ordered to adopt one of the IRC-approved plans on a strict timetable, with limited opportunity to make amendments thereto," *Harkenrider*, 38 N.Y.3d at 526 (Troutman, J., dissenting in part); (2) the Steuben County Supreme Court's initial approach of giving the Legislature another chance to achieve bipartisan compromise, *Harkenrider* No.243 at 16;[1] and (3) the very remedy that Petitioners seek here—but declined to adopt those alternative remedies. Thus, regardless of whether Petitioners' proposed remedy would have been available to the Court of Appeals when it decided *Harkenrider*, that remedy is no longer available under Article III, Section 4(e)'s plain text.

Second, while this Court need not reach this issue, the relief that Petitioners request would not be constitutionally available even if *Harkenrider* had not already remedied the procedural constitutional violation because the only constitutional remedy for a procedural constitutional violation after the expiration of the constitutional deadline is a judicially adopted map. In *Harkenrider*, the Court of Appeals explained that once "[t]he deadline in the Constitution for the IRC to submit

[1] All citations to e-filings in *Harkenrider v. Hochul*, Index No.E2022-0116CV (Steuben Cnty. Sup. Ct.), may be found at https://iapps.courts.state.ny.us/nyscef/DocumentList?docketId=kmywkTvfcaoSsQ66zseQsg==&display=all. Such documents are cited as "*Harkenrider* No.__." In dismissing Petitioners' Amended Petition, the Albany County Supreme Court explicitly considered the relevant e-filings in *Harkenrider*. R.19 n.12.

a second set of maps has long since passed," any procedural constitutional violation becomes "incapable of a legislative cure," and so "the Constitution explicitly authorizes" only judicial drawing of remedial maps as a remedy "in the wake of a determination of unconstitutionality" arising from the IRC's failure to send second-round maps to the Legislature. 38 N.Y.3d at 523. That principle forecloses the remedy that Petitioners seek here—requiring the IRC to reconvene after the constitutional deadline and send a second map for the Legislature's consideration—providing an independent ground for affirmance.

Third, Petitioners' lawsuit is time barred under both general equitable principles and CPLR 217(1)'s four-month statute of limitations for mandamus actions, accruing upon "the respondent's refusal . . . to perform its duty." Petitioners filed their Article 78 Petition seeking mandamus relief on June 28, 2022, more than *five* months after the IRC announced that it would not present a second round of proposed maps for legislative consideration in violation of its constitutional obligations. That is far too late under both general equitable principles and the four-month window that CPLR 217(1) provides. This untimeliness provides yet another alternative basis to affirm the Albany County Supreme Court's dismissal.

Fourth and finally, this lawsuit is an impermissible collateral attack on the Steuben County Supreme Court's final judgment in *Harkenrider*. For Petitioners to

obtain effective relief here, the Albany County Supreme Court would need to require the IRC to submit a second congressional map to the Legislature *and* to limit the applicability of the map that the Steuben County Supreme Court drafted and adopted only to the 2022 election. But the Albany County Supreme Court has no power to order the second half of this relief, given that only the Steuben County Supreme Court has the power to modify or vacate its own final, unappealed judgment.

For all four of these independent reasons, this Court should affirm the dismissal of Petitioners' legally and constitutionally foreclosed Article 78 Petition.

COUNTERSTATEMENT OF QUESTIONS PRESENTED

(1) Whether Petitioners' requested relief is constitutionally unavailable because *Harkenrider* already remedied the only violation of law that Petitioners raise here, so the Steuben County Supreme Court's remedial map must "be in force until the effective date of a plan based upon the subsequent federal decennial census taken." N.Y. Const. art. III, § 4(e).

Answer of Supreme Court: The Albany County Supreme Court correctly held that Petitioners' requested relief is unconstitutional because the Steuben County Supreme Court certified its congressional map consistent with the Court of Appeals' remittal in *Harkenrider* to remedy the violation of constitutional procedure raised

there and that "approved redistricting map[ ]" must remain "in full force and effect, until redistricting takes place again following the 2030 federal census." R.18–19.

(2) Whether Petitioners' Article 78 Petition is alternatively foreclosed because the New York Constitution does not permit a court to order the reestablishment of the IRC and legislative redistricting process to adopt a new map upon a finding of a procedural constitutional violation, after the constitutional deadline has passed.

Answer of Supreme Court: The Albany County Supreme Court correctly held that "there is no authority for the IRC to issue a second redistricting plan after February 28, 2022," to remedy a procedural constitutional violation like the one here. R.18.

(3) Whether Petitioners' Article 78 Petition, filed over five months after the expiration of the IRC's deadline to submit second-round maps on January 25, 2022, was untimely filed under both principles of equity and CPLR 217(1).

Answer of Supreme Court: The Albany County Supreme Court erred in holding that this lawsuit was timely because Petitioners' claims were not ripe until May 20, 2022, when the new congressional map went into effect.

(4) Whether Petitioners' lawsuit, which asks the Albany County Supreme Court to transform the Steuben County Supreme Court's judicially adopted

congressional map into an interim map, is an impermissible collateral attack on the Steuben County Supreme Court's judgment.

Answer of Supreme Court: The Albany County Supreme Court erred in holding, based largely upon principles relevant to res judicata only, that this lawsuit could not be a collateral attack on the Steuben County Supreme Court's judgment because Petitioners were not parties to that prior lawsuit and so did not have a full and fair adjudication on the merits of their claim.

COUNTERSTATEMENT OF FACTS

A. The 2014 Anti-Gerrymandering Amendments Set Up An Exclusive, Carefully Crafted Redistricting Process

For decades, partisanship ruled the redistricting process in New York. *See Harkenrider*, 38 N.Y.3d at 502–03. At that time, courts interpreted the New York Constitution as not barring partisan gerrymandering, *Bay Ridge Cmty. Council, Inc. v. Carey*, 103 A.D.2d 280, 284 (2d Dep't 1984), offering politicians and partisan actors carte blanche to draw lines for political gain.

In 2014, the People rejected this failed regime by amending Article III, Sections 4 and 5 of the New York Constitution, and adding a new Section 5-b to the same Article (collectively, "the 2014 Amendments"), thereby "significantly alter[ing] both substantive standards governing the determination of district lines and the redistricting process established to achieve those standards," to "introduce a

new era of bipartisanship and transparency." *Harkenrider*, 38 N.Y.3d at 501, 503. The 2014 Amendments embed important procedural and substantive safeguards against gerrymandering into the Constitution. N.Y. Const. art. III, §§ 4, 5. To that end, the Constitution lays out a mandatory, exclusive process that "*shall govern* redistricting in this state," meaning that redistricting cannot take place outside of this process. *Id.* § 4(b), (e) (emphasis added).

Under the 2014 Amendments, the IRC only has constitutional authority to act after each decennial census to draw new districts, with the sole exception being that the IRC may "amend[ ]" district maps in response to a court order. *Id.* §§ 4, 5-b. "On or before February first of each year ending with a zero," the New York Constitution requires the establishment of the 10-member IRC, which comprises two members each appointed by the Temporary President of the Senate, the Speaker of the Assembly, the Senate Minority Leader, and the Assembly Minority Leader, and two members appointed by a vote of the politically appointed members. *Id.* § 5-b(a)(1)–(5); *see also Harkenrider*, 38 N.Y.3d at 509–10. Thereafter, these 10 members must hold twelve public hearings throughout the State, accepting public comments and suggestions on what districts should look like, N.Y. Const. art. III, § 4(c); *Harkenrider*, 38 N.Y.3d at 510, and then "prepare a redistricting plan to

establish senate, assembly, and congressional districts every ten years commencing in two thousand twenty-one," N.Y. Const. art. III, § 4(b).

Following the completion of the public-hearing process, the IRC must submit to the Legislature an initial set of maps and the necessary implementing legislation "as soon as practicable," but in no event "later than January fifteenth in the year ending in two beginning in two thousand twenty-two," after which the Legislature must vote on the maps and implementing legislation as provided, without any amendment. *Id*. If the Legislature fails to adopt this first set of maps and implementing legislation, or if the Governor vetoes adopted implementing legislation, then the redistricting process reverts to the IRC. *Id.* The IRC must then submit a second set of maps and implementing legislation to the Legislature, subject to the requirements outlined above, at least "[w]ithin fifteen days" of notification of the first rejection, but "in no case later than February twenty-eighth." *Id.* The Legislature then votes on the second set of proposed maps and implementing legislation, without any amendment. *Id.*; *see also Harkenrider*, 38 N.Y.3d at 510. Only then, if the Legislature fails to adopt the IRC's second set of maps and implementing legislation, or if the Governor vetoes the second adopted implementing legislation, can the Legislature amend the IRC's proposed maps and enact its own maps. N.Y. Const. art. III, § 4(b); *see also* N.Y. Legis. Law § 93(1).

The Constitution also provides for "expedited judicial review" of a redistricting map, when challenged immediately after its enactment. *See Harkenrider*, 38 N.Y.3d at 521–22. Under Article III, Section 5, "[a]n apportionment by the legislature, or other body, shall be subject to review by the supreme court, at the suit of any citizen, under such reasonable regulations as the legislature may prescribe." N.Y. Const. art. III, § 5. In such cases, a reviewing court should "give precedence" to the redistricting challenge "over all other causes and proceedings" before it, and, in all cases, must "render its decision within sixty days after a petition is filed." *Id.* Under this initial review, a court determines whether the "law establishing congressional or state legislative districts . . . violate[s] the provisions of [Article III]," and if so, declares the law "invalid in whole or in part." *Id.* And, if a court determines that the redistricting is invalid, it generally must give the Legislature "a full and reasonable opportunity to correct the law's legal infirmities." *Id.* But when a court determines that there have been procedural infirmities after the conclusion of the timeline for IRC and legislative enactment, the Constitution does not permit giving the Legislature a chance to fix them, because "the legislature is incapable of unilaterally correcting the infirmity." *Harkenrider*, 38 N.Y.3d at 523 n.19.

Outside of this every-10-years process, the Constitution only gives the IRC the constitutional authority to act in narrow circumstances: only if "a court orders that congressional or state legislative districts be amended." N.Y. Const. art. III, § 5-b(a). In such a case, the court can order that the IRC "be established to determine the district lines for congressional and state legislative offices." *Id.*

Finally, Section 4(e) provides that "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 changes to, a redistricting plan as a remedy for a violation of law." N.Y. Const. art. III, § 4(e). Section 4(e) then explains that "[a] reapportionment plan and the districts contained in such plan"—that is, the plan adopted under the process described above, either via IRC-and-Legislature redistricting or via the courts on initial review of "[a]n apportionment by the legislature, or other body," N.Y. Const. art. III, § 5—"*shall be in force until the effective date of a plan based upon the subsequent federal decennial census taken in a year ending in zero unless modified pursuant to court order*," N.Y. Const. art. III, § 4(e) (emphasis added).

B. The Legislature Purports To Enact A Congressional Map After The IRC Violates Its Constitutional Duty By Failing To Submit A Second Congressional Map By January 25

The 2020 decennial census and subsequent redistricting process offered the first opportunity to apply the 2014 Amendments, and their specific, constitutionally adopted process. *Harkenrider*, 38 N.Y.3d at 504. Initially abiding by this constitutional process, the IRC held public hearings throughout 2021, accepting input from the public across the State to assist with the mapdrawing process. *Id.* Then, in January 2022, the negotiation process between the majority-appointed and minority-appointed IRC members began to break down and the IRC split along party lines, unable to agree on any consensus maps to submit to the Legislature. *Id.* As a result, the IRC submitted two initial redistricting plans to the Legislature, one from each of the party delegations. *Id.* The Legislature rejected these plans out-of-hand, without even holding any hearings, on January 10, 2022. 2021–2022 N.Y. Reg. Sess. Leg. Bills A.8587, A.8588, A.8589, A.8590, S.7631, S.7632, S.7633, S.7634; *see also Harkenrider*, 38 N.Y.3d at 504.

The Legislature's rejection of the IRC's initial submissions meant that the redistricting process reverted to the IRC for drafting and submission of a second-round redistricting plan. N.Y. Const. art. III, § 4(b). Thus, the IRC had until January 25, 2022—15 days after the Legislature's January 10 rejection of the initial maps, *id.*—to submit revised maps to the Legislature, *Harkenrider*, 38 N.Y.3d at 504. But

on January 24, one day before the constitutional deadline, the IRC announced that it would not submit a second redistricting plan to the Legislature. *Id.* at 504–05. So the IRC failed to comply with its constitutional duty to submit second-round maps within 15 days of the Legislature's rejection of its initial redistricting plans. N.Y. Const. art. III, § 4(b).

Following this announcement, the Democrats in control of the Legislature, without any input from the Republicans, *see Harkenrider*, 38 N.Y.3d at 504–05, unconstitutionally purported to adopt their own 2022 congressional redistricting map, *see* 2021–2022 N.Y. Reg. Sess. Leg. Bills S.8196, A.9039-A (as technically amended by A.9167), A.9040-A, A.9168, even though the Legislature had no authority to adopt any map under the New York Constitution, *Harkenrider*, 38 N.Y.3d at 508–17. As Intervenors ultimately proved, the map that the Legislature purported to enact outside of New York's constitutional processes was 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)(5); *see Harkenrider*, 38 N.Y.3d at 518–20. Nevertheless, and ignoring these constitutional defects, Governor Hochul signed this legislatively drawn congressional redistricting map into law on February 3, 2022. *Harkenrider*, 38 N.Y.3d at 505.

C. Intervenors Successfully Challenge This Violation Of Constitutional Procedure In *Harkenrider*

Intervenors challenged the congressional map in the Steuben County Supreme Court on the same day that it was signed into law, *see Harkenrider* No.1, naming Governor Kathy Hochul, legislative leadership, and the New York Board of Elections, among others, as respondents, *id.* at 1. After noting that the existing congressional map, adopted after the 2010 decennial census, was now unconstitutional, *Harkenrider* No.18 at 16–19, 75–77, Intervenors raised both procedural and substantive challenges to the Legislature's 2022 congressional map.

On the constitutionally mandated procedure relevant here, Intervenors argued that the congressional map was invalid because the Legislature adopted the map notwithstanding the IRC's failure to submit a second congressional map under the New York Constitution. *See id.* at 73–75; N.Y. Const. art. III, §§ 4, 5. On this basis, Intervenors argued that the enacted congressional map was unconstitutional, and that the only constitutional remedy for this violation was the courts drawing a remedial map. *Harkenrider* No.18 at 75. Intervenors explained that because the Legislature had no authority to draw a congressional map upon the IRC's failure to complete its mandatory duties, the Steuben County Supreme Court could not "give the Legislature another opportunity to draw curative districts" and so a court-drawn map was the only permissible remedy for the violation of constitutional procedure. *Id.*

On substance, Intervenors argued that the congressional map that the Legislature had purported to adopt was an unconstitutional partisan gerrymander, in violation of Article III, Section 4(c)(5) of the New York Constitution. *See Harkenrider* No.18 at 77–78. Intervenors explained to the Steuben County Supreme Court that if it found a substantive constitutional violation, but not a violation of constitutional procedures, the Legislature had one chance to cure the gerrymander and adopt a lawful congressional map. *Id.* at 82; *see also* N.Y. Const. art. III, § 5.

The Steuben County Supreme Court issued its decision on March 31, 2022, within the expedited 60-day window for redistricting challenges. N.Y. Const. art. III, § 5. The Court ruled in favor of Intervenors on the violation of constitutional procedure. *Harkenrider* No.243 at 8–10. The Court also held that the congressional map was unconstitutionally gerrymandered, based upon the one-sided redistricting process and social science analysis of the partisan results of the enacted congressional map. *Id.* at 10–14. Then, interpreting the Constitution's remedial provisions, the Court rejected Intervenors' argument that the courts had to cure any violation of constitutional procedure under Article III, Section 4(b), concluding instead that although the congressional map was "void *ab initio*" for failure to follow the constitutional procedure, *id.* at 10, the Steuben County Supreme Court would give the Legislature "another chance to pass maps that do not violate the

Constitution," *id.* at 16. Thus, the Court would have given the Legislature until April 11, 2022, "to enact new bipartisan supported maps that meet the constitutional requirements." *Id.* at 16–17. If the Legislature was unable to receive bipartisan support for a congressional map, or otherwise failed to adopt a map, the Steuben County Supreme Court ruled that it would "retain an expert at the State's expense to draw new maps." *Id.* at 17.

On appeal, the Appellate Division, Fourth Department reversed the Steuben County Supreme Court's conclusion of procedural invalidity but affirmed the substantive-violation holding. *Harkenrider v. Hochul*, 204 A.D.3d 1366, 1366–75 (4th Dep't 2022). As a result, the Fourth Department held that the Legislature had one chance to correct the substantive infirmities with the congressional map and so granted the Legislature "until April 30, 2022 to enact a constitutional replacement for the congressional map." *Id.* at 1375.

The Court of Appeals, ruling on the parties' cross-appeals, held that the congressional map was both procedurally and substantively unconstitutional, and then agreed with Intervenors on their remedial arguments. The Court of Appeals held that the congressional map's procedural unconstitutionality was "at this juncture, incapable of a legislative cure," because "[t]he deadline in the Constitution for the IRC to submit a second set of maps"—January 25, 15 days from when the

Legislature rejected the first-round map, or February 28, the absolute last day the IRC could submit a second-round map, N.Y. Const. art. III, § 4(b)—"has long since passed." *Harkenrider*, 38 N.Y.3d at 523. The Court held that "the enactment of the congressional [map] by the legislature was procedurally unconstitutional," and thus ordered the Steuben County Supreme Court to adopt a new map itself. *See id.* at 521, 524. On the constitutional process, the Court of Appeals held that the Constitution established a single, "constitutionally mandated procedure," which "permits the legislature to undertake the drawing of district lines only after two redistricting plans composed by the IRC have been duly considered and rejected," and which "drawing" would amount only to "'amendments' to such plan, not the wholesale drawing of entirely new maps." *Id.* at 509, 511–12 (emphasis omitted) (quoting N.Y. Const. art. III, § 4(b)). As a result, the Court ordered the Steuben County Supreme Court to "adopt constitutional maps" itself, "with the assistance of a neutral expert, designated a special master, following submissions from the parties, the legislature, and any interested stakeholders who wish to be heard," as that is the remedy "the Constitution explicitly authorizes" for the "procedural unconstitutionality of the congressional . . . map[ ]." *Id.* at 523–24.

Judge Troutman agreed with the majority's holding as to the procedural constitutional violation but would have ordered a different remedy. Observing that

the majority's decision results in a judicially adopted "electoral map" "for the next 10 years," *id.* at 527 (Troutman, J., dissenting in part), Judge Troutman concluded that the better remedy would be that "the legislature should be ordered to adopt one of the IRC-approved plans on a strict timetable," *id.* at 526. The majority declined to adopt this approach, pointing out that the Legislature rejected the IRC's initial maps and "the deadline in the Constitution for the IRC to submit a second set of maps has long since passed," meaning IRC and Legislature involvement was no longer permissible under the Constitution. *Id.* at 523 & n.20 (majority opinion).

D. On Remand In *Harkenrider*, The Steuben County Supreme Court Adopts A Remedial Congressional Map That Will Govern For The Next Decade, Over Petitioners' Objections

On remand, the Steuben County Supreme Court implemented the Court of Appeals' direction to adopt a "final enacted [congressional] map[ ]." *Harkenrider* No.696 at 1; *see Harkenrider* No.670. To aid in its creation of preliminary and final maps, the Steuben County Supreme Court offered all interested persons the opportunity to submit proposed maps, and people had the opportunity to appear and give public testimony on proposed maps before the Court and the Special Master. With the aid of the voluminous testimony submitted to the IRC and the thousands of additional comments submitted to the court, the Special Master drafted preliminary remedial maps.

Several of the Petitioners to this lawsuit—Courtney Gibbons, Lauren Foley, Seth Pearce, Verity Van Tassel Richards, and Nancy Van Tassel—represented by some of the same counsel as here, raised objections to the Special Master's proposed congressional map and urged that the map only govern the 2022 congressional elections. *See* R.328–38. Specifically, these Petitioners criticized the Steuben County Supreme Court's process, claiming that it "did not provide the public, including minority voters who live in historically marginalized communities, with an opportunity to provide input." R.328. They also raised what they claimed were several "serious concerns" they had with the Special Master's proposed congressional map, including that it would break up certain communities of interest. R.328–37. These Petitioners urged the Steuben County Supreme Court first "to ensure that the map drawn by the Special Master only be used for the 2022 congressional election," and then to "require the elected representatives of the people—who are best equipped to consider the interests of local populations and to weigh the specific equities involved—to enact a congressional map that complies with both the United States and New York Constitutions to be used for the rest of the decade." R.328, 337–38. In response to this request, Intervenors pointed out the proposal to limit the remedial map to only the 2022 elections violated the Court of Appeals' decision and the Constitution. *Harkenrider* No.660 at 3.

The Steuben County Supreme Court released its final congressional map on May 21, 2022, accompanied by the Special Master's detailed report documenting the process and the Court's written explanation regarding how it considered objections raised by Petitioners and others, how the final map preserved communities of interest, and how the court utilized the voluminous public testimony and comments in the mapdrawing process. *Harkenrider* No.670 at 1–31. After incorporating various minor technical corrections, the Steuben County Supreme Court "ORDERED, ADJUDGED, and DECREED" that the proposed technical changes were approved and the maps "as modified" "become the *final* enacted redistricting maps." *Harkenrider* No.696 at 1 (emphasis added). The Court thus declined to adopt Petitioners' request that the Court limit the applicability of the remedial congressional map only to the 2022 election. *See id.*; *Harkenrider* No.670 at 1–5. *No interested party, including Petitioners in this case, sought to appeal the Steuben County Supreme Court's final redistricting order, including on the grounds that the Court did not limit the map to the 2022 elections only*.

In the middle of the remedial proceedings before the Steuben County Supreme Court, Petitioner Anthony Hoffman, along with several other persons, sought relief from the U.S. District Court for the Southern District of New York, asking it to mandate that the already-declared-unconstitutional congressional map that was

"passed by the New York Legislature and signed by Governor Hochul on February 3, 2022," be used in the impending 2022 congressional elections. Compl. at 13, 15–16, *De Gaudemar, et al.*, Dkt.1. The District Court for the Southern District of New York criticized Petitioner Hoffman's request as "a Hail Mary pass" seeking to "hav[e] the New York primaries conducted on district lines that the State says are unconstitutional," rejecting it as an unlawful attempt to "impinge[ ] . . . on the public perception of" both "free, open, rational elections" and "respect for the courts." Transcript of May 4, 2022, Hearing at 15, 40, *id.*, Dkt.38.

E. Petitioners Bring This Action More Than Five Months After The Procedural Constitutional Violation That They Invoke

On June 28, 2022, Petitioners Anthony S. Hoffmann, Marco Carrión, Courtney Gibbons, Lauren Foley, Mary Kain, Kevin Meggett, Reverend Clinton Miller, Seth Pearce, Verity Van Tassel Richards, and Nancy Van Tassel, many of whom participated in the proceedings in Steuben County or federal court, as noted immediately above, filed this Article 78 special proceeding in the Albany County Supreme Court. R.24–25. In an Amended Petition filed on July 14, Petitioners asked the Albany County Supreme Court: (1) to "compel" the members of the IRC, named as Respondents in this case, "to 'prepare and submit to the legislature a second redistricting plan and the necessary implementing legislation for such plan,'" to be put in place "following the 2022 elections" to be "used for subsequent elections

this decade"; and (2) to therefore limit the *Harkenrider* map to only the 2022 elections, so that a new map, following the reinstatement of the IRC, "can be used for subsequent elections this decade." R.266, 284. Nowhere in their Petition or Amended Petition did Petitioners mention Article III, Section 4(e) of the New York Constitution—the provision that is now the centerpiece of their appeal—which provision permits a court "to order the adoption of, or changes to, a redistricting plan as a remedy for a violation of law," N.Y. Const. art. III, § 4(e). R.24–45, 265–88.

After Respondent Republican IRC Commissioners, R.315–16, and Intervenors, R.339–40, both moved to dismiss the Amended Petition, the Albany County Supreme Court dismissed on September 12, 2022. R.8–21. The Albany County Supreme Court concluded that Petitioners' lawsuit failed as a matter of law because their sought-after relief—an order compelling the IRC to submit new proposed plans for legislative enactment—would violate the Constitution's "mandate that approved redistricting plans be in place for" a 10-year period and "would provide a path to an annual redistricting process, wreaking havoc on the electoral process." R.18–19. Moreover, that Court also correctly held that "there is no authority for the IRC to issue a second redistricting plan after February 28, 2022," to remedy a procedural constitutional violation like the one Petitioners raised. R.18. The Albany County Supreme Court, however, disagreed with Intervenors and

Respondent Republican IRC Commissioners with respect to the timeliness of the lawsuit, concluding that Petitioners had filed within CPLR 217(a)'s four-month statute of limitations for mandamus actions because a justiciable controversy between Petitioners and the IRC accrued only in May 2022, when "the new 2022 Congressional Maps went into effect." R.17. Finally, the Albany County Supreme Court disagreed with Intervenors' contention that the Amended Petition amounted to an impermissible collateral attack on the judgment entered by the Steuben County Supreme Court in *Harkenrider*. R.15–16. The Albany County Supreme Court concluded that the suit was not barred by *res judicata* and, therefore, not a collateral attack on the *Harkenrider* judgment, because Petitioners were not parties in *Harkenrider* and had not been afforded the opportunity to fully and fairly adjudicate the merits of their claims therein. R.15–16.

After waiting another full month, Petitioners appealed to this Court from the dismissal of the Amended Petition on October 17, 2022. R.1–2. And, after waiting an additional three months to perfect their appeal, Petitioners filed their Appellant's Brief with this Court. *See* Brief for Petitioners-Appellants ("Appellants' Br.").

LEGAL ARGUMENT

I. Point I: The Relief That Petitioners Seek Is No Longer Available Under Section 4(e) Because *Harkenrider* Already "Remed[ied]" The "Violation Of Law" That Petitioners Invoke

A. When the existence of a right and judicial remedy involves resolving questions of constitutional interpretation, courts begin by analyzing the text of the provision at issue, "giv[ing] to the language used its ordinary meaning." *Harkenrider*, 38 N.Y.3d at 509 (quoting *Matter of Sherrill*, 188 N.Y. 185, 207 (1907)). Effectuating the "ordinary and plain meaning" of constitutional language must be the first and primary consideration, because that language is the best indication of the People's intent, *Matter of Sherrill*, 188 N.Y. at 207; *see also Finger Lakes Racing Ass'n Inc. v. N.Y. State Racing & Wagering Bd.*, 45 N.Y.2d 471, 479–480 (1978), and "[t]he Constitution is the voice of the people speaking in their sovereign capacity, [so] it must be heeded," *Matter of N.Y. El. R.R. Co.*, 70 NY 327, 342 (1877); *see also Harkenrider*, 38 N.Y.3d at 524. Courts "can exercise no powers but those which the Constitution and the statutes give [them]." *Tyndall v. N.Y. Cent. & H. R.R. Co.*, 213 N.Y. 691, 693 (1915).

The relevant constitutional provision here is Article III, Section 4(e), which provides that "[t]he process for redistricting" established by the 2014 Amendments "shall govern redistricting in this state except to the extent that a court is required to order the adoption of, or changes to, a redistricting plan as a remedy for a violation

of law." N.Y. Const. art. III, § 4(e). Section 4(e) also articulates the temporal scope of maps enacted or adopted through this process, explaining that "[a] reapportionment plan and the districts contained in such plan shall be in force until the effective date of a plan based upon the subsequent federal decennial census taken in a year ending in zero unless modified pursuant to court order." *Id.*; *see also* N.Y. Const. art. III, § 4(b) (redistricting shall occur "every ten years commencing in two thousand twenty-one"). In other words, under Section 4(e), once constitutionally adopted either by the Legislature or by the courts under the procedure for initial review of "[a]n apportionment by the legislature, or other body" in Section 5, maps are presumed to "be in force until the effective date of a plan based upon the subsequent federal decennial census," with the only exception being a "modifi[cation]" to remedy "a violation of the law." N.Y. Const. art. III, § 4(e); *see Harkenrider*, 38 N.Y.3d at 515 (use of the word "shall" indicates that "compliance with the IRC process enshrined in the Constitution is the *exclusive* method of redistricting, absent court intervention following a violation of the law" (emphasis in original)).

B. Here, Petitioners' requested relief is unavailable under the constitutional text, *see Harkenrider*, 38 N.Y.3d at 509; *Tyndall*, 213 N.Y. at 693, given that *Harkenrider* already remedied the procedural constitutional violation that

Petitioners invoke by constitutionally adopting a map. That plan must stay in place for the full decade under Article III, Section 4(e), absent a judicial finding of some other violation of law, which would then allow for a "modifi[cation]" of the map.

Petitioners have not alleged any unremedied legal violation that would allow a court to "modif[y]" the map that the Steuben County Supreme Court put in place in *Harkenrider*. As explained immediately above, any final "reapportionment plan and the districts contained in such plan shall be in force until the effective date of a plan based upon the subsequent federal decennial census taken in a year ending in zero unless modified pursuant to court order," in order to "remedy . . . a violation of law." N.Y. Const. art. III, § 4(e). Here, Petitioners alleged as their only "violation of law" justifying the relief they seek, N.Y. Const. art. III, § 4(e), that "the IRC abandoned its constitutional duty" to propose a second-round congressional map to the Legislature, failing to "complete its constitutionally required redistricting duties" and, "as a direct result of the IRC's refusal to carry out its constitutional duty," New York voters have not received the benefit of the 2014 Amendments. R.267–69; *see also* R.275–76, 282–84. Petitioners sought to have the Albany County Supreme Court order the IRC to fulfill its duty belatedly, so that "[s]ubsequent congressional elections this decade . . . occur under plans adopted pursuant to the constitutionally mandated process for the IRC and Legislature." R.269.

The Albany County Supreme Court correctly held, R.18, that *Harkenrider* already remedied this procedural constitutional violation, meaning that the judicially adopted map from the Steuben County Supreme Court "shall be in force until the effective date of a plan based upon the subsequent federal decennial census taken in a year ending in zero." N.Y. Const. art. III, § 4(e). As the Court of Appeals explained in *Harkenrider*, Intervenors there asserted that "lack of compliance by the IRC and the legislature with the procedures set forth in the Constitution" rendered the congressional map unconstitutional. *Harkenrider*, 38 N.Y.3d at 508–09. The Court of Appeals further explained that the 2014 Amendments "permit[ ] the legislature to undertake the drawing of district lines only after two redistricting plans composed by the IRC have been duly considered and rejected," so the IRC was *required* to submit a second-round map before the Legislature could adopt its own. *Id.* at 511–14. As a result, the Court of Appeals held that the IRC and Legislature violated this mandatory process, resulting in a "procedurally unconstitutional" map, which required the Court of Appeals to craft "the proper remedy": the Steuben County Supreme Court "order[ing] the adoption of . . . a redistricting plan with the assistance of a neutral expert, designated a special master." *Id.* at 521–23 (citation omitted). The Steuben County Supreme Court, in turn, complied with this mandate, reviewing the entire IRC record from the initial mapdrawing process, *see*

Harkenrider No.670 at 1; submissions from the public, including from multiple Petitioners here, R.328–38; *see also, e.g.*, *Harkenrider* No.670 at 1–2; and holding a public hearing, *see Harkenrider* Nos.291 at 2, 296 at 2, before ultimately adopting the constitutionally compliant, remedial congressional map, *Harkenrider* Nos.696 at 1, 670 at 1–5. Petitioners here are seeking a new, second "remedy" for this same violation, *see* R.267–69, 275–76, 282–84, but because *Harkenrider* already remedied the violation with the court-drawn map, there remains no "violation of law" for any court, including the Albany County Supreme Court below, to "remedy," N.Y. Const. art. III, § 4(e), so the Albany County Supreme Court correctly dismissed the Amended Petition.

Petitioners' preferred remedy also does not comport with Section 4(e) in another, related respect. Appellants' Br.23. Section 4(e) provides that any lawfully adopted map must remain in force for an entire decade "unless *modified* pursuant to court order." N.Y. Const. art. III, § 4(e) (emphasis added). But Petitioners have never sought to "modif[y]" the Steuben County Supreme Court's unquestionably lawfully adopted remedial map, and instead have sought to replace that map entirely. *Id.* Petitioners asked the Albany County Supreme Court to "command[ ] 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 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"—i.e., to restart the IRC-and-legislative redistricting process so an entirely new map could be adopted. R.284. Because Petitioners have not actually sought merely to "modif[y]" the Steuben County Supreme Court map, N.Y. Const. art. III, § 4(e), but rather to replace that map with an entirely new map, their requested relief similarly fails.

Notably, the Court of Appeals in *Harkenrider* adopted a judicially created map as a remedy for the same procedural constitutional violation as at issue here even though it had before it other proposed remedies. Judge Troutman proposed "order[ing] the legislature to adopt either of the two plans that the IRC has already approved." *Harkenrider*, 38 N.Y.3d at 525 (Troutman, J., dissenting in part). The Steuben County Supreme Court, in turn, had ordered as a remedy remanding to the Legislature for adoption of maps "receiv[ing] bipartisan support among both Democrats and Republicans in both the senate and the assembly." *Harkenrider* No.243 at 16. The Court of Appeals, fully cognizant of these alternatives, nonetheless rejected them in favor of "judicial oversight of remedial action" for the procedural constitutional violation. *Harkenrider*, 38 N.Y.3d at 523.

Importantly, the Court of Appeals in *Harkenrider* specifically considered and decided not to adopt the very remedy that Petitioners propose here by requiring the IRC to send second-round maps to the Legislature. *See id.* at 510, 522–23. The Court of Appeals explored in detail at the oral argument in *Harkenrider* whether it should take that very approach, asking counsel for Intervenors numerous questions about that possibility. *See* Transcript of Oral Argument at 35–44, *Harkenrider v. Hochul*, No.60 (N.Y. Apr. 26, 2022) ("*Harkenrider* Transcript").[2] This remedial process easily could have been completed in a matter of days, well before the full month it took for the Steuben County Supreme Court to complete its mapdrawing-and-public-input process after the Court of Appeals' decision in *Harkenrider*. *See supra* pp.19–21. In response, Intervenors' counsel explained that, as argued in more detail in Point II of this Brief, the exclusive constitutional remedy for a violation of constitutional process after the expiration of the constitutional deadline for IRC action was a court-adopted map. *Harkenrider* Transcript, *supra*, at 40–41. After engaging in this careful questioning, the Court of Appeals adopted the court-adopted-map remedy that Intervenors' counsel had argued was the exclusive constitutional remedy. *Harkenrider*, 38 N.Y.3d at 523. Even if this Court does not

[2] Available at https://www.nycourts.gov/ctapps/arguments/2022/Apr22/Transcripts/042622-60-Oral%20Argument-Transcript.pdf.

believe that the Court of Appeals accepted Intervenors' counsel's argument that a court-adopted map is the exclusive constitutional remedy in such circumstances, *but see infra* Point II, the Court of Appeals at the very minimum consciously selected the judicial remedy that Intervenors' counsel urged, leaving no "violation of law," N.Y. Const. art. III, § 4(e), for the courts to remedy here.

C. Petitioners' appellate brief centers almost exclusively on whether their requested relief is *ever* permissible under the Constitution, *see infra* Point II, and fails entirely to grapple with the Albany County Supreme Court's ruling that *Harkenrider* already remedied the supposed violation of law Petitioners complain of.[3] Petitioners simply assert that the Constitution imposes on the IRC "a nondiscretionary duty to submit a second set of redistricting plans to the Legislature if its first set of plans is rejected," and so Section 4(e) "permits the mandamus relief requested here." Appellants' Br.23–26. But, even putting aside whether Petitioners' preferred alternative remedy for the procedural constitutional violation could ever be available after the expiration of the constitutional deadline, *but see infra* Point II, Petitioners offer no answer to the core point that *Harkenrider* already issued a

[3] Petitioners also argued against the "futility" aspect of the Albany County Supreme Court's ruling. Appellants' Br.31–35. Intervenors never urged that conclusion below, *see* NYSCEF No.144, and do not defend it here.

remedy for the exact procedural constitutional violation they re-raise in this case. 38 N.Y.3d at 523.

Petitioners' argument that the Albany County Supreme Court misconstrued the 2014 Amendments as requiring an "approved map to be in effect until a subsequent map is adopted after the federal decennial census," Appellants' Br.26–28 (quoting R.11), does not salvage their case. Section 4(e) contemplates exactly what the Albany County Supreme Court held in dismissing this case, providing that a reapportionment plan "shall be in force until the effective date of a plan based upon the subsequent federal decennial census taken in a year ending in zero *unless modified pursuant to court order*." N.Y. Const. art. III, § 4(e) (emphasis added). In this manner, Section 4(e) sets 10 years as the default term for reapportionment plans and provides the sole exception to that rule. Petitioners have not presented any still extant "violation of law" for which a court could "modif[y]" the Steuben County Supreme Court's congressional map, *id.*, let alone explained how their proposed remedy qualifies as a "modification" of the map.

The Democratic Commissioner Respondents duplicate this same error. They simply assert that "courts should favor a legislative solution" to unconstitutional redistricting proceedings, and so the Constitution prefers "allowing a legislative remedy over judicially drawn maps." Brief of Respondents-Respondents Ken

Jenkins, Ivelisse Cuevas-Molina, and Elaine Frazier ("Dem. Comm'rs Respondents' Br.") at 17–21. But here too the Democratic Commissioners ignore that there remains no unconstitutionality or legal violation left for any court to remedy under Section 4(e), and that what is requested here is not a modification in any event.

Notably, if this Court affirms the Albany County Supreme Court's dismissal on this basis, that would not at all implicate the Appellate Division, First Department's decisions in *Nichols v. Hochul*, 212 A.D.3d 529 (1st Dep't 2023) ("*Nichols II*"), and *Nichols v. Hochul*, 206 A.D.3d 463 (1st Dep't 2022) ("*Nichols I*"), which Petitioners and the Democratic Commissioner Respondents repeatedly invoke. Appellants' Br.19–20, 21, 28, 34; Dem. Comm'rs Respondents' Br.14–15, 20–24. In *Nichols*, the petitioners challenged the constitutionality of the New York State Assembly map under the unconstitutional process at issue in *Harkenrider*, and the First Department ordered the New York County Supreme Court to "[consider] the proper means for redrawing the state Assembly map, in accordance with N.Y. Const, art III, § 5-b." *See Nichols I*, 206 A.D.3d at 464; *see also Nichols v. Hochul*, 177 N.Y.S.3d 424, 429 (N.Y. Cnty. Sup. Ct. 2022) (noting that Section 4(e) "is not relevant" in that case). The First Department's reasoning and the New York County Supreme Court's subsequent remedial decision arose under Section 5-b of the Constitution, not Section 4(e), so the specific relief Petitioners request here, *see, e.g.*,

Appellants' Br.23–26, was not implicated in that case. Notably, no party in *Harkenrider* had challenged the state Assembly map, so the Court of Appeals did not invalidate that map or order any remedy, even though it suffered from the same "procedural infirmity" as the congressional map. *See Harkenrider*, 38 N.Y.3d at 521 n.15. Thus, even if *Nichols* involved relief under Section 4(e) of the Constitution, at the time the *Nichols* petitioners challenged the state Assembly map, it suffered from "a violation of law" that a Supreme Court could "remedy." N.Y. Const. art. III, § 4(e). In this case, on the other hand, *Harkenrider* has already "remed[ied]" the exact "violation of law," *id.*, that the IRC's and Legislature's procedural constitutional violation caused, *Harkenrider*, 38 N.Y.3d at 523–24.

II. Point II: Even If *Harkenrider* Had Not Already Remedied The Violation Of Law That Petitioners Invoke, Their Requested Relief Is Unavailable Because The Only Permissible Remedy For A Violation Of Constitutional Procedure That A Court Can Order After The Constitutional Deadline Is A Judicially Adopted Map

A. The New York Constitution sets forth an exclusive redistricting scheme pursuant to which the IRC is responsible for developing redistricting plans and proposing those plans for legislative approval and adoption. N.Y. Const. art. III, § 4(b); *Harkenrider*, 38 N.Y.3d at 501. The Constitution also permits "any citizen" to challenge an "apportionment" in a Supreme Court, which must declare the apportionment "invalid in whole or in part" if "found to violate the provisions of [Article III]" of the New York Constitution. N.Y. Const. art. III, § 5. And although

the Constitution permits the IRC to reconvene "at any . . . time a court orders that congressional . . . legislative districts *be amended*," in response to a constitutional challenge, N.Y. Const. art. III, § 5-b(a) (emphasis added), other constitutional infirmities—including where the IRC's constitutional deadlines have expired—may only be remedied by the adoption of a court-drawn map replacing the one subject to the challenge. *See Harkenrider*, 38 N.Y.3d at 523 (procedural unconstitutionality "incapable of a legislative cure" because "[t]he deadline in the Constitution for the IRC to submit a second set of maps has long since passed").

B. Here, even assuming that Petitioners could establish any "violation of law" still requiring judicial intervention, *contra supra* Point I, their requested relief—the reestablishment of the IRC to propose a new congressional map to the Legislature, so that the Legislature can either adopt that map, revise it, or adopt a wholly new map—became unavailable as soon as the constitutional deadline lapsed more than a year ago, and many months after they filed their Petition.

This conclusion follows from the constitutional text. Again, the only constitutional infirmity that Petitioners have raised throughout this case is that the IRC failed to "complete its constitutionally required redistricting duties" by declining to provide a second-round congressional map to the Legislature. R.267–69; *see also* R.275–76, 282–84. But the IRC's authority to do so expired on January

25, 2022,[4] or at the absolute latest on February 28, 2022, under the constitutional text. *See* N.Y. Const. art. III, § 4(b); *supra* pp.12–14, 17–18. And Article III, Section 5-b(a) only permits a court to "establish[ ]" the IRC outside of the every-10-years process to "order[ ] that congressional or state legislative districts be *amended*," N.Y. Const. art. III, § 5-b(a) (emphasis added), not to restart the entire redistricting process between the IRC and the Legislature, as this lawsuit seeks.

Harkenrider adopted this understanding of the constitutional remedial scheme. The Court of Appeals held that after the expiration of Article III, Section 4(b)'s deadlines for IRC action, any "procedural unconstitutionality of the congressional . . . map[ ]" is, "at this juncture," simply "incapable of a legislative cure" because "[t]he deadline in the Constitution for the IRC to submit a second set of maps has long since passed." *Harkenrider*, 38 N.Y.3d at 523. Explicitly rejecting alternative remedies, such as requiring the Legislature to "adopt one of the IRC-approved plans on a strict timetable," *id.* at 525–26 (Troutman, J., dissenting in part); *see also id.* at 527 (Wilson, J., dissenting), as "[in]consistent with the constitutional text," *id.* at 523 n.20 (majority op.), the Court of Appeals held that the Constitution

[4] The Constitution grants the IRC 15 days from the date the Legislature rejects the first-round maps to prepare and submit second-round maps to the Legislature. N.Y. Const. art. III, § 4(b). The Legislature rejected the IRC's first-round congressional map on January 10, 2022, meaning it had 15 days, until January 25, 2022, to submit a second-round map. *Harkenrider*, 38 N.Y.3d at 504–05.

only "authorize[d]" as a remedy "*judicial* oversight of remedial action in the wake of a determination of unconstitutionality," *id.* at 523–24 (emphasis added).

Petitioners' requested remedy violates the Constitution on this independent ground, as the Court of Appeals explained in *Harkenrider* after accepting Intervenors' counsel's argument. *See Harkenrider* Transcript, *supra*, at 35–44. Through this lawsuit, Petitioners sought, beginning in June of 2022, an IRC and "legislative cure" that is no less unavailable "at this juncture" than it was at the time *Harkenrider* was decided because "[t]he deadline in the Constitution for the IRC to submit a second set of maps has long since passed." *Harkenrider*, 38 N.Y.3d at 523. Simply put, the permissible period for IRC and legislative involvement in redistricting has long expired, and Petitioners cannot obtain an order reestablishing the IRC to "cure" the procedural constitutional violation they raise. *Id.*

D. Petitioners incorrectly contend that their requested relief is consistent with both the constitutional text and "the intent of the New Yorkers who voted to adopt the Redistricting Amendments." Appellants' Br.23–24. Requiring the IRC to submit new maps for legislative approval would not allow the Court "to order the adoption of . . . a redistricting plan" consistent with N.Y. Const. art. III, § 4(e), because the constitutionally mandated IRC process has an explicit expiration date, N.Y. Const. art. III, § 4(b), that "has long since passed," *Harkenrider*, 38 N.Y.3d

at 523. Nor does Article III, Section 5-b(a) permit Petitioners' requested relief. *Contra* Appellants' Br.27 n.7. As previously discussed, *supra* pp.35–36, that provision only allows a court to reestablish the IRC when necessary to "amend[ ]" the districts within an existing congressional map, N.Y. Const. art. III, § 5-b(a), and so it does not permit a court to reestablish the IRC to restart the mapdrawing process in tandem with the Legislature. No better is Petitioners' argument that reading Section 4(e) to permit constitutionally tardy IRC and legislative involvement "is consistent with the intent of the New Yorkers who voted to adopt the Redistricting Amendments." Appellants' Br.24. The *Harkenrider* Court debunked this erroneous claim, explaining that "a court-ordered redistricting map . . . is, in fact, exactly what the [P]eople have approved in the State Constitution as a remedy" for the procedural constitutional violations at issue here. 38 N.Y.3d at 523 n.20.

The Court of Appeals' decision in *Harkenrider* plainly rejects Petitioners' requested relief as constitutionally unavailable, notwithstanding Petitioners' cherry-picked citations to inapposite aspects of that decision. *See* Appellants' Br.24–25. *Harkenrider* explained that "the text of section 4 contemplates that any redistricting act ultimately adopted must be founded upon a plan submitted by the IRC" while discussing the initial constitutionally mandated redistricting procedures established in Article III, Section 4(b) and whether the Legislature had the authority circumvent

the IRC and unilaterally "undertake the drawing of district lines" without the IRC first proposing a second set of maps for legislative approval. *See Harkenrider*, 38 N.Y.3d at 511–12. *Harkenrider* nowhere says, or even implies, that Section 4(e) allows the IRC to have a second shot at "complet[ing] its redistricting duties," *contra* Appellants' Br.25, *after* the constitutional deadline for doing so has expired, explicitly coming to a contrary conclusion, *Harkenrider*, 38 N.Y.3d at 523. The Court of Appeals in *Harkenrider* recognized as much when it concluded that the mandatory and exclusive nature of the "IRC-based process for redistricting" in the absence of "*court intervention following a violation of the law*" is "not a scenario where the Constitution fails to provide 'specific guidance' or is 'silen[t] on th[e] issue.'" 38 N.Y.3d at 515 (alterations in original; emphasis added).[5]

Petitioners also erroneously rely on decisions from other States to support their general claim that a legislative remedy is preferrable to a judicial remedy when it comes to redistricting. Appellants' Br.25–26 (quoting *In re Below*, 151 N.H. 135,

[5] The Democratic Commissioner Respondents' arguments on this point fail for the same reason. Although they argue that the Albany County Supreme Court's reading of the 2014 Amendments violates the "core principle . . . that there is a preference for a legislatively enacted map rather than a judicially created map whenever possible," Dem. Comm'rs Respondent's Br.1–2, they fail to cite any law that permits this Court to elevate a general "principle" over fidelity to constitutional text, and ignore entirely the Court of Appeals' explicit holding that the People "approve[d] of a court-ordered redistricting map . . . as a remedy" for the IRC's and Legislature's unconstitutional conduct. *Harkenrider*, 38 N.Y.3d at 523 n.20.

137 (2004) (per curiam); citing *Lamson v. Sec'y of Commonwealth*, 168 N.E.2d 480, 486 (Mass. 1960); *Harris v. Shanahan*, 387 P.2d 771, 795 (Kan. 1963)). Other States' judicial decisions on their own constitutions are irrelevant here. Whether relief is permissible in *this* litigation turns on the proper interpretation of Section 4(e), a question Petitioners' out-of-state cases do not address. As Section 4(e) sets forth, and *Harkenrider* confirmed, the 2014 Amendments created a "mandatory" and "exclusive" process for redistricting, which "explicitly authorizes judicial oversight of remedial action in the wake of a determination of unconstitutionality," and the particular constitutional violation at issue here—failure of the mandatory, exclusive process for redistricting—is "incapable of a legislative cure" after the conclusion of the explicit constitutional deadlines for IRC and legislative action. 38 N.Y.3d at 501, 523. And although *Harkenrider* explained that "judicial intervention in the form of a mandamus proceeding . . . [is] among the many courses of action available to ensure the IRC process is completed as constitutionally intended," *id.* at 515 n.10, as Petitioners stress, Appellants' Br.25, the Court was discussing the various mechanisms by which litigants could challenge "gamesmanship by minority members" of the IRC, not whether mandamus lies after the constitutional deadline for the IRC to act has long expired. *Harkenrider*, 38 N.Y.3d at 516 n.10.

Finally, with all respect, the First Department erred in concluding that the Constitution permits reestablishment of the IRC to begin anew the IRC-and-Legislature redistricting process as a remedy for the procedural constitutional violation that occurred in early 2022.[6] In "endors[ing]" the New York County Supreme Court's chosen IRC-and-Legislature remedial process, the *Nichols* Court reasoned that the Constitution "does not mandate any particular remedial action when a violation of law has occurred" and "does not expressly limit the potential remedies a court may order to facilitate a viable [ ] plan." *Nichols II*, 212 A.D.3d at 530–31. But this contradicts *Harkenrider*, which explained that the Constitution does limit potential remedies for facilitating a constitutional plan, *contra id.* at 531, as the exact same "procedural unconstitutionality" that infected *all* of the congressional, state Senate, and state Assembly maps, is "incapable of a legislative cure" once "[t]he deadline in the Constitution for the IRC to submit a second set of maps has long since passed." *Harkenrider*, 38 N.Y.3d at 521 n.15, 523.

Similarly misplaced is the First Department's attempt to distinguish *Harkenrider* because "[t]here is much more time available in this case than there was in *Harkenrider* for the IRC and legislative procedures to proceed and conclude

[6] Notably, Intervenors stress again that this Court does not need to reach the correctness of *Nichols* if it adopts Intervenors' argument as to Point I.

prior to the next election cycle." *Nichols II*, 212 A.D.3d at 531. Although *Harkenrider* was cognizant of the impending 2022 elections, its conclusion that an IRC-and-legislative-based cure was unavailable rested entirely on the fact that the Constitution's mandatory deadlines for IRC involvement "ha[d] long since passed," not exigency concerns. 38 N.Y.3d at 523. And while the remedy that the court ordered in *Nichols* obviously could not have been completed before the 2022 elections, given that it involves restarting the entire IRC process, including holding hearings throughout the State and submitting *two* rounds of maps to the Legislature, *Nichols II*, 212 A.D.3d at 529–30, *Harkenrider* had enough time to order the remedy at issue in the present case. As previously explained, *supra* pp.37–38, the Court of Appeals easily could have mandated the remedy Petitioners seek, with plenty of time for an IRC-and-Legislature-adopted map to be completed by May 20, 2022, *see supra* pp.30–31.

III. Point III: This Court Can Also Affirm Dismissal Because Petitioners Filed Months Too Late

A. CPLR 217(1) requires that petitions for mandamus "to compel the performance of a duty," *Kolson v. N.Y.C. Health & Hosps. Corp.*, 53 A.D.2d 827, 827 (1st Dep't 1976), be filed "within four months" of "the respondent's refusal" to perform its duty," "[u]nless a shorter time is provided in the law authorizing the proceeding." CPLR 217(1). In other words, CPLR 217(1) sets an outer limit on the

time in which a mandamus action *must* be brought, which limit begins to accrue upon the respondent's "refusal to perform [the] duty" the petition seeks to compel. *Kolson*, 53 A.D.2d at 827.

In addition, because mandamus relief under Article 78 is equitable in nature, courts retain discretion to deny Article 78 petitions when the equities counsel against relief, even within the four-month window. *Anderson v. Lockhardt*, 310 N.Y.S.2d 361, 362 (Westchester Cnty. Sup. Ct. 1970); *see Ouziel v. State*, 667 N.Y.S.2d 872, 876 (Ct. Cl. 1997). Thus, courts may exercise discretion to dismiss an Article 78 petition if filed too late. *See Hill v. Giuliani*, 272 A.D.2d 157, 157 (1st Dep't 2000).

B. Here, the Court can affirm the Albany County Supreme Court's dismissal of the Amended Petition on alternative grounds, *see Feight v. Lesser*, 58 N.Y.2d 101, 105 (1983), because Petitioners brought their mandamus claim more than five months after the courts could have granted them the relief they seek, *see Hill*, 272 A.D.2d at 157, including outside of CPLR 217(1)'s four-month limitations period.

As a threshold matter, the Amended Petition is time-barred under CPLR 217(1) because it was filed more than four months after the IRC announced, on January 24, 2022, that it "would not present a second plan to the legislature," as Article III, Section 4(b) requires, or the following day, on January 25, when the IRC's 15-day window to submit a second-round congressional map to the

Legislature expired. *Harkenrider*, 38 N.Y.3d at 504–05; N.Y. Const. art. III, § 4(b). Any mandamus action seeking to compel the IRC to present a second plan to the Legislature must have been filed within four months of the IRC's "refusal to perform [its] duty," *Kolson*, 53 A.D.2d at 827; CPLR 217(1), and the IRC fully and publicly "refus[ed] to perform [its] duty," *Kolson*, 53 A.D.2d at 827, on January 24, 2022, when it "announced that it was deadlocked and, as a result, would not present a second plan to the legislature," and followed through with that public refusal by allowing the January 25, 2022, deadline to expire without further action. *Harkenrider*, 38 N.Y.3d at 504–05. And so, under CPLR 217(1), Petitioners had until May 24 or 25, 2022, to file this mandamus petition. But rather than filing this lawsuit within the statutory limitations period, Petitioners chose to wait. Only upon concluding that they disagreed with the *Harkenrider* map as a matter of substance, and after their other legal gambits failed, *see supra* pp.19–22, did Petitioners file this lawsuit in June 2022. That delay is impermissible under CPLR 217(1), which requires lawsuits seeking to compel an officer or state body's performance of its duty—*as Petitioners' Petition here plainly seeks*, *see* R.284—to be filed within four months of the refusal to carry out the duty.

Even putting CPLR 217(1)'s specific four-month deadline aside, the Petition was untimely filed under general equitable principles because the Constitution

provides a date-certain deadline for any IRC involvement in the redistricting process, and Petitioners waited until well after that deadline expired. Even if the Constitution conceivably permits a court to order the IRC to begin anew the redistricting process after the expiration of Article III, Section 4(b)'s various deadlines of "fifteen days" to propose a second set of maps to the Legislature after the Legislature's notification of rejection of the first round maps, and "in no case later than" February 28, N.Y. Const. art. III, § 4(b), *contra supra* Point II, the constitutional text at the very minimum prefers IRC action within that timeframe. At that point, a court could mandate that the IRC perform the functions it neglected within the time period for IRC action laid out in the Constitution, before "[t]he deadline in the Constitution for the IRC to submit a second set of maps ha[d] long since passed." *Harkenrider*, 38 N.Y.3d at 523. But by filing almost half a year later, Petitioners waited far too long and ignored the constitutional deadlines for the IRC-and-legislative redistricting process, making their request for the "extraordinary remedy" of mandamus untimely as a matter of equity, *see Silverman v. Lobel*, 163 A.D.2d 62, 62 (1st Dep't 1990).

Enforcing these time limitations also makes sense, as a matter of equity. *See Anderson*, 310 N.Y.S.2d at 362; *Ouziel*, 667 N.Y.S.2d at 876; *Hill*, 272 A.D.2d at 157. Permitting would-be litigants to file lawsuits requiring IRC action months after the expiration of the constitutional redistricting process deadlines would allow

them to await the conclusion of the remedial judicial mapdrawing process, like in *Harkenrider*, 38 N.Y.3d at 521–23, to see whether they politically prefer the court's judicially created maps, before seeking another bite at the apple via an IRC-and-legislative remedy, through a post-hoc mandamus lawsuit.

C. The Albany County Supreme Court's erroneous conclusion that Petitioners timely filed their Petition is unresponsive to both timeliness arguments raised by Intervenors and Respondents below.

First, the Albany County Supreme Court misunderstood the triggering date for CPLR 217's four-month limitations period. R.16–17. The Court decreed that "there simply wasn't a justiciable controversy between Petitions and the IRC" on January 24, 2022, the date the IRC announced that it would not propose a second set of maps to the Legislature, or February 28, 2022, the date the IRC's constitutional authority to submit such maps expired—because Petitioners challenge the "new 2022 Congressional Maps," which went into effect on May 20, 2022. R.17. The Albany County Supreme Court thus held that the Petition was timely filed within four months of May 20, 2022, under CPLR 217(1). R.17.

Respectfully, the Albany County Supreme Court erred in concluding that Petitioners' cause of action accrued on May 20, 2022. Petitioners' Amended Petition makes clear that they "bring this *writ of mandamus* to compel [the IRC] to 'prepare

and submit to the legislature a second redistricting plan . . .' as is required by Article III, Section 4 and 5(b) of the New York Constitution." R.266 (emphasis added). In Petitioners' own words, then, the issue in this lawsuit is the IRC's purported failure to act pursuant to Article III, Sections 4 and 5—not the subsequent enactment of the *Harkenrider* maps—and the remedy Petitioners seek is a writ obligating the IRC to do so. *Because a claim "to compel the performance of a duty," accrues upon an officer or state body's "refusal to perform such [a] duty," Kolson, 53 A.D.2d at 827, the controversy between Petitioners and the IRC clearly accrued on January 24, 2022, when the IRC announced that it would not propose a second set of maps to the Legislature as the 2014 Amendments require, or on January 25, 2022, the IRC's constitutional deadline for doing so*. N.Y. Const. art. III, § 4(b) (requiring the IRC to propose a second set of maps fifteen days after the Legislature "notif[ies]" the IRC that it has "disapproved" the "first redistricting plan").

Second, the Albany County Supreme Court never discussed any of the equitable considerations that also independently merit dismissal of the untimely filed Petition. At the very least, the Constitution prefers the IRC's involvement in the redistricting process to expire no later than 15 days after the Legislature rejects any first-round map submissions and no later than February 28, N.Y. Const. art. III, § 4(b), so any person aggrieved by and challenging a failure in the IRC or legislative

process should endeavor to move swiftly, to comply with that timeline as best as possible. *See generally Harkenrider*, 38 N.Y.3d at 501, 504, 515–16, 523. Thus, Petitioners needed to seek their relief upon the IRC's public declaration that it would not comply with the mandatory constitutional redistricting procedures or after the timeline for it to do so expired. *Id.* Petitioners' failure to do so, waiting months after the IRC could even conceivably remedy its error provides a separate, equitable basis to deny Petitioners' Petition as untimely. *See Hill*, 272 A.D.2d at 157. Although the Albany County Supreme Court acknowledged that there is no constitutional "authority for the IRC to issue a second redistricting plan after February 28, 2022," as a basis for denying the Amended Petition *on the merits*, R.18, it never grappled with the constitutional deadlines to file the Petition *as a matter of timeliness*, under basic equitable principles.

IV. Point IV: This Court Can Also Affirm Dismissal Because The Petition Is An Impermissible Collateral Attack On The Steuben County Supreme Court's Remedial Order

A. A litigant may not collaterally attack a prior judgment without filing a motion for reconsideration or a motion to vacate in the litigation in which that judgment was rendered. *See Gager v. White*, 53 N.Y.2d 475, 484 n.1 (1981); *Divito v. Glennon*, 193 A.D.3d 1326, 1328 (4th Dep't 2021); *Calabrese Bakeries, Inc. v. Rockland Bakery, Inc.*, 83 A.D.3d 1060, 1061 (2d Dep't 2011) ("A motion for relief from a default judgment must be brought in the original action or proceeding. A

plenary action or proceeding for such relief will not lie."); CPLR 4404(b), 5015. This prohibition on collateral attacks "is applicable not only to the parties but to other interested persons, who were not parties, as well." *Donato v. Am. Locomotive Co.*, 283 A.D. 410, 414 (3d Dep't 1954) (emphasis added). Thus, so as not to run afoul of this basic rule, "any interested person" desiring to seek relief from a judgment or order must file a motion directly with "[t]he court which *rendered* [that] judgment [or order]." CPLR 5015(a) (emphasis added).

B. This Court can also affirm the Albany County Supreme Court's dismissal on the alternative ground, *see Feight*, 58 N.Y.2d at 105, that a necessary part of the relief that Petitioners seek constitutes an impermissible collateral attack on the congressional maps adopted in *Harkenrider*. While the Amended Petition requests an order "commanding" the IRC to "submit[ ] a second round of proposed congressional districting plans for consideration by the Legislature, in order to ensure that a lawful plan . . . can be used for subsequent elections this decade," R.284, *that relief has two necessary and interrelated components*. First, it requires the reconstitution of the IRC, so that the IRC can propose new congressional maps for legislative consideration. Second, it requires that the current congressional map, which the Steuben County Supreme Court ordered to govern elections in New York until the next decennial redistricting process, be transformed into an interim map and

then replaced with a different map. But such transformation and replacement, which are essential components of the remedy Petitioners seek, would, of course, require an amendment to the final judgment in *Harkenrider*—relief that *only* the Steuben County Supreme Court may order.

This lawsuit fails under the collateral attack doctrine because the relief that Petitioners seek would require turning the *Harkenrider* congressional map into an interim map and then replacing that map. The best reading of the Steuben County Supreme Court's order is that the maps must govern for the whole decade, given that the order's plain text "ORDERED, ADJUDGED, and DECREED that" the resulting maps "become the *final* enacted [congressional] redistricting map[ ]" for the State with no temporal restriction. *Harkenrider* No.696 at 1 (emphasis added). In so ordering, the Court necessarily rejected the Petitioners' explicit request in that case that the Court limit the remedial map's applicability to the 2022 election alone. *See supra* pp.19–21. This reading of the Steuben County Supreme Court's order is additionally clear in light of the judicial context, and the Court of Appeals' directive that the Steuben County Supreme Court provide "judicial oversight of remedial action in the wake of a determination of [judicial] unconstitutionality," so as to satisfy the Constitution's requirement that congressional districts be

"reapportion[ed]" "[e]very ten years," and in order to "giv[e] meaningful effect to the 2014 constitutional amendments." *Harkenrider*, 38 N.Y.3d at 502, 523.

Notably, all parties involved understood the full-decade applicability of the Steuben County Supreme Court's congressional map in *Harkenrider*. For example, counsel for the Speaker of the Assembly in both *Harkenrider* and *Nichols v. Hochul*, explained that the State Assembly "respect[ed]" the fact that the Steuben County Supreme Court's remedial mapdrawing efforts would "determine the lines for all of congress . . . for the next 10 years," Oral Argument Recording at 29:55–30:17, *Nichols v. Hochul*, No.154213/2022 (1st Dep't Jan. 17, 2023).[7] And, of course, Judge Troutman, who dissented from the Court of Appeal's decision and advocated for an order requiring the Legislature to "adopt either of the two plans that the IRC has already approved," also understood that the maps would govern congressional elections "for the next 10 years." *Harkenrider*, 38 N.Y.3d at 525, 527 (Troutman, J., dissenting in part).

Petitioners' requested relief would necessarily alter the *Harkenrider* judgment. *See Calabrese Bakeries*, 83 A.D.3d at 1062. As immediately discussed, the best reading of the *Harkenrider* judgment is that the resulting maps would apply

[7] Available at https://wowza.nycourts.gov/vod/wowzaplayer.php?source=ad1&video=AD1_Archive2023_Jan17_11-59-13.mp4.

for an entire decade. Petitioners seek an order compelling the IRC to submit "a second round of proposed congressional districting plans for consideration by the Legislature, in order to ensure that a lawful plan . . . can be used for subsequent elections this decade," R.284, which would *change* that judgment by transforming the judicially adopted congressional map into a mere interim map and then replacing that map. In other words, there is no way to grant Petitioners the relief they seek without altering the temporal scope or finality of the Steuben County Supreme Court's judgment in *Harkenrider*, which the Albany County Supreme Court obviously cannot do. *Gager*, 53 N.Y.2d at 484 n.1; *Divito*, 193 A.D.3d at 1328.

Petitioners' framing of their requested relief further underscores the fact that this lawsuit seeks to attack collaterally the *Harkenrider* judgment. Petitioners claim that the 2014 Amendments "expressly contemplate that a redistricting plan can be modified by court order" under Section 4(e), and that "is precisely what Petitioners seek here." Appellants' Br.27. In other words, Petitioners argue that they want to "modify" the map that the Steuben County Supreme Court adopted in its final judgment. *Id.* But doing so necessarily changes the Steuben County Supreme Court's final judgment, *Harkenrider* No.696 at 1, in these collateral proceedings, which is unlawful, CPLR 5015(a); *Calabrese Bakeries*, 83 A.D.3d at 1061. And, of course, if Intervenors are seeking is a replacement of the Steuben County Supreme

Court's map, not an amendment under Section 4(e), *see supra* pp.29–30, that would only further support the point that this lawsuit is a collateral attack on that map.

Petitioners' insults to the Steuben County Supreme Court's remedial process in the background section of their Opening Brief (and in their Amended Petition, R.268, 280–82), duplicate the arguments that they raised before the Steuben County Supreme Court, also supporting the conclusion that this is a collateral attack on the Steuben County Supreme Court judgment. Appellants' Br.15–17. Petitioners contend that "the Steuben County Supreme Court provided no meaningful (let alone extensive) opportunity for public comment," "selected the special master without regard to whether his map-drawing process would reflect New York's diverse population," and maintained an "opaque and truncated process," *id.*, much as many of Petitioners asserted to the Steuben County Supreme Court during the remedial process, R.328–38. If Petitioners were unhappy with those aspects of the Steuben County Supreme Court's process or the map that process generated, they should have appealed that Court's judgment, not filed this transparent collateral attack.

C. The Albany County Supreme Court's contrary conclusion is wrong because it conflates the prohibition on collateral attacks with the doctrine of *res judicata*—

an independent ground for dismissal that Respondents do not pursue in this appeal.[8] The Albany County Supreme Court explained that "[r]esolution of the so-called collateral attack claim[ ] necessitates a determination of whether the subject claim is barred under res judicata or . . . collateral estoppel." R.15. And in holding that "[t]hey are not," R.15, the Court focused on whether Petitioners had a full opportunity to litigate their claims in *Harkenrider*. While that question had bearing on the *res judicata* issue that Intervenors raised below, NYSCEF No.144 at 13; NYSCEF No.168 at 5–6, it has nothing to do with Intervenors' *alternative argument* that Petitioners' lawsuit is an impermissible collateral attack on the *Harkenrider* judgment, filed in the wrong court, NYSCEF No.144 at 11–13; NYSCEF No.168 at 2–5, 6–7.

Nor was the Albany County Supreme Court correct that the Steuben County Supreme Court "did not even address the issue of whether the approved 2022 Congressional Map was limited to the 2022 election." R.16. The Steuben County Supreme Court was operating under the Court of Appeals' remittal and mandate to adopt a replacement for the Legislature's procedurally (and substantively) unconstitutional reapportionment plan, *Harkenrider*, 38 N.Y.3d at 523–24, that

[8] Although Respondents raised the issue of res judicata in the lower court, NYSCEF No.144 at 13, they do not pursue the argument in this appeal.

would govern "for the next 10 years," *id.* at 527 (Troutman, J., dissenting in part), and did so by adopting the "*final* enacted [congressional] redistricting map[ ]" for New York, *Harkenrider* No.696 at 1 (emphasis added), until the next decennial census, N.Y. Const. art. III, § 4(e). Thus, Intervenors respectfully submit that the best interpretation of the Steuben County Supreme Court's actions is that it adopted a *final* map for the entire decade, as the Court of Appeals in *Harkenrider* and the plain text of Section 4(e) require.

CONCLUSION

The Court should affirm the judgment of the Albany County Supreme Court dismissing Petitioners' Article 78 Petition.

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Respectfully Submitted,

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