

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF STEUBEN

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

Petitioners,

v.

GOVERNOR KATHY HOCHUL, LIEUTENANT
GOVERNOR AND PRESIDENT OF THE SENATE
BRIAN A. BENJAMIN, SENATE MAJORITY
LEADER AND PRESIDENT PRO TEMPORE OF
THE SENATE ANDREA STEWART-COUSINS,
SPEAKER OF THE ASSEMBLY CARL HEASTIE,
NEW YORK STATE BOARD OF ELECTIONS,
and THE NEW YORK STATE LEGISLATIVE
TASK FORCE ON DEMOGRAPHIC RESEARCH
AND REAPPORTIONMENT,

Respondents.

GARY GREENBERG,

Intervenor-Petitioner,

v.

GOVERNOR KATHY HOCHUL, LIEUTENANT
GOVERNOR AND PRESIDENT OF THE SENATE
BRIAN A. BENJAMIN, SENATE MAJORITY
LEADER AND PRESIDENT PRO TEMPORE OF
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TASK FORCE ON DEMOGRAPHIC RESEARCH
AND REAPPORTIONMENT,

Intervenor-Respondents.

Index No. E2022-0116CV

PETITION IN INTERVENTION

Intervenor-Petitioner Gary Greenberg (the “Petitioner”) brings this Petition in Intervention against State Respondents¹ to vindicate his constitutional and statutory right to have his vote counted in the 2022 New York State Assembly elections in accordance with the redistricting standards and procedures prescribed by the New York State Constitution and statutory law. The Court should grant intervention because (1) Petitioner’s right to the relief sought herein is indisputable, given that the Court of Appeals already found the State Respondents’ Assembly map unconstitutional,² (2) the existing parties are not adequately representing Petitioner’s interests, and a judgment in this case may foreclose Petitioner’s right to the relief sought, *i.e.*, the right to vote in, and qualify to be a candidate for, a lawful 2022 Assembly election, and (3) the matters asserted herein present common issues of law or fact with the existing Petition.

Petitioner, by and through his attorneys, **Walden Macht & Haran LLP**, alleges as follows:

PRELIMINARY STATEMENT

1. This is an action for declaratory and injunctive relief in connection with (1) the redistricting of the New York Assembly following the 2020 Census, and (2) upcoming 2022 elections. Petitioner’s right to this relief is simple and straightforward.

2. On April 27, 2022, the New York Court of Appeals held that the procedure adopted by the New York Legislature in adopting the congressional and State Senate maps was unconstitutional. *Harkenrider v. Hochul* (“*Harkenrider IIP*”), No. 60, 2022 WL 1236822, at *9 (N.Y. Apr. 27, 2022). However, because the petitioners did not seek to invalidate the 2022 State

¹ “State Respondents” refers herein to each and every one of the Respondents listed in the caption above.

² *Harkenrider v. Hochul* (“*Harkenrider IIP*”), No. 60, 2022 WL 1236822, at *9 (N.Y. Apr. 27, 2022).

Assembly redistricting legislation (either in the initial petition or on appeal), the Court of Appeals found that it “**may not invalidate the assembly map *despite its procedural infirmity.***” *Id.* at *11, n.15. ***This Petition bridges that gap.*** Petitioner asks this court to apply the Court of Appeals’ analysis of the State Respondents’ unconstitutional redistricting process to the State Assembly legislation and declare the constitutional infirmity of the Assembly map—as this Court did already in its March 31, 2022 Order.³

3. With respect to the unconstitutional State Senate and congressional maps, the Court of Appeals held that the proper remedy was for the Supreme Court, with the aid of a neutral redistricting expert, serving as special master, to oversee the Senate and congressional redistricting. Petitioner seeks the same remedy with respect to the Assembly map.

4. Petitioner is proceeding by Order to Show Cause because of several upcoming election deadlines. Ballots are scheduled to be transmitted to eligible military voters (among others) on May 13. Certain primary elections—including Assembly primaries—are scheduled for June 28, 2022. But because voting district membership affects, *e.g.*, whether someone petitions to become a candidate, whose signatures count, the candidates on a ballot, and the actual votes cast in a district, the constitutional infirmity of the Assembly map carries through to other important elements of the Assembly election that also warrant a remedy. Thus, Petitioner requests that the Court adjourn the Assembly primaries pending resolution of the Assembly map issue, just as it has already done with the State Senate and congressional primaries. Petitioner further requests that the Court develop a schedule, as the Court of Appeals instructed, for impacted election deadlines

³ See NYSCEF Doc. No. [243](#), at 10 (“The court would note that not only are the Congressional District Maps and Senate District Maps void but the Assembly District Maps are void *ab initio* as well. The same faulty process was used for all three maps. Therefore new maps will need to be prepared for the Assembly Districts as well.”).

and administrative milestones. *See Harkenrider III*, 2022 WL 1236822, at *12. Consolidating and fast-tracking the remedial phase of this action, to redeem all three of the elections that have been stained by the State Respondents' unconstitutional power-grab, will be efficient.

5. The New York Constitution guarantees Petitioner a neutral and non-partisan Assembly map and election. Petitioner asks this Court to deliver on that guarantee of representative democracy by invalidating the State Respondents' illegal attempt to consolidate majority-party political power by carving up New York voters.

INTERVENOR-PETITIONER

6. Gary Greenberg is a registered, eligible, and active voter in the State of New York, residing in New Baltimore, Greene County, within Assembly District 102. Petitioner ran for a State Senate seat in 2020 in District 46.

7. With the redrawing of district maps for congressional, State Senate, and, as Petitioner requests, State Assembly office, Petitioner is a potential candidate for each.

FACTUAL BACKGROUND

I. The "Scourge" of Gerrymandering

8. Defining the boundaries of voting districts—and thus including or excluding certain communities and neighborhoods—has tremendous political ramifications. For that reason, parties have historically vied for control over the process of defining those boundaries, and this power struggle has been—and remains to this day—subject to tremendous political manipulation and abuse.

9. Gerrymandering is the political manipulation of voting district boundaries to serve nakedly partisan ends—shuffling minority party votes into uncompetitive majority-dominant districts (where the minority votes are meaningless); dividing and conquering powerful communities and neighborhoods; and stacking majority-party blocks to flip or secure districts that

are considered too “competitive” by the majority party. In short, gerrymandering is effectively **vote rigging**, using manipulated district lines to ensure dominance by incumbents or candidates favored by the majority party. In this way, gerrymandering is patently anti-democratic.

10. As one author succinctly explained:

Once a decade, every state redraws its electoral districts, determining which people will be represented by each politician. In many states, this means that politicians gather behind computer screens to figure out how they can manipulate the lines to box out their competition and maximize the power of their political party. While an increasing number of states employ independent commissions to draw district lines, the large majority still lack safeguards to prevent partisan favoritism in the redistricting process—also known as partisan gerrymandering.⁴

11. “The core principle of republican government” is “that the voters should **choose their representatives, not the other way around.**” *Arizona State Legislature v. Arizona Independent Redistricting Comm’n*, 135 S. Ct. 2652, 2677 (2015). But this principle is negated when political parties in power, like the State Respondents here, foist on the minority party and the electorate illegal voting district maps.

12. Historically, entrenched politicians sought to “pack” all of the disfavored party voters into the smallest number of districts, while also “cracking” the other minority-dominated districts to ensure disfavored candidates do not have sufficient votes to win in any other district.

13. Minority votes become practically meaningless because they are not cast in competitive races. The power to make the map becomes the power to pick which party candidate will win each electoral district.

⁴ Alex Tausanovitch, *The Impact of Partisan Gerrymandering*, Ctr. Am. Progress (Oct. 1, 2019), <https://www.americanprogress.org/article/impact-partisan-gerrymandering/>.

14. As this Court aptly described, gerrymandering is a “**scourge**” on our democratic process and the health of the Republic. Decision & Order at 2 (Doc. No. [243](#)) (“*Harkenrider I*”).

II. The People Amend the Constitution and Adopt Redistricting Reforms

15. In 2014, the citizens of New York amended the Constitution to combat political manipulation and gerrymandering of voting districts. These amendments, and implementing statutes, created an independent redistricting commission (the “IRC”), as well as an “**exclusive method of redistricting**” congressional, State Senate, and State Assembly districts. *Harkenrider III* 2022 WL 1236822, at *2, *5, *8; N.Y. Const. art. III, § 4(b).

16. This constitutionally mandated method was designed to limit legislative gamesmanship—so no single party could steer the redistricting process to its own ends. *Harkenrider III*, 2022 WL 1236822, at *2. It was further designed to promote citizen participation, fair representation, and, ultimately, confidence in the outcome of elections, thereby ushering in “**a new era of bipartisanship and transparency.**” *Id.*

17. Sadly, the State Respondents intentionally created an elaborate subterfuge to eviscerate the will of the voters and assure the majority party’s stranglehold on the legislature, denuding the role of the IRC.

18. The IRC is comprised of ten members. Eight of the members are appointed by the majority and minority leaders of the Senate and Assembly. The eight members then appoint the remaining two members. This bipartisan group is “**constitutionally required to pursue consensus to draw redistricting lines**” and follow a transparent process that engages the public as it crafts new maps to propose to the Legislature. *Id.* at *7.

19. Critically, the 2014 constitutional reforms constrain the Legislature’s power to bypass the IRC. The reforms require the Legislature to consider and vote on the maps proposed by the IRC. After the IRC drafts maps and holds public hearings, the IRC must submit a first set

of maps to the Legislature by January 15 of the second year following the Census. *Id.* at *5 (citing N.Y. Const. art. III, § 4(b)). If either the Legislature or Governor reject the maps, the IRC must revise and submit new maps to the Legislature within 15 days, but no later than February 28. *Id.* The Legislature must then consider and vote on this second set of maps. *Id.*

20. Only in the event the Legislature *votes down the second set of IRC maps*—which it must do in an “up or down” vote (*i.e.*, without making modification)—does the New York Constitution permit the Legislature to undertake amending the IRC’s proposed maps and ultimately enact its own district maps. N.Y. Const. art. III, § 4(b); N.Y. Legis. Law § 93(1); *see Harkenrider III*, 2022 WL 1236822, at *2.

21. The IRC process was thus “**crafted to guarantee that redistricting maps have their origin in the collective and transparent work product of a bipartisan commission.**” *Harkenrider III*, 2022 WL 1236822, at *7. The process ensures that the IRC—a bipartisan group independent from the Legislature—has “**a substantial and constitutionally required role in the map drawing process**” as a “**precondition to redistricting legislation.**” *Id.* at *8.

22. After the constitutional deadline for the IRC to submit a second redistricting plan, the *only* alternative to the carefully crafted process set forth in Article III, § 4, is “**court intervention following a violation of the law.**” *Id.* at *8, *12.

23. To that end, the Constitution and State statute empower “**any citizen**” to enforce the 2014 amendments, expressly conferring standing on any citizen of New York, such as Petitioner, to bring an action to challenge the Legislature’s enacted maps as either procedurally or substantively defective. *Id.* at *4 (quoting N.Y. Const. art. III, § 5 and N.Y. Unconsolidated Laws § 4221).

24. The Legislature's maps are procedurally defective where, as set forth above, the IRC fails to present a plan to the Legislature, or the Legislature fails to consider and vote on such a plan. *Id.* at *9. The Legislature's maps are substantively defective where they have been drawn with an intent or motive **"to 'discourage competition' or 'favor or disfavor incumbents or other particular candidates or political parties.'"** *Id.* at *10 (quoting N.Y. Const. art. III, § 4(c)(5)). Either a procedural or a substantive defect renders the Legislature's maps unconstitutional, necessitating judicial intervention and remedy pursuant to Article III, § 4. *Id.* at *11-12.

III. The IRC and Legislature Attempt to Evade the 2014 Constitutional Reforms

25. As alleged above, every ten years, New York must redraw its legislative districts to account for population changes reported in the Federal Census. *Harkenrider III*, 2022 WL 1236822, at *7 (citing N.Y. Const. art. III, § 4).

26. The State's prior redistricting occurred in 2012, after the 2010 Census. Ten years later, new maps are constitutionally mandated. *Id.* Naturally, population changes occurred in the State of New York between 2012 and 2022. For example, as reported by the 2020 Census, released on April 26, 2021, New York's resident population increased by more than 4 percent, or 823,147 residents, since 2010—enough new voters to change the outcomes of multiple Assembly races.

27. After the 2020 Census was released, Democratic and Republican leaders in the New York Legislature appointed their respective delegations to the IRC, and the IRC commenced drafting new districting maps to account for the population change reported in the 2020 Census.

28. As required by the Constitution, the IRC held public meetings across the State throughout 2021 to hear public testimony about draft maps and the redistricting process.⁵ N.Y. Const. art. III, § 4(c).

29. After nine meetings, the IRC released initial map drafts on September 15, 2021.

30. Through October and November, the IRC held fourteen more public hearings on the draft maps and the redistricting process. It also solicited written comments from the public, where stakeholders and voters voiced further concerns and suggestions.⁶

31. During that time, eschewing the will of voters, the Legislature tried, but failed, to enact a constitutional amendment in November 2021 that would have created an end-run around the IRC process created by the 2014 reforms.

32. Under this failed amendment, the Legislature would have been able to create its own redistricting plan should the IRC submit no map for consideration and vote, effectively removing the IRC and associated public participation from the map-drawing process.

33. Unsurprisingly, New York citizens voted down the Legislature's craven amendment, which was intended to protect favored candidates and incumbents.

34. Undaunted, the IRC held its last public hearing on December 5, 2021, and the final deadline for public comment on draft maps was December 6.

35. With public hearings and comments closed, the IRC members began negotiations amongst themselves to finalize a set of maps to submit to the Legislature. But the IRC members were unable to reach an agreement or consensus.

⁵ See N.Y. State Independent Redistricting Comm'n, *Meetings*, NYIRC, <https://www.nyirc.gov/meetings> (last visited May 2, 2022).

⁶ See N.Y. State Independent Redistricting Comm'n, *Submissions*, NYIRC, <https://www.nyirc.gov/submissions> (last visited May 2, 2022).

36. On January 3, 2022, the Democratic delegation and their appointee voted for one redistricting plan, and the Republican delegation and their appointee voted for another. *Harkenrider III*, 2022 WL 1236822, at *2.

37. The Legislature received both plans from the IRC and voted upon them without amendment, rejecting both without public input. *Id.* It notified the IRC of its rejection on January 10, 2022. *Id.*

38. Consequently, under Article III, § 4(b) of the New York Constitution, the IRC was *required* to draft a new redistricting plan to submit to the Legislature within 15 days, by January 25, 2022. And the Legislature was *required* to review and vote on this second plan.

39. Rather than submit a new plan, the IRC informed the Legislature that it was again deadlocked and would not send a second set of maps to the Legislature for review or a vote. *Id.* The January 25 deadline passed without the IRC submitting any new maps, or the Legislature voting on such maps, as was constitutionally required. *Id.*

40. Instead, over the next week, the Democrat-controlled Legislature drafted and enacted its own set of maps—along a party-line vote without public input—thereby effectuating a partisan redistricting of congressional, Senate, and Assembly districts. *Id.*

41. Sadly, despite the undeniable (and now declared) infirmity, Democratic Governor Hochul signed these maps into law on February 3, 2022. *See* 2021–2022 N.Y. Reg. Sess. Leg. Bills A.9040- A and A.9168.

IV. The Court of Appeals Recognizes that the 2022 Maps Are Unconstitutional

42. The same day the Governor signed the maps into law, New York citizens filed a special proceeding in this Court challenging the constitutionality of the congressional and (after amending their petition) Senate maps. *See* Amended Petition (Doc. No. [18](#)).

43. The petitioners claimed that the maps (1) were the product of a constitutionally defective process and (2) were unconstitutional partisan gerrymanders.

44. On March 31, 2022, following a bench trial and extensive expert testimony, this Court voided the congressional and Senate maps, holding that the IRC and Legislature had failed to follow the necessary constitutional procedure for submitting and reviewing a second set of redistricting plans when the Legislature rejected the IRC's first redistricting plan.

45. The Supreme Court further held that the congressional maps had been drawn with impermissible political bias—*i.e.*, were gerrymandered—and were void for that reason as well. *See Harkenrider I* at 14.

46. The Supreme Court also voided the Assembly maps because “[t]he same faulty process was used for all three maps” and “[t]herefore new maps will need to be prepared for the Assembly Districts as well.” *Id.* at 10.

47. On appeal, the Fourth Department vacated the Supreme Court's holding that the Senate and Assembly maps were procedurally defective and therefore void. *Harkenrider v. Hochul*, No. 22-00506, 2022 WL 1193180, at *3 (4th Dep't Apr. 21, 2022) (“*Harkenrider II*”).

48. The Fourth Department's decision was quickly overturned.

49. Six days later, on April 27, 2022, the New York Court of Appeals reversed the Fourth Department, reinstating the Supreme Court's decision that “the legislature and the IRC deviated from the constitutionally mandated procedure” and so the congressional, Senate, and Assembly maps were all defective. *Harkenrider III*, 2022 WL 1236822, at *5. “[T]here can be no question,” the Court of Appeals found, “that the drafters of the 2014 constitutional amendments and the voters of this state intended compliance with the IRC process to be a constitutionally required precondition to the legislature's enactment of redistricting

legislation.” *Id.* at *9. Indeed, “**no one disputes**” that the IRC and Legislature had “**failed to follow the procedure commanded by the State Constitution.**” *Id.* at *1.

50. The Court of Appeals found that the Assembly maps suffer from the same “**procedural infirmity**” as the congressional and Senate maps. *Id.* at *11 n.15.

51. But the Court of Appeals declined to *sua sponte* invalidate the Assembly maps because the petitioners had neither sought such relief nor appealed the Fourth Department’s vacatur of the Supreme Court’s voiding of the Assembly maps. *Id.* at *11 n.15.

52. In short, the Assembly maps are clearly void, and a declaration to that effect depends on nothing more than the institution of this action, thus finally giving full effect to the 2014 constitutional amendments.

V. The Court of Appeals Remands to the Supreme Court to Oversee Redistricting

53. The constitutional deadline for the IRC to submit a second redistricting plan has passed. Consequently, the Legislature’s unconstitutional maps are “**incapable of a legislative cure.**” *Harkenrider III*, 2022 WL 1236822, at *12.

54. The Court of Appeals therefore remanded the matter to this Court to craft and adopt redistricting maps in a court-supervised process, as authorized by Article III, § 4(e) of the New York Constitution. *Id.* Judicial oversight, the Court Appeals explained, is “**required to facilitate the expeditious creation of constitutionally conforming maps for use in the 2022 election and to safeguard the constitutionally protected right of New Yorkers to a fair election.**” *Id.* at *1.

55. This Court was directed to follow the course of action that it had already set in motion during the pendency of these appeals: adopt a redistricting plan “**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.**” *Id.* at *12.

56. This Court's special master hearings are proceeding apace. The Court has set a schedule and retained a neutral expert to redraw nonpartisan congressional and Senate maps. A hearing for public input on proposed maps is presently set for May 6, 2022, and the deadline for the special master to complete final maps is May 20, 2022. *See* Second Amended Order (Doc. No. [296](#)). Moreover, the Supreme Court has pushed back the primaries for congressional and State Senate elections from June 28 to August 23, 2022. *See* Preliminary Order (Doc. No. [301](#)).

57. This Court should likewise follow the clear mandate of the Court of Appeals and void the 2022 State Assembly map. The IRC and the Legislature indisputably failed to comply with Article III, § 4(b) of the New York Constitution—enacting, as the Court of Appeals held, an Assembly map with a fatal constitutional defect that undermines the goals of the 2014 amendments. The only option here is for this Court to declare the unconstitutional Assembly map void and adopt a new one, with assistance from the special master, and make necessary arrangements for the 2022 election cycle.

58. Further, as *Harkenrider III* found no good reason to delay a remedy for the unconstitutional congressional and State Senate maps, there is no good reason to delay a remedy to the unconstitutional Assembly map. The Court of Appeals rejected state respondents' request to defer a remedy until after the 2022 election cycle. *Harkenrider III*, 2022 WL 1236822, at *12.

59. The Court of Appeals was “**confident that, in consultation with the Board of Elections, Supreme Court can swiftly develop a schedule to facilitate an August primary election, allowing time for the adoption of new constitutional maps, the dissemination of correct information to voters, the completion of the petitioning process, and compliance with federal voting laws, including the Uniformed and Overseas Citizens Absentee Voting Act.**” *Id.* at *12.

60. This Court should therefore move expeditiously to enjoin the State’s primary for the State Assembly election and begin proceedings to adopt a new Assembly map.

61. The primary is currently scheduled for June 28, 2022. But, as the Supreme Court has ordered in *Harkenrider*, moving them to August will “**likely be necessary**” for there to be time to adopt constitutional maps. *Id.* at *12. Waiting until after the 2022 elections would “**subject the People of this state to an election conducted pursuant to an unconstitutional reapportionment.**” *Id.* at *11.

62. Further, the current petitioners do not appear to have addressed the likely defects that will occur—once the special-master redistricting process is completed—with the petition signatures that candidates for office must obtain to appear on a ballot.

63. These defects would affect the ballots for congressional, State Senate, State Assembly, as well as statewide offices.

64. To appear on a ballot, a potential candidate must obtain signatures from voters who meet specific residency requirements, and these residency requirements are tied to the boundaries of districts. *See, e.g.*, N.Y. Elec. Law § 6-138.

65. After maps are redrawn, many of the signatures that candidates have obtained may no longer comply with state law and will be invalid. Further, many New Yorkers will be eligible to provide petitions for potential candidates in different districts or political units.

66. This Court should establish measures to remedy invalid petitions and reopen the period to current primary candidates for obtaining such petitions, so that they may obtain replacement signatures. This Court should further reopen the period for potential new candidates who—after finding themselves in a redrawn district where they are now competitive and can obtain

signatures they could not have before—wish to run for office.⁷ New Yorkers should not be denied this opportunity because the Legislature has enacted poisoned maps.

FIRST CAUSE OF ACTION

Failure to Follow Constitutional Procedures for Redistricting (N.Y. Const. art. III, § 4(b))

67. Petitioner incorporates each of the foregoing paragraphs as if fully set forth herein.

68. Every ten years, New York must reapportion State Assembly districts “**to account for population shifts**” reported in the Federal Census. *Harkenrider III*, 2022 WL 1236822, at *1.

69. Article III, § 4(e) of the New York Constitution provides that “[t]he **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.**” N.Y. Const. art. III, § 4(e).

70. Article III, § 4(b) requires that, should the Legislature “**fail to approve the legislation implementing the first redistricting plan**” prepared by the IRC, the IRC then “**shall prepare and submit to the legislature a second redistricting plan and the necessary implementing legislation for such plan,**” and that “[s]uch legislation shall be voted upon, **without amendment.**” N.Y. Const. art. III, § 4(b).

71. Only then, after rejecting a second redistricting plan, or, after the Governor vetoes such plan, may the Legislature “**introduce**” its own “**implementing legislation**” along with “**any amendments**” that comply with Article III, Section 4. N.Y. Const. art. III, § 4(b).

⁷ Because candidates for statewide office have to get petition signatures from voters in 50% of the congressional districts, for example, changing the congressional district lines (which the Court has already ordered) necessarily requires new petitions from existing (and potentially new) candidates, as some signatories will obviously find themselves in different districts than they were in when signing in support of a candidate.

72. After the Legislature rejected the first-round maps introduced by the IRC, and the IRC did not adopt and introduce second-round maps to the Legislature within 15 days, the Legislature was left with no maps to act on within the scope of its limited constitutional role.

73. As a result, the Legislature did not consider a second map from the IRC, which mandatory consideration was required before the Legislature was constitutionally permitted to adopt its own congressional map. N.Y. Const. art. III, § 4(b).

74. On February 3, 2022, several voters of New York challenged the constitutionality of this process, and, on April 27, 2022, the Court of Appeals held that the procedure used by the IRC and Legislature was unconstitutional. *Harkenrider III*, 2022 WL 1236822, at *11.

75. The State Constitution “**requires expedited judicial review of redistricting challenges ... and authorizes the judiciary to ‘order the adoption of, or changes to, a redistricting plan’ in the absence of a constitutionally-viable legislative plan.**” *Id.* at *2 (citing NY Const, art III, § 4(e) then quoting *id.* § 4(e)). Further, “**judicial oversight is required to facilitate the expeditious creation of constitutionally conforming maps for use in the 2022 election and to safeguard the constitutionally protected right of New Yorkers to a fair election.**” *Id.* at *1.

76. Thus, this Court should draw its own map for the Assembly prior to the upcoming deadlines for candidates to gain access to the ballot.

SECOND CAUSE OF ACTION

Declaratory Judgment (CPLR § 3001)

77. Petitioner incorporates each of the foregoing paragraphs as if fully set forth herein.

78. Petitioner seeks a declaratory judgment from the Court “**as to the rights and other legal relations of the parties**,” CPLR § 3001, regarding the constitutionality of the Assembly map (“2022 State Assembly map”). *See* 2021–2022 N.Y. Reg. Sess. Leg. Bills A.9040-A and A.9168.

79. This issue is ripe for judicial review.

80. If this constitutional question is not resolved, neither Respondents nor the citizens of New York will have adequate guidance regarding the propriety of the enacted maps, in preparation for impending elections, which will be left in limbo following the Court of Appeals decision in *Harkenrider v. Hochul*.

81. If this constitutional question is not promptly resolved, it will be too late to do so without threatening the integrity of upcoming elections, leaving the voters of New York with an indisputably unconstitutional map in the elections.

82. This Court should enter judgment declaring that the 2022 State Assembly map violates the New York Constitution and is therefore void *ab initio*.

PRAYER FOR RELIEF

WHEREFORE, Petitioner prays for relief as follows:

First, declaring pursuant to CPLR § 3001 that the 2022 State Assembly map, *see* 2021–2022 N.Y. Reg. Sess. Leg. Bills A.9040-A and A.9168, is void based upon the procedural flaws in its adoption previously set forth by the Court of Appeals;

Second, enjoining Respondents to adjourn the primary election date for the New York Assembly from June 28, 2022, to August 23, 2022 (thus, aligning the primary election date for the State Assembly with the adjourned primary election dates for the State Senate and U.S. Congress);

Third, enjoining the deadline for military and overseas ballots to July 8, 2022, or a date that this Court otherwise deems appropriate;

Fourth, applying the same remedial procedures this Court has ordered in this action with respect to congressional and State Senate apportionment and redistricting to State Assembly apportionment and redistricting, including the creation and adoption of a new, constitutionally and legally compliant State Assembly map;

Fifth, adopting appropriate measures and processes with respect to congressional, State Assembly, State Senate, and statewide office:

- i. to remediate signatures on petitions that are no longer valid under N.Y. Elec. Law § 6-138 or other state law;
- ii. to allow existing candidates with invalid signatures to obtain new signatures;
- iii. to allow new candidates to obtain signatures to qualify for primary elections;

Sixth, suspending or enjoining the operation of any other state laws, or vacating any certifications or other official acts of the acts of the New York State Board of Elections or other governmental body, that would undermine this Court's ability to offer effective and complete relief for the November 2022 elections and related primaries;

Seventh, awarding Petitioner reasonable attorneys' fees and costs; and

Eighth, awarding such other and further relief as this Court may deem just and proper.

Dated: New York, NY
May 3, 2022

Respectfully submitted,

WALDEN MACHT & HARAN LLP

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