SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

PAUL NICHOLS, GAVIN WAX, and GARY GREENBERG, Petitioners, v. GOVERNOR KATHY HOCHUL, 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.	Index No. 154213/2022

PETITIONERS' MEMORANDUM OF LAW CONCERNING THE APPROPRIATE PROCESS TO REDRAW THE ASSEMBLY MAP

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Petitioners Paul Nichols, Gary Greenberg, and Gavin Wax, by their undersigned counsel, submit this Memorandum of Law concerning the appropriate method to redraw the Assembly district lines, following the June 10, 2022, decision of the First Department, which remanded this action "for further proceedings in connection with the redrawing of the [Assembly] map."

PRELIMINARY STATEMENT

In February 2022, the Legislature passed a redistricting plan for the Assembly. The Legislature drew the new Assembly map in the secrecy of its chambers—without public input, without transparency, and without independent checks—ignoring the constitutional mandate adopted by New Yorkers less than a decade before. On June 10, 2022, the First Department held that the 2022 Assembly map was unconstitutional and void, since the Legislature failed to follow the exclusive redistricting process set forth in Article III of the New York Constitution.

One question remains. Does the Constitution require a judicial remedy when a redistricting plan has been invalidated for violating the Article III redistricting process?

The text and structure of the Constitution is plain. And the Court of Appeals' decision in *Harkenrider* is unequivocal. A judicial remedy is now the only option. Neither the Legislature nor the Independent Redistricting Commission (IRC) get a second chance at fixing a procedural violation *when constitutionally fixed deadlines have passed*. There are no do-overs. No mulligans. Article III provides that only a court can now impose a remedy:

> 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*.

Art. III, § 4(e) (emphasis added).

This is especially so here because, as verified by the study of a nationally recognized expert in redistricting, the 2022 Assembly map violated the Constitution in a second way by intentionally

drawing the now-voided map to eliminate competition and favor incumbents, which the Constitution forbids. Art. III, § 4(b)(5) (forbidding map drawing to stifle competition).

BACKGROUND

In 2014, New Yorkers added gerrymandering protections to the Constitution. They passed amendments to Article III Sections 4 and 5 and adopted Section 5-b. Together, these amendments created an Independent Redistricting Commission (IRC), a detailed procedure for crafting and enacting redistricting plans, and prohibitions against partisan and incumbent considerations in drawing the new plans. The amendments were passed "in response to criticism of the scourge of hyper-partisanship." *Harkenrider v. Hochul*, No. 60, 2022 WL 1236822, at *7 (N.Y. Apr. 27, 2022). Together, the 2014 amendments created an "exclusive" process of redistricting that was designed to promote citizen participation, fair representation, and confidence in elections, thereby ushering in "a new era of bipartisanship and transparency." *Id.* at *2, *8.

This year marked the first redistricting cycle with the new constitutional paradigm. The Legislature ignored it. On April 27, 2022, the Court of Appeals held that the IRC and the Legislature violated this constitutionally mandated process. *Id.* at *9. The Court struck down the Congressional and Senate maps for that reason. *Id*. at *11. The Assembly map remained, however, because the petitioners in *Harkenrider* had not challenged it; and so, the Court could not also strike down the Assembly map "despite its procedural infirmity." *Id.* at *11 n.15.

Petitioners in this matter thus filed an action on May 15, 2022, seeking to invalidate the 2022 Assembly map. This Court rejected and dismissed the Petition. On June 10, 2022, the First Department reversed, granted the Petition, and invalidated the 2022 Assembly map "based on its procedural infirmity as previously determined by the Court of Appeals" in *Harkenrider*. NYSCEF No. 99, at 1. Although Petitioners requested that a new map be adopted in time for the 2022 primary and general elections, the First Department held that insufficient time existed to draw a

new Assembly map, allowing the election to proceed with a constitutionally infirm map. *Id.* The court remanded the matter "for consideration of the proper means for redrawing the state assembly map, in accordance with NY Const, art III, § 5-b."[1] *Id.* at 3.

Three weeks later, the June 28 primary election went ahead with the unconstitutional Assembly map in place. Turnout was anemic; voters' disgust with the legislative game-playing inherent in the redistricting process was likely a contributing factor. According to preliminary data, only 13% of registered Democrats in New York voted in the June 28 gubernatorial primary, compared to 25% in 2018; and only 16% of registered Republicans voted in the June 28 primary (there was no Republican gubernatorial primary in 2018).[2] In New York City, approximately 12.3% of registered Democrats and Republicans cast votes in the primary, whereas in 2018, 27% of all registered Democrats voted.[3] This result was foreseeable.

On June 29, 2022, this Court directed the parties to submit briefs to address "the proper means by which to redraw the state assembly map as ordered by the Appellate Division." NYSCEF No. 98. This brief provides the answer, and there is only one: a judicial remedy.

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[1] Although Petitioners also requested a special election with a new map, the First Department foreclosed that specific relief when it ordered: "upon the formal adoption and implementation of a new legally compliant state assembly map, for use no sooner than the 2024 regular election, the February 2022 map will be void and of no effect . . . ." NYSCEF No. 99, at 2.

[2] Ethan Geringer-Sameth, *Voter Turnout in New York Gubernatorial Primary Drops Sharply from 2018 Surge*, Gotham Gazette (June 30, 2022), https://www.gothamgazette.com/state/11431-voter-turnout-2022-primaries-new-york.

[3] David Cruz & Cyra Paladini, *NYC turnout in June's primary was weak — August will likely be weaker*, Gothamist (July 13, 2022), https://gothamist.com/news/nyc-turnout-in-junes-primary-was-weak-august-will-likely-be-weaker.

ARGUMENT

I. As *Harkenrider* holds, the Constitution requires a judicial remedy when there has been a constitutional violation that the Legislature is incapable of curing.

This Court need only look to the plain text of Article III to decide the remedial question presented. Article III sets forth the "exclusive" process for redistricting with one caveat: "court intervention following a violation of the law." *Harkenrider*, 2022 WL 1236822, at *8. When that process has been violated, Section 4(e) empowers the court—and only the court—to "*order the adoption of, or changes to, a redistricting plan* as a remedy for a violation of law." Art. III, § 4(e) (emphasis added). The language is "plain and precise" that a judicial remedy is the only option; it must therefore "be given its full effect." *Harkenrider*, 2022 WL 1236822, at *5 (quoting *People v. Rathbone*, 145 N.Y. 434, 438 (1895)). The 2014 amendments' framers "understood the force of the language used and, as well, the people who adopted it." *Id.*

For that reason, the Court of Appeals found that "due to the procedural constitutional violations and the expiration of the outer February 28th constitutional deadline for IRC action, *the legislature is incapable of unilaterally correcting the infirmity*." *Id.* *10 n.19 (emphasis added). The Court rejected Respondents' argument that the Legislature be given an opportunity to redraw the maps: "[t]he procedural unconstitutionality of the congressional and senate maps is, at this juncture, *incapable of a legislative cure*. The deadline in the Constitution for the IRC to submit a second set of maps has long since passed." *Id.* at *10 (emphasis added). And the Court rejected Judge Troutman's dissenting view that the Court "should now order the legislature to enact redistricting legislation despite their inability to cure the procedural violation." *Id.* at *10 n.20.

What role, then, does the Legislature have within Article III's remedial scheme? The answer to that is also plain. The Legislature may fix defects in a map—but only if it *can* fix them within the required constitutional process, including its time limits. Section 5 provides that the

Legislature "shall have a full and reasonable opportunity to correct the [map's] legal infirmities." Art. III, § 5. This provision is a safety valve; it provides that where legal infirmities exist that the Legislature *is capable* of correcting—such as partisan or other substantive bias—it must have an opportunity to correct them. But when the redistricting process itself has been violated and constitutionally set deadlines have passed—there is no role for the Legislature to try to salvage a defective map, since it is no longer salvageable. A judicial remedy is the mandate of Article III and the clear holding of *Harkenrider*, which this Court is duty-bound to follow.

The Assembly map, which has been invalidated because of the same procedural infirmities as the Congressional and Senate maps,[4] is now in the same remedial posture. This Court must adopt a redistricting plan for the Assembly, since the old one is now legally void and of no effect. Art. III, § 4(e). Respondents might argue, as they did in *Harkenrider*, that Article III leaves room for "legislative discretion regarding the particulars of implementation." *Harkenrider*, 2022 WL 1236822, at *7 (referencing Respondents' arguments). But the Court of Appeals rejected that argument: "this is not a scenario where the Constitution fails to provide 'specific guidance' or is 'silent on the issue.'" *Id.* (quoting *Cohen v. Cuomo*, 19 N.Y.3d 196, 200 (2012)).

In *Harkenrider*, the League of Women Voters as *amicus curiae* succinctly articulated the remedial scheme that the 2014 reforms created. The League explained:

> [I]f there has been a "violation of law," including the procedural dictates of the Constitution, Section 4(e) charges the courts to order one of two specified remedies—the adoption of a new redistricting plan or a change to a pre-existing plan. Although Section 5 allows for the Legislature to "have a full and reasonable opportunity to correct" the "legal infirmities" of a "law establishing congressional or state legislative districts," that remedial path, necessarily, can be

[4] The Congressional map was found to be both procedurally and substantively unconstitutional; the Senate map was found to be procedurally unconstitutional. *Harkenrider*, 2022 WL 1236822, at *11. In *Harkenrider*, both the Congressional and Senate maps were redrawn with the assistance of a special master, pursuant to a court-supervised process.

> available only when it is possible for the Legislature to correct the "legal infirmities." Here, the Legislature is incapable of curing the procedural violation. Thus, Section 4(e)'s express charge to the Judiciary must be respected; the Court should order one of the two specified remedies contemplated by that subsection.

Devlin Aff., Ex. 1, at 2; *see also* Devlin Aff., Ex. 2, at 11–18 (the League of Women Voters arguing same as *amicus* to the Fourth Department). The Legislature is unable to fix the invalidated Assembly map. This Court must therefore adopt a new map. Allowing the Legislature to step in would be the same as granting no remedy at all and is precisely what the Court of Appeals warned should not happen. The exclusive redistricting process is not just a procedural formality.

Adherence to the process and deadlines in Article III as they are plainly written serves substantive interests. The process "incentiviz[es] the legislature to encourage and support fair bipartisan participation and compromise throughout the redistricting process." *Harkenrider*, 2022 WL 1236822, at *8; *see also* Devlin Aff., Ex. 2, at 16 ("By insisting that the remedial provisions of the Amendment must be enforced as written, this Court would give the members of the IRC a powerful incentive to perform their constitutional duties, and give the legislative leaders who appoint them a powerful incentive to spur them to do so. Surely the uncertain contours of a judicial reapportionment plan would encourage political compromises, compromises that, perforce, would reduce the possibility of abusive gerrymandering.").

Nor is reconvening or restarting the IRC process an option. The Article III process is the exclusive process—deadlines and all—as *Harkenrider* holds. The constitutional timetable, among other requirements, for the IRC to carry out any redistricting process has lapsed. The IRC has until "January fifteenth in the year ending in two beginning in two thousand twenty-two" to submit a plan and implementing legislation to the Legislature. Art. III, § 4(b). That date passed long ago.

Respondents might argue that Section 5-b(a) requires another IRC process to redraw the Assembly map. Section 5-b(a) states: "On or before February first of each year ending with a zero

and at any other time a court orders that congressional or state legislative districts be amended, an independent redistricting commission shall be established to determine the district lines for congressional and state legislative offices." Art. III., § 5-b(a).

This argument lacks merit for three reasons.[5]

First, this Court could not direct the IRC to "amend" the original assembly map, because it no longer exists. The First Department voided it. The First Department ordered that the map be "redrawn[n]," not amended.

Second, the other conditions in Article III for IRC action could not be met and are impossible to meet. It is not possible for the IRC to comply at this point with the deadlines established in Sections 4(b) ("no later than January fifteenth in the year ending in two beginning in two thousand twenty-two"), 4(c) ("no later than September fifteenth of the year ending in one or as soon as practicable thereafter"), and 5-b(g) ("on or before January first in the year ending in two or as soon as practicable thereafter"). It also is not possible for the IRC to comply with various other constitutional requirements; for example, Section 4(b) requires that plans for *both* "the assembly and the senate *shall be contained* in and voted upon by the legislature *in a single bill*." Art. III, § 4(b) (emphasis added).

Third, allowing the IRC to fix a violation of law contradicts the plain remedial scheme of Article III and renders that scheme meaningless. Section 4(e) specifically addresses what happens when there is a "violation of law"; Section 5-b sets forth the composition of the IRC. Under

[5] In the Supreme Court, County of Albany, several New York voters have filed a petition against the members of the IRC seeking a mandamus order that would force the IRC to reconvene and submit a second set of Congressional plans to the legislature. *See* Amended Verified Petition for Writ of Mandamus, *Hoffman v. N.Y. State Indep. Redistricting Comm'n*, No. 904972-22 (Sup. Ct. Albany Cnty. Aug. 4, 2022) (NYSCEF No. 47). The respondents' answer is presently due August 23, 2022. *See* Order to Show Cause, *Hoffman*, (Aug. 5, 2022) (NYSCEF No. 58).

longstanding canons of construction, a specific provision trumps a general one, and a provision should not be made superfluous.[6] *Isaacs v. Westchester Wood Works*, *Inc.*, 278 A.D.2d 184, 185 (1st Dep't 2000). Moreover, to argue that the IRC should again convene under Section 5-b would conflict with *Harkenrider*'s reading of the Constitution, which recognizes that a judicial remedy is now necessary (and which the Court of Appeals imposed with respect to both the Congressional and Senate maps). Giving the IRC "another chance" at drawing the Assembly lines would incentivize dilatory and unlawful conduct if they know that courts will afford them opportunities to bypass the exclusive process for redistricting and corresponding remedies.

II. This Court should appoint a special master to draw the Assembly map.

Petitioners respectfully request that the Court appoint a special master with redistricting expertise to draw a new Assembly map. The Supreme Court in Steuben County appointed Dr. Jonathan Cervas as Special Master to redraw the Congressional and Senate maps. Dr. Cervas is highly qualified and was assisted in that matter by a team of experts. Given his expertise and familiarity with the process of redrawing the other maps, it is likely that he could readily be retained as a Special Master in this action and get to work immediately; accordingly, Dr. Cervas is Petitioners' first choice. If, however, the Court wishes to evaluate other redistricting experts to potentially serve as special master, Petitioners stand ready to assist the Court with that process.

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[6] Although the First Department referenced only Section 5-b in its instructions on remand, that does not require this Court blind itself to the rest of Article III. It is axiomatic that the Court has a duty to interpret the Constitution as a whole. *See People* ex rel. *McClelland v. Roberts*, 148 N.Y. 360, 367 (1896) ("The constitution, as it now exists, must be read and considered in all its different parts, and each provision must be given its appropriate place in the system, and some office to perform, and at the same time all must be so construed as to operate harmoniously.").

Even if the Court had some discretion to allow the IRC to reconvene, and it does not, the Court should not exercise any such discretion. The State of New York was not supposed to be cited this year alongside the long list of regressive states that have rigged elections through gerrymandering. But this whole redistricting debacle has brought appropriate scorn and derision to the State. Although Petitioners brought no gerrymandering claim in the very short time they had to file the original Petition, Petitioners have now commissioned an expert study. The study demonstrates conclusively that the corrupt purpose of the unconstitutionally drawn Assembly map was a gerrymander, and thus violated the Constitution for that reason as well.

A. The Court must not countenance the IRC's and Legislature's attempt to shortcut the exclusive Article III redistricting process.

The redrawing of the Congressional and Senate maps in *Harkenrider* has been successfully completed. Dr. Cervas now has expertise in both the map-drawing process and the requirements and computations required to accomplish drawing new maps here in New York. Dr. Cervas also successfully participated in public hearings and reviewed and considered written submissions from interested parties. At the conclusion of the process, the court commended Dr. Cervas's work:

> Dr. Cervas has solid credentials in redistricting matters. He established a team which included amongst others, Dr. Bernard Grofman. Dr. Grofman is widely considered one of the leading experts in redistricting and has now worked on New York's redistricting in three separate decades. Dr. Cervas also has working under him several assistants born and raised in New York. New Yorkers should be very thankful that Dr. Cervas was willing to take on this task.

Order at 4, *Harkenrider v. Hochul*, Index. No. E2022-0116CV (Sup. Ct. Steuben Cnty. May 20, 2022) (NYSCEF No. 670); *see also* Devlin Aff., Ex. 3 (Dr. Cervas's curriculum vitae). Dr. Cervas received thousands of comments and submissions from New Yorkers. He heard remarks at a hearing in Steuben County. He released proposed maps on May 16 and 17 and, after additional comments, released final maps on or about May 20. The process was thorough and efficient.

Petitioners are prepared to assist the Court with contacting Dr. Cervas to ascertain whether he can be retained in connection with this action, or in connection with a search process concerning the potential retention of another qualified individual.

At oral argument before this Court, and in briefing to the First Department, Respondents suggested that the Court rubberstamp the now-void Assembly map. According to Respondents Heastie and Stewart-Cousins, the Assembly map "is fair and should not be re-drawn"; and the Court should "simply re-adopt[] the enacted bipartisan Assembly map." Resp'ts Heastie & Stewart-Cousins Br. at 36–38, App. No. 2022-2301 (1st Dep't) (NYSCEF No. 11). At oral argument before this Court on Petitioners' order to show cause, Respondent Heastie invited this Court to "ratify" the Assembly map for the next decade. Tr. 78–79 (NYSCEF No. 95). But this Court correctly recognized that solution as untenable. *Id.* at 99.

An unvetted and perfunctory process to redraw the Assembly map would do nothing to dispel the shadow over Assembly elections. The constitutional harm, if unremedied, will cast a pall of suspicion over elected officials for years to come. The now-voided Assembly map lacks the legitimacy that a rigorous enactment process would have imparted. Not only is the now-voided Assembly map procedurally unconstitutional, but also, as discussed below, it was designed to protect incumbents—hence its purported "bipartisan" support Respondent Heastie has touted throughout these proceedings. This Court must dispel voters' doubts seeded by the IRC's and Legislature's constitutional violations and incentivize our elected officials and their appointees to follow the Constitution in the first instance.

B. The statistical analysis of a nationally recognized expert demonstrates that the 2022 Assembly map was purposefully drawn to favor incumbents.

The Assembly map that the First Department recently invalidated is also unconstitutionally biased towards incumbents. Article III expressly forbids the exact incumbent protection that the

Legislature sought when it passed the map: "Districts shall not be drawn to discourage competition or for the purpose of favoring or disfavoring incumbents or other particular candidates or political parties." Art. III, § 4(b)(5). This basic truth supplies compelling justification for the Court to use an independent expert to redraw the Assembly map, which is the best process to protect voters and the best mechanism to deter the Legislature from ever-again executing a corrupt scheme to protect incumbents, as it did here.

To assess the 2022 Assembly map's incumbent-bias, Petitioners engaged Dr. Jeanne Clelland to analyze it using an ensemble analysis.[7] Dr. Clelland is a Professor of Mathematics at University of Colorado Boulder, where she has been a faculty member since 1998. Clelland Aff. ¶ 2. She was a National Science Foundation Postdoctoral Research Fellow at the Institute for Advanced Study from 1996 to 1998. *Id.* Her research has been supported by grants from the National Science Foundation and the Simons Foundation. *Id.* She is the author of a graduate-level textbook and 29 peer-reviewed journal articles. *Id.* ¶ 3. Her research focuses on the mathematical analysis of redistricting; in particular, ensemble analysis, which is the algorithmic sampling of district plans to identify plans with extreme properties, such as partisan or incumbent bias. *Id.* ¶ 4.

In her expert study, Dr. Clelland performed "two independent and complementary" ensemble analyses of the 2022 Assembly map. *Id.* ¶ 10. Both analyses independently led Dr. Clelland to conclude that it "is almost certain that the 2022 Assembly plan was deliberately designed in part to maximize the number of districts containing a single incumbent Assembly

[7] Ensemble analyses were used by the *Harkenrider* petitioners' expert, Sean P. Trende, to prove that the 2022 Congressional map was a partisan gerrymander. Mr. Trende's ensemble analysis was credited by the trial court, the Fourth Department, and the Court of Appeals, and relied upon by all to hold and affirm that the Congressional map was substantively unconstitutional. *See Harkenrider v. Hochul*, 204 A.D.3d 1366, 1371 (4th Dep't 2022) ("[T]he testimony of Trende was probative and confirmed the inference from the above two points that the legislature engaged in unconstitutional partisan gerrymandering when enacting the 2022 congressional map.").

member." *Id.* ¶¶ 11, 61. Dr. Clelland's analyses demonstrate that the 2022 Assembly map was intentionally drawn by the Legislature to protect incumbents by ensuring that each incumbent had their own district and would not be forced to run against another incumbent, ensuring the political status quo and violating Section 4(b) of the Constitution. Little wonder that legislators agreed on the now-voided Assembly map when they focused on protecting their own seats instead of drawing a fair and constitutionally compliant map.

In her first analysis, Dr. Clelland constructed three ensembles of 50,000 district plans. She then computed the number of districts where 0, 1, 2, or 3 incumbents resided in each plan. *Id.* ¶ 17. Finally, she compared the statistical range of outcomes for these measures to the values of the 2022 Assembly map and found that the 2022 Assembly was an extreme outlier, meaning that it is highly unlikely an Assembly map would have the number of one-incumbent districts it did. *Id.*

For this first analysis, Dr. Clelland used resident addresses provided by counsel from publicly available data. Counsel provided Dr. Clelland with 141 of 150 Assembly incumbent addresses that were available from public sources. Dr. Clelland conducted her analysis with the 141 addresses and 9 "proxy" addresses based on incumbent office addresses. *Id.* ¶¶ 15 n.5, 56. From this data, Dr. Clelland assumed that the 2022 Assembly map contains 2 districts with 0 incumbents, 2 districts with 2 incumbents, and 146 districts with 1 incumbent. *Id.* ¶ 38. Potential inaccuracies of the address data likely did not affect the conclusions of her district ensemble analysis. *Id.* ¶¶ 44–48.

From this first analysis, Dr. Clelland concluded that "it seems very likely that the plan was deliberately designed to maximize the number of districts containing exactly 1 incumbent." *Id.* ¶ 48. Further, under her second ensemble analysis, discussed below, Dr. Clelland independently reached the same conclusion, and she demonstrates that her second analysis would remain valid

even in the worst-case scenario in which all 9 proxy incumbent addresses are located in the wrong 2022 Assembly district. *Id.* ¶¶ 56–60.

In her second analysis, Dr. Clelland considered only the Assembly map that was in fact drawn, so that her analysis could account for the difficulty of incorporating all redistricting criteria into the same district ensemble. *Id.* ¶ 18. Rather than generating an ensemble of district plans, Dr. Clelland generated 100,000 sets of "theoretical" incumbent addresses within each district from the 2012 Assembly map and compared each of these sets against the 2022 Assembly map. *Id.* ¶ 19. By then determining whether the actual set of incumbent addresses was an extreme outlier relative to the results of the ensemble, Dr. Clelland could conclude whether the 2022 Assembly map was drawn to accommodate incumbent residences, "regardless of what additional considerations may have informed the drawing of the plan," such as core preservation. *Id.* ¶ 20.

From this second analyses, Dr. Clelland concluded:

> The actual addresses were a very extreme outlier—more extreme, in fact, than any of the sets of addresses in the ensemble. **The probability of this outcome occurring by chance if the 2022 Assembly plan had not been deliberately designed to accommodate incumbent addresses is less than 0.01%.** Even allowing for possible inaccuracies in the 9 incumbent addresses for which proxy addresses were used, this probability estimate remains accurate even if the actual number of districts with 1 incumbent is as low as 142. Even in the worst-case scenario in which all 9 proxy addresses are located in the wrong 2022 Assembly district, the probability of this outcome occurring by chance remains less than 1 in 500.

Id. ¶ 60. This range of probabilities is summarized below.

Table 15: Probability of numbers of districts with 1 incumbent occurring by chance

	Standard deviations above the mean	Probability
137 districts	2.89	0.19%
138 districts	3.07	0.11%
139 districts	3.25	0.06%
140 districts	3.42	0.03%
141 districts	3.60	0.02%
142 districts	3.78	0.01%
143 districts	3.95	< 0.01%
144 districts	4.13	< 0.01%
145 districts	4.31	< 0.01%
146 districts	4.48	< 0.01%

Id. ¶ 57 tbl. 15.

Dr. Clelland's analysis is further supported by individual examples. Huge Ma was an Assembly candidate in Queens who won significant grassroots support after he built a website that helped residents find vaccinations for COVID-19. (This earned him the avuncular nickname "VaxDaddy.") But Mr. Ma had to exit the race because under the 2022 Assembly map his residence was outside the district in which he was running. Mr. Ma was challenging incumbent Catherine Nolan in the 37th District, who, according to the N.Y. Times, is "a high-ranking Democrat who has served for nearly four decades."[8] What happened? "The new lines for her district carved out parts of the Long Island City waterfront where some of her most likely challengers, including Mr. Ma, reside."[9] In addition, Sam Fein was a primary challenger in the

[8] Luis Ferré-Sadurni & Grace Ashford, *How Democrats' New Maps Could Shape N.Y. Politics for Years to Come*, N.Y. Times (Feb. 14, 2022), https://www.nytimes.com/2022/02/14/nyregion/redistricting-gerrymandering-albany-ny.html. After the map was redrawn, Assembly Member Nolan dropped out of the race for medical reasons.

[9] *Id.*

108th District against Democratic incumbent John McDonald. Mr. Fein dropped out of the race when his residence was drawn outside of the district. Mr. Fein announced on Twitter: "I am disappointed that I can no longer run in the redrawn 108th Assembly District. When the new Assembly district lines were released, I found out that I am no longer in the 108th District."[10]

Had the IRC and the Legislature followed the constitutionally required process, the Legislature would have been unable to engineer an Assembly map that was unconstitutionally designed to protect incumbents. New Yorkers should have faith that the map is fair, and the Constitution provides that only a court-adopted map is now allowed.

[*Intentionally left blank*]

[10] @samfein518, Twitter (Feb. 8, 2022, 2:18 PM), https://twitter.com/samfein518/status/1491129314368442369?s=20&t=ccOkKfX74DFWaSgFfC0jfg.

CONCLUSION

For the reasons given, the Court should adopt a new Assembly map by appointing a special master to conduct a public and Court-supervised redistricting proceeding.

Dated: New York, NY
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Respectfully submitted,

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CERTIFICATE OF WORD COUNT COMPLIANCE

As an attorney at Walden Macht & Haran LLP, I hereby certify that this memorandum of law is in compliance with Commercial Division Rule 17. The foregoing document was prepared using Microsoft Word, and the document contains 4,717 words as calculated by the application's word counting function.

Dated: New York, New York
August 8, 2022

/s/ *Peter Devlin*
Peter Devlin