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Appellate Division–Third Department Docket No. CV-22-2265

Court of Appeals

of the

State of New York

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-Respondents,

For an Order and Judgment Pursuant to Article 78 of the New York Civil Practice Law and Rules

– against –

INDEPENDENT REDISTRICTING COMMISSIONER ROSS BRADY, INDEPENDENT REDISTRICTING COMMISSIONER JOHN CONWAY III, INDEPENDENT REDISTRICTING COMMISSIONER LISA HARRIS, INDEPENDENT REDISTRICTING COMMISSIONER CHARLES NESBITT and INDEPENDENT REDISTRICTING COMMISSIONER WILLIS H. STEPHENS,

Respondents-Appellants,

(For Continuation of Caption See Inside Cover)

AMICUS CURIAE BRIEF FOR LEAGUE OF WOMEN VOTERS OF NEW YORK STATE IN SUPPORT OF INTERVENORS-RESPONDENTS-APPELLANTS

HOLWELL SHUSTER & GOLDBERG LLP
Attorneys for Proposed Amicus Curiae League of Women Voters of New York State
425 Lexington Avenue
New York, New York 10017
(646) 837-5151
jmcguire@hsgllp.com

Of Counsel:
JAMES M. MCGUIRE

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CP COUNSEL PRESS (800) 4-APPEAL • (323767)

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INTEREST OF THE AMICUS

Amicus the League of Women Voters of New York State (the "League") is a nonpartisan, not-for-profit organization dedicated to promoting informed and active participation of citizens in government. Formed in 1919 after the constitutional amendment granting women's suffrage, the League has become a guardian of the rights of all eligible voters in New York. The League is affiliated with the League of Women Voters of the United States and has 45 local leagues throughout New York. As part of its mission to empower citizens and strengthen public participation in government, the League works to increase voter registration and turnout, encourage its members and New Yorkers to exercise their right to vote, and protect that right from unnecessary barriers to full participation in the electoral process. In this regard, the League has long stood for fair and equitable representation for the people of New York through redistricting of legislative and congressional districts that are untainted by gerrymandering. *See* Bierman Aff. ¶¶ 3-11.[1]

In March 2012, the League and the Citizens Union of the City of New York (the "Citizens Union") issued a joint press release calling on Governor Cuomo and the legislature to negotiate a constitutional amendment on redistricting that would achieve the permanent reform that those groups had sought for decades. In 2014,

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[1] "Bierman Aff." refers to the Affidavit of Laura Ladd Bierman, dated April 14, 2022, which is attached as Exhibit B to the Affirmation of James M. McGuire, dated September 8, 2023, in support of the League's motion for leave to file this *amicus curiae* brief.

that reform was achieved when the people approved the amendment to Article III of the Constitution (the "Amendment") at issue in this appeal. The League supported and educated the voters about the Amendment, and therefore has a keen interest in this appeal. *Id.*

Indeed, the League was granted leave to file an *amicus* brief in the Fourth Department that was submitted to this Court, and an *amicus* letter brief in this Court, in *Matter of Harkenrider v. Hochul*, 38 N.Y. 3d 494 (2022) ("*Harkenrider*"), this Court's seminal decision on the Amendment. In its briefs, the League analyzed vitally important issues relating to the procedural requirements of the Amendment, their substantive purposes, the failure of the Independent Redistricting Commission (the "IRC") to fulfill one of its core constitutional obligations, and the remedial consequences of that failure.[2] The remedial consequences of that failure are yet again at issue on this appeal from the Third Department's Order in *Hoffman v. New York State Redistricting Commission*, 217 A.D.3d 53 (2023) ("*Hoffman*"). The Third Department plainly erred in granting the Respondents' petition for a writ of mandamus to compel the IRC—the very same IRC—to prepare and submit to the legislature a second redistricting plan and implementing legislation for subsequent congressional elections this decade. That relief sought is foreclosed because: (1) the

[2] The League respectfully refers the Court to and incorporates by reference its *amicus* submissions in the Fourth Department and this Court.

remedial holding of *Harkenrider* controls this appeal; and (2) another core provision of the Amendment prohibits—with an exception not applicable here—mid-decade redistricting.

Moreover, *Harkenrider*'s analysis of the Amendment's procedural requirements, as well as its conclusion that judicial adoption of congressional and senate districts is the remedy mandated by the Amendment for the incurable procedural violations at issue, are wholly in accord with the analysis and conclusion advanced by the League in its submissions. Indeed, as discussed further below, affirmance would therefore sap the Amendment of the power to achieve its important purpose.

PRELIMINARY STATEMENT

As the League showed in its amicus curiae submissions in *Harkenrider*, the procedural provisions the Amendment mandates are carefully drawn to reduce the potential for partisan and racial gerrymandering in a variety of ways. These include: increasing the accountability of the IRC's members; increasing accountability of the legislative leaders for their appointments to the IRC and, more broadly, of the members of the legislature through greater public education and participation; and increasing the accountability of members of the legislature for their votes on the redistricting proposals of the IRC—the necessary and salutary consequence of greater public knowledge and participation. The Amendment also decreases the risk

of invidious gerrymandering through accountability-enhancing provisions that (a) require the IRC to submit a second set of proposed maps and implementing legislation by a prescribed deadline if its first proposed maps and legislation are not approved, (b) require legislative members to vote on the IRC's proposed redistricting legislation without amendment, and (c) prohibit the legislature from amending the IRC's proposed maps and legislation unless a second set of proposed maps and legislation—which the IRC is obligated to submit by a deadline if its first proposals are not approved—also is not approved on an up-or-down vote (or because of a non-overridden gubernatorial veto following such a vote).

As a vital complement to these protections, the text of the Amendment told the people that incurable violations of its procedural requirements would necessitate maps adopted by the judiciary, the non-political branch. The relief this Court ordered in *Harkenrider*, in other words, *is* part of the exclusive process the Amendment prescribes. As this Court recognized, "compliance with the IRC process enshrined in the Constitution … incentiviz[es] the legislature to encourage and support fair bipartisan participation and compromise throughout the redistricting process." *Harkenrider*, 38 N.Y.3d at 515 (footnote omitted). The prospect of maps drawn by the judiciary serves as a powerful incentive for the IRC and the legislature to hew to these requirements. Thus, the relief ordered by the Third Department undermines that necessary incentive and thereby reduces the effectiveness of the Amendment as

an instrument for realizing the people's goal of reducing, if not eliminating, racial and partisan gerrymandering.

ARGUMENT

I. This Appeal Is Controlled By The Remedial Holding in *Harkenrider*

In *Harkenrider*, this Court squarely rejected the "protest" by the state respondents "that the legislature must be provided a 'full and reasonable opportunity to correct … legal infirmities' in redistricting litigation." 38 N.Y.3d at 523. And the Court rejected it for a simple and incontrovertible reason:

> The 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. (footnote omitted).[3]

Accordingly, the Court directed that the violation be redressed by the only remedy authorized by the Amendment under the circumstances. That is, the Court invoked the authority conferred on the judiciary for the first time by article III, §4(e)—exercisable only "required"—"to order the adoption of … a redistricting plan as a remedy for a violation of law." Art. III, §4(e). The meaning of the word

[3] *See also id.* at n. 19 ("[D]ue 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.").

"required" is as plain as it is precise. And "[i]n the construction of constitutional provisions the language used, if plain and precise, should be given its full effect." *People v. Rathbone*, 145 N.Y. 434, 438 (1895).

That this Court held that judicial adoption of a redistricting plan was the only constitutionally permissible remedy is thus eminently clear from the opinion's text. And it is clear as well from the text of article III, §4(e), given that the judicial authority to adopt a redistricting plan is exercisable only when "required"—*i.e.,* only when no other remedy is authorized by the Constitution.

Importantly, another remedial path—more accurately, a remedial punt—was advanced by the parties. Specifically, the state respondents "urg[ed] that the 2022 congressional and senate elections be conducted using the unconstitutional maps, deferring any remedy for a future election." 38 N.Y.3d at 521 (footnote omitted). That the Court *rejected* this option further underscores that the Court was holding that *judicial* adoption of congressional and senate maps was the only lawful remedy.

To the same effect, the Court also rejected Judge Troutman's position—with which Judge Wilson agreed, *id.* at 527 (Wilson, J, dissenting)—that "the legislature should be ordered to adopt one of the IRC-approved plans on a strict timetable with limited opportunities to make amendments thereto." *Id* at 526 (Troutman, J., dissenting). At oral argument, moreover, Judge Rivera raised the possibility of another remedy: "su[ing] the IRC" to "require [it] to comply with its duty,"

Transcript of Oral Argument, *Harkenrider v. Hochul,* No. 60 (N.Y. Apr. 26, 2022) at 33 (the "Transcript"), a "remedy" that "focuses on [the IRC]" and thus "falls on the shoulders" of the constitutional body responsible for the "procedural defect[]." *Id.* at 34. Neither the majority in its opinion nor Judge Rivera in her dissent mentioned this option, though clearly it was contemplated. Instead, the Court directed the judicial remedy authorized by the Amendment for those circumstances in which it was "required," precisely because it was the "required"—that is, the only available—remedy.

Nor, contrary to the Third Department majority's analysis, *Hoffman*, 217 A.D.3d at ___, 192 N.Y.S.3d at 767-769, can *Harkenrider* reasonably be read to have directed the adoption of congressional and senate districts valid for the 2022 elections *only*.

First, if this Court intended the congressional and senate maps it directed Supreme Court to adopt to be valid only for the 2022 elections, it surely would have said so. The Court did no such thing. After all, it would have been irresponsible in the extreme for the Court to have directed the adoption of maps with a hidden fuse that would explode and destroy the maps after the 2022 elections. To the contrary, this Court expressly directed "Supreme Court . . . [to] adopt constitutional maps"—i.e., legally valid maps to be in place for remainder of the redistricting cycle. *Harkenrider*, 38 N.Y.3d at 524. It is simply preposterous to indulge the notion that

the Court consigned the electorate, the political parties, the members of Congress and the New York Senate elected at the 2022 election, as well as potential candidates for those offices after the 2022 election, to guess that new maps would be created after the election through a process the nature of which was never even hinted at in the *Harkenrider* opinion.

Second, none of the state respondents asked for such a good-for-one-ride-only remedy, either in their submissions or at oral argument. In fact, they asked for the opposite. The state respondents argued that "the 2022 congressional and senate elections [should] be conducted using the unconstitutional maps, deferring any remedy for a future election." 38 N.Y.3d at 521 (footnote omitted). Petitioners now, therefore, seek a remedy that none of the parties in *Harkenrider* itself asked for.[4]

Third, the proposition that the Court regarded the to-be-judicially-adopted maps as mere 2022 stopgaps—to be followed by new maps if the IRC were forced to submit the required second redistricting plan by some (unspecified) date after the constitutional deadline and the 2022 elections—is at war with one of the Court's central (and indisputable) conclusions. That is, the "procedural unconstitutionality" of the unconstitutionality enacted maps was "*incapable of a legislative cure*"

[4] Inconsistently, petitioners do not contend that new *Senate* maps should be created even though, on their reasoning, this Court also intended that the judicial establishment of Senate maps would be a one-time fix. As petitioners must know, if the Senate maps are not in force after the 2022 elections, "we are left in the same predicament as if no [senate] maps had been [adopted]," *id.* at 522, for all subsequent Senate elections this decade. This glaring inconsistency further demonstrates that petitioners are mounting a (poorly camouflaged) frontal attack on *Harkenrider*.

because the constitutional "deadline" for submission of the second set of maps "ha[d] long since passed." 38 N.Y.3d at 523 (emphasis added). Obviously, the IRC can no more cure this "procedural unconstitutionality" than the legislature could, and for the same reason: "The deadline in the Constitution for the IRC to submit a second set of maps has long since passed." *Id.*

Fourth, in her dissenting opinion, Judge Troutman observed that the remedy directed by the Court "may ultimately subject the citizens of this state, for the next 10 years, to an electoral map created by an unelected official." *Id.* at 527 (Troutman, J., dissenting). That the Court did not dispute Judge Troutman's point surely reflects that, as the Court's opinion makes plain, it understood this necessary consequence of the decision. No surprise, there, since the last sentence of article III, §4(e), also added by the Amendment, provides 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." Art. III, §4(e) (emphasis added).[5]

[5] Even were there any doubt that this Court was well aware that the maps it directed would remain in force for ten years, Judge McAllister, on remand, ordered that the maps were "the final enacted redistricting maps." *Matter of Harkenrider v. Hochul*, Sup. Ct., Steuben County, June 2, 2022, McCallister, J., Index No. E-2022-0116CV, NYSCEF Doc. No. 696. Yet neither the *Harkenrider* petitioners nor anyone else emerged to tell Justice McAllister that, to paraphrase *Casablanca*'s Captain Renault, that she was "shocked, shocked to find that finality was going on here." And this fact potentially affords another ground for reversal. That is, the League agrees with the Intervenors that if this proceeding could be thought to seek a mere "modif[ication]" of the judicially adopted maps—and it cannot for the reasons stated below in Section II—it would suffer from the fatal defect that it does not seek that relief in the Steuben County Supreme Court. *See* Intervenors' Memorandum Of Law In Opposition For Motion To Vacate Stay Pending

Fifth, the Third Department hypothesized that the supposed remedy of directing the IRC to make an untimely submission of the second set of maps was authorized by the Amendment but unavailable in *Harkenrider* "due to then-fast approaching 2022 election cycle." *Hoffman*, 217 A.D.3d ___, 192 N.Y.S.3d at 768. That hypothesis is utterly implausible. This Court was "cognizant of the logistical difficulties" presented by new maps at the time of its decision and the "likely" need "to move the congressional and senate primary elections to August." *Id.* at 522. But the Court was "confident"—correctly so—that Supreme Court could "swiftly develop a schedule to facilitate an August primary election." *Id.* Despite its keen awareness of those practical difficulties, however, the Court never so much as hinted—even if it were constitutional to direct the IRC to submit the second set of maps after the constitutional deadline—that it was declining to do so because it would be impossible or infeasible for the IRC to submit the maps to the Legislature for enactment consistent with an orderly August primary. The absence of such a concern belies the Third Department's hypothesis about unexpressed reasons for this Court's remedy.[6]

Appeal Or, In The Alternative, In Support Of Motion For Stay Pending Appeal at 23-24 ("Intervenors Mem.").

[6] The First Department made the same error in *Matter of Nichols v. Hochel*, 212 A.D. 3d 529, 531 (1st Dep't), *appeal dismissed on grounds order appealed from did not finally determine the proceeding*, 39 N.Y.3d 1119 (2023).

The Third Department plainly erred in another respect by trying to squeeze out of *Harkenrider* an opening for a different constitutional remedy despite this Court having made clear it directed a judicial remedy because the IRC's deadline to submit a second set of maps had passed and a judicial remedy was authorized, contemplated and "required" by the Amendment. Accepting petitioners' position, the *Hoffman* majority concluded that:

> *Harkenrider* left unremedied the IRC's failure to perform its duty to submit a second set of maps. There were two questions posed before the Court … in *Harkenrider*, neither of which addressed the IRC's duty.

217 A.D.3d at ___, 192 N.Y.S.3d at 769. Continuing, the majority agreed that:

> The challenge brought and the remedy granted were directed at the Legislature's unconstitutional reaction to the IRC's failure to submit maps, rather than the IRC's failure in the first instance.

Id. Then the denouement:

> *Harkenrider* addressed the IRC's inaction solely by way of factual background, *and the IRC's discrete failure to perform its constitutional duty was left unaddressed until this proceeding.*

Id. (emphasis added) (footnote omitted).

All this is fallacious. There is no hole in *Harkenrider*'s remedial holding big enough to fit an amoeba, let alone petitioners' elephantine remedy. True, the opening paragraph of the opinion did pose two questions: "Whether *this failure* to follow the

prescribed constitutional procedure warrants invalidation of the … maps and whether there is record support for the determination of both courts below that the district lines for congressional races were drawn with an unconstitutional partisan intent." 38 N.Y.3d at 501-502 (emphasis added). But the Court identified the nature of "this failure" in the second clause of the opinion's second sentence: "the *IRC and* the legislature failed to follow the procedure commanded by the Constitution." *Id.* at 501 (emphasis added).

Moreover, this Court posed a third question. Part V of the opinion addressed how the Court should resolve "the parties[']' dispute [over] the proper remedy for these constitutional violations," 38 N.Y.3d at 521, *i.e.*, stated to be the "procedural[] unconstitutional[ity]" of the "enactment . . . by the legislature" of the congressional and senate maps and the substantive unconstitutionality of the congressional map. *Id.* Of course, the enactment was "procedurally unconstitutional" because the IRC's failure to perform its constitutional duty necessarily meant that the legislature, in enacting maps, violated the Amendment, through which "the voters of the state intended compliance with the IRC process to be a constitutionally required precondition to the legislature's enactment of redistricting legislation." *Id.* at 517.

The constitutional violations by the IRC and the legislature are thus inextricably intertwined. The IRC's failure to comply with its constitutional duty cannot be waved away as mere "factual background" in the Court's opinion.

In sum, affirming the Third Department's order would necessarily entail overruling *Harkenrider* expressly or through an unsupportable effort to distinguish it. The dictates of *stare decisis* demand better. One of New York's greatest Chief Judges said the following of this "essential doctrine" in his canonical decision, *People v. Hobson*, 39 N.Y.2d 479, 487 (1976) (Breitel, C.J.):

> At the root of the techniques [used in applying the doctrine] must be a humbling assumption, often true, that no particular court as it is then constituted possesses a wisdom surpassing that of its predecessors. Without this assumption there is judicial anarchy.

Id. at 488.

Since this Court decided *Harkenrider*, all that has changed is the composition of this Court. But "the accident of a change of personalities in the Judge of a court is a shallow basis for jurisprudential evolution." *Id.* at 491. Or, as Justices Breyer, Sotomayor, and Kagan put it in criticizing the majority in *Dobbs v. Jackson Women's Health Organization*:

> The Court reverses course today for one reason and one reason only: because the composition of this Court has changed. *Stare decisis*, this Court has often said, "contributes to the actual and perceived integrity of the judicial process" by ensuring that decisions are "founded in the law rather than in the proclivities of individuals."

597 U.S. _, 142 S. Ct. 2228, 2320 (2022) (Breyer, Sotomayor, Kagan, JJ., dissenting) (quoting *Payne v. Tennessee*, 501 U.S. 808, 827 (1991).[7]

Of course, in *Harkenrider*, Chief Judge DiFiore wrote for a 4-3 majority of the Court. But "[t]he closeness of a vote in a precedential case is hardly determinative." *Hobson*, 39 N.Y.2d at 490. Indeed, "[i]t certainly should not be. Otherwise, every precedent decided by a majority is a nonprecedent—one to be followed if a later court likes it, and not to be followed if it does not like it." *Id.*

Similarly, although a necessary condition for departure from the doctrine by a subsequent court of last resort is that the court must be "convinced of prior error," *id.* at 488-489, more is required by the "humbling assumption" that underpins *stare decisis*. *Id.* at 488. In particular, "the conviction of error must be imperative." *Id.* at 489. That is true as well for decisions interpreting constitutional provisions. "[T]he Court may not overrule a decision, even a constitutional one, without a special justification." *Dobbs*, 142 S. Ct. at 2334 (Breyer, Sotomayor, Kagan, JJ., dissenting) (internal quotation marks omitted). In other words, "the Court must have a good reason to do so *over and above* the belief that the precedent was wrongly decided." *Id.* (Breyer, Sotomayor, Kagan, JJ., dissenting) (emphasis added) (internal quotation marks omitted). Or as Judge Abdus-Salaam stated for the Court: "Even

[7] *See also id.* at 2333 ("As Hamilton wrote [of *stare decisis*]: It 'avoid[s] an arbitrary discretion in the courts.' The Federalist No. 78, p. 529 (J. Cooke ed. 1961) (A. Hamilton). And as Blackstone said before him: It 'keep[s] the scale of justice even and steady, and not liable to waiver with every new judge's opinion." 1 Blackstone 69.").

under the most flexible version of the doctrine applicable to constitutional jurisprudence, prior decisions should not be overruled unless a 'compelling justification' exists for such a drastic step." *State Farm Mut. Auto Ins. Co. v. Fitzgerald*, 25 N.Y.3d 799, 819 (2015) (quoting *People v. Lopez*, 16 N.Y.3d 375, 384 n.5 (2011)); *see also People v. Garcia*, 38 N.Y.3d 1137, 1140 (2022) (Wilson, J., dissenting) (summarizing *stare decisis* doctrine, concluding that the majority "follow[ed] … to a point" a precedent based on the Sixth Amendment right to a jury trial, and stating, "[w]rong though I believe [that precedent] to be, my duty is to follow it.").

In sum, *Harkenrider* and its remedial holding were correctly decided and *stare decisis* commands that the petition be dismissed.

II. The Amendment Prohibits Mid-Decade Redistricting

Intervenors have concisely and convincingly argued, Intervenors Mem. at 17-23, that article III, §4(e) prohibits mid-decade redistricting—*i.e.*, drawing new maps for congressional, senate, and assembly districts not based on the next decennial census—and the League agrees with Intervenors' arguments. The League briefly supplements them.

The sole exception to the prohibition on mid-decade redistricting of any kind is plainly stated: ". . . unless modified pursuant to court order." "Modify," of course, "has a connotation of increment or limitation. Virtually every dictionary we are

aware of says that 'to modify' means to change moderately or in minor fashion." *MCI Telecommunications Corp. v. American Tel. & Tel. Co.*, 512 U.S. 218, 225 (1994). The exception presupposes an antecedent legal violation for two reasons. First, with rare exceptions not applicable here, courts issue orders only pursuant to the judicial function of resolving disputes about violations of law. Second, §4(e)'s second sentence refers back to its first sentence, which establishes the exclusivity of the process for redistricting congressional and state legislative districts, "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." Thus, the carve-out from the prohibition in the second sentence on mid-decade restriction "unless modified pursuant to a court order" refers back to, and is synonymous with, the word "changes" in the first sentence, Intervenors Mem. at 19, and thus the authority of a court to order "changes" presupposes an antecedent legal violation.

In short, the exception to the prohibition on mid-decade redistricting includes only "modifi[cation]" of a reapportionment plan ordered to cure a legal violation, not "adoption" of a new reapportionment plan. But the "adoption" of a new congressional reapportionment plan is precisely what petitioners seek.

Furthermore, article III, §5-b(a) specifies that a court, "at any other time" than the period in which the IRC commanded by the text is "established"—i.e., "[o]n or before February first of each year ending with a zero"—"shall" "establish" an IRC

when the court "orders that congressional or state legislative districts be *amended*." Art. III, §5-b(a) (emphasis added). Section 5-b(a) surely does not permit an IRC "established" by court order to adopt new congressional or state legislative districts, lest the word "amended" used in the first sentence of §5-b(a) be equated with the word "adoption" used in the first sentence of §4(e). To "adopt" districts is plainly a different action than to "amend" them, as both the framers of the Amendment and the people, in adopting it, necessarily realized.) Moreover, were that not true, Section 4(e)'s prohibition on mid-decade redistricting would be rendered meaningless.

Finally, §5-b(a) reinforces for another reason the conclusion that mid-decade redistricting is prohibited under the "plain and precise," *Rathbone*, 145 N.Y. at 438, language of §4(e). After all, once an IRC "established" "[o]n or before February first of each year ending with a zero" either performs the only duties assigned to it by the Amendment or fails to perform one of those duties before the expiration of a deadline fixed by the Amendment, it no longer has any constitutional duty or power and thus becomes *functus officio*. *See*, e.g., *People ex. rel. Public Service Interstate Transp. Co. v. Public Service Comm.,* 269 N.Y. 39, 44 (1933) (statue "did not recognize a limited or qualified certificate" issued by Public Service Commission and thus "[a]fter issu[ance] the commission was *functus officio* in respect to the certificates"); *Benvenga v. LaGuardia*, 294 N.Y. 526, 532-533 (1945) ("Having

exercised the limited power granted [by statute], the [Board of Estimate] was *functus officio*."). Indeed, if an IRC established "on or before February first of each year ending with a zero" continued despite having no duty or power under the Amendment, the specification of §5-b(a) that "an independent redistricting commission … be established" "at any other time a court orders that congressional or state legislative districts be amended"— not "adopted or amended"—would be pointless.[8] The IRC established "[o]n or before February first of each year ending in a zero" would perforce perform the duties of the IRC established in accordance with any court-ordered amendments.

In sum, the Amendment's prohibition on mid-decade redistricting commands that the petition be dismissed.

[8] The requirement that a new IRC be established under such circumstances (with, of course, ten members appointed in accordance with §5-b(a)(1)-(5)) makes perfect sense. Much can change after an IRC established "[o]n or before February first of each year ending with a zero" completes its constitutional duties or becomes constitutionally incapable of performing them. Not only could the identity of the leaders change, the political party in which a new leader is enrolled could change. Especially in the latter of these circumstances, the accountability of the leaders for the performance of their appointees would be eliminated if, for example, at some point during the 8 years following an election in a year ending with a two, the temporary president of the senate were succeeded by someone else because of a resignation or leadership contest. The successor could simply evade responsibility for the mid-decade work of the IRC that lingered, zombie-like, from the beginning of the decade by pointing out that she had not appointed any of its members. Further intractable problems would arise if a new temporary president of the senate was enrolled in a different political party than her predecessor (and thus, perforce, the same was true of the new minority leader). And who appoints a new member if one (or more) of the IRC members appointed by the prior leader resigned?

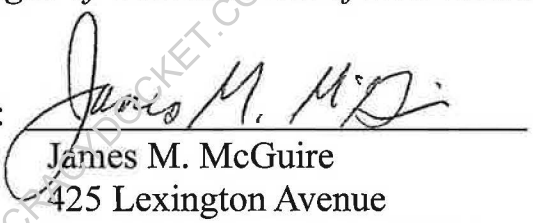
CONCLUSION

The League respectfully submits that the order of the Third Department should be reversed and the petition dismissed.

Dated: New York, New York
September 8, 2023

Respectfully submitted,

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

By: 

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

JAMES M. McGUIRE
DANIEL SULLIVAN
GREGORY DUBINSKY
Of Counsel

NEW YORK STATE COURT OF APPEALS
CERTIFICATE OF COMPLIANCE

I hereby certify pursuant to 22 NYCRR PART 500.1(j) that the foregoing brief was prepared on a computer using Microsoft Word.

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