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VIA NYSCEF

Robert Mayberger, Clerk
Supreme Court of the State of New York
Appellate Division, Third Department
State Street, Room 511
Albany, New York 12223

Re: *Hoffmann et al. v. New York State Independent Redistricting Commission et al.*, No. CV-22-2265 (argued June 8, 2023)
Response to Intervenors-Respondents' Post-Argument Submission

Dear Clerk Mayberger:

We represent Respondents New York State Independent Redistricting Commission Chair Ken Jenkins and Commissioners Ivelisse Cuevas-Molina and Elaine Frazier (the "Jenkins Respondents"). The Jenkins Respondents respectfully request that the Court accept this letter in response to Intervenors-Respondents' post-argument submission (NYSCEF Doc. No. 74).

Intervenors-Respondents contend in their post-argument submission that the United States Supreme Court's decision in *Biden v. Nebraska*, No. 22-506 (U.S. June 30, 2023), supports their position that the redistricting plan established following the Court of Appeals' decision in *Harkenrider v. Hochul* must remain in force until the end of the 2020 census cycle. Specifically, they argue *Biden* establishes Petitioners' requested relief—reinitiating the Independent Redistricting Commission process to draw lines for the remainder of the 2020 census cycle—would not constitute a "modifi[cation] pursuant to court order" within the meaning of Article III, Section 4(e) of the New York Constitution, and so the 2022 lines must remain in place under that provision.

Biden has no relevance to this Court's decision. There, the United States Supreme Court did not address what it means to "modify" a redistricting plan, but rather was construing a grant of authority to the Secretary of Education to "waive or modify" certain provisions relating to student financial assistance programs. Slip op. at 13. The Court reasoned that this authority did not empower the Secretary of Education to create a "novel and fundamentally different loan forgiveness program" than that provided by statute. Slip op. at 14. That holding has nothing to do with the issues before this Court.

As the Court is aware, Article III, Section 4(e) states 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 … unless modified pursuant to court order" and further states that a court may "order the adoption of, or changes to, a redistricting plan as a remedy for a violation of law." The Constitution places no limits on a court's power to modify, order the adoption of, or order changes to a redistricting plan other than that this power must be exercised in response to a violation of law. Moreover, in the redistricting context, changes to one district invariably necessitate other changes to maintain compliance with substantive requirements governing redistricting. Here, the violation of law that Petitioners have alleged is the Independent Redistricting Commission's failure to submit a second set of redistricting plans to the Legislature. If the Court were to order the Commission to redress that violation by submitting a second set of congressional lines to the Legislature, that would fit squarely within the language of Article III, Section 4(e).

Indeed, it was a point of agreement among all parties at argument that the court could, at any time during the decade, issue an order that could require the modification of a redistricting plan in order to redress a violation of law. *See* Recording of June 8, 2023 Oral Argument at 30:39–31:11 (counsel for Respondents Ross Brady, John Conway III, Lisa Harris, Charles Nesbitt, and Willis H. Stephens acknowledging that in future years, "if somebody identifies some error in the census data or they identify a VRA violation," they may still attack the merits of the current map and the map may need to be remedied by court order within this same redistricting cycle, such that Section 4(e) does not immunize the map from subsequent challenges). The parties simply disagree as to whether the court now has the power to redress the violation of law that arose when the Independent Redistricting Commission failed to submit a second set of district lines to the Legislature.

We respectfully submit that the *Biden* decision has no bearing on the issues in this case and the use of the term "modified" in Section 4(e) does not constrain a court's ability to order the Independent Redistricting Commission to reconvene as a remedy for the violation of law.

Respectfully,
/s/ Jacob D. Alderdice

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cc: All counsel of record via NYSCEF