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P. Benjamin Duke

Covington & Burling LLP
The New York Times Building
620 Eighth Avenue
New York, NY 10018-1405
T +1 212 841 1072
pbduke@cov.com

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Robert Mayberger, Clerk
Supreme Court of the State of New York
Appellate Division, Third Department
Robert Abrams Building for Law and Justice
State Street, Room 511
Albany, NY 12223

Re: *Hoffman et al. v. New York State Independent Redistricting Commission et al.*, Case No. CV-22-2265—Response of *Amicus Curiae* to Intervenor-Respondents' Post-Argument Submission

Dear Clerk Mayberger:

We represent *amici curiae* Scottie Coads, Mark Favors, and Mark Weisman ("Amici") in the above-referenced appeal pending before this Court. The "post-argument submission" filed by Intervenors-Respondents ("Intervenors") on July 3, 2023, directly implicates the arguments made by Amici in their previously-filed *amicus* brief, *see* Dkt. No. 57, and Amici therefore respectfully request that this Court accept this letter on behalf of Amici responding to Intervenors' submission.

As Petitioners correctly state in their responsive submission, *see* Dkt. No. 75 (filed July 7, 2023), the U.S. Supreme Court's recent interpretation of a federal statutory provision in *Biden v. Nebraska*, No. 22-506 (U.S. June 23, 2023)—a case that had nothing to do with either voting rights or redistricting generally or the specific issues under the New York State Constitution presented here—is not controlling or relevant authority in this case. The *Biden* majority's gloss on Congress's use of the word "modify" in the distinct context of an unrelated federal statute should be given no weight by this Court.

Moreover, Intervenors' effort to deploy the *Biden* majority's opinion in service of their argument under Art. III, § 4(e) of the New York Constitution is fundamentally misdirected. Intervenors focus solely on whether a second redistricting plan prepared by the IRC would do more than "modify" the judicially-approved maps prepared by a court-appointed special master and used in the 2022 Congressional and state Senate elections. As Amici showed in their brief, *see* Dkt. No. 57 at 14-16, 19-22, that formulation of the question is flawed because it leap-frogs a more critical, and dispositive, point.

The second sentence of § 4(e) provides that a reapportionment plan (including the 2022 court-approved plan) "shall be in force until the effective date of a plan based upon the subsequent federal decennial census taken in a year ending in zero *unless modified pursuant to court order*." *Id.* (emphasis added). Intervenors, however, completely fail to acknowledge that the default duration of the 2022 court-approved plan has *already* been "modified pursuant to court order": the **Steuben County Supreme Court's Decision and Order dated May 20, 2022 ("Order")** specifically certified that plan "as being the official approved ***2022*** Congressional map and the ***2022*** State Senate map." **R.229** (emphases added). The Order "modified" the duration of the court-approved maps by expressly stating—in two separate places, *see id.*—that they were "2022" maps only. They were certified solely "**as . . . 2022 . . .** maps," in force only for the **"2022"** Congressional and **"2022"** state Senate elections.

Even under Intervenors' (and *Biden*'s) narrow construction of the term "modify," § 4(e) clearly authorizes this time limitation on the judicially-created 2022 Congressional and state Senate maps. The phrase "unless modified pursuant to court order" in § 4(e) immediately follows the default time period and thus plainly contemplates durational modifications. By shortening the duration of the 2022 maps, the Steuben County court merely made last year's judicial takeover of legislative redistricting "more moderate [and] less sweeping," "more temperate and less extreme," *see* Intervenors' Submission at 1 (quoting Webster's Third New Int'l Dict. 1203 (11th ed. 2019) and Black's Law Dict. 1203 (11th ed. 2019)). The time limitation did not change the "form or structure" of or "transform[]" the special master's maps, *see id.* (quoting same dictionaries). It merely "modified" the amount of time those maps would remain "in force"—as § 4(e) allows.

This straightforward reading of the Order eliminates any legal obstacle to the resumption of the IRC's work in preparing a second redistricting plan to govern the rest of the decade. Why would this Court construe the Steuben County court's Order any other way? The limitation to 2022 is plain on the face of the Order. Furthermore, it is wholly consistent with the Court of Appeals' explicit direction in *Harkenrider* to quickly draw "constitutionally conforming maps for use ***in the 2022 election***"—*i.e.*, not in any subsequent election. 38 N.Y.2d at 502 (emphasis added); Dkt. No. 57 at 13-14. It also gives effect to the constitutional command—set forth elsewhere in § 4(e)—that the IRC-based redistricting process "shall govern redistricting" in New York "except to the extent that" a tailored judicial remedy is "required." *Id.* at 22-24. And it prevents the unseemly judicial overreach that would result if a short-term 2022 emergency were misused to displace the constitutional process and force the special master's hastily-created 2022 maps upon New York voters for an entire decade. *See id.* at 25-29.

In response to Intervenors' submission, Petitioners correctly point out that the plain meaning of the word "modify" in § 4(e) encompasses the type of alteration to the judicially-imposed maps in *Harkenrider* that Petitioners seek from this Court here. *See* Dkt. No. 75, at 2. However, Amici respectfully submit that the Steuben County court in *Harkenrider* already made that durational modification, by certifying those maps as "2022" maps. No party in *Harkenrider* appealed or otherwise challenged the Steuben County court's unmistakable "2022" time-stamp on the maps certified by the Order.

That limitation is therefore binding and not subject to collateral second-guessing here. This Court need only order the IRC to fulfill its constitutional duty by preparing and submitting a new redistricting plan to govern post-2022 elections.

In light of the above, the people of New York are entitled to have valid maps drawn pursuant to the constitutionally-mandated, IRC-based procedure for use in Congressional and state Senate elections through the remainder of this decade. Contrary to Intervenors' assertion, the dictionary definitions of "modify" cited by the U.S. Supreme Court in *Biden* support Petitioners' reading of § 4(e) and their request for Article 78 relief in this case. Amici respectfully submit that this Court should direct the IRC to get back to work without delay.

Respectfully submitted,

P. Benjamin Duke
Counsel to Amicus Curiae Scottie Coads, Mark Favors, and Mark Weisman

cc: All Counsel of Record (via NYSCEF)