SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION: THIRD DEPARTMENT

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ANTHONY S. HOFFMAN, MARCO CARRION, COURTNEY GIBBONS, LAUREN FOLEY, MARY KAIN, KEVIN MEGGETT, CLINTON MILLER, SETH PEARCE, VERITY VAN TASSEL RICHARDS, and NANCY VAN TASSEL,

Petitioners-Appellants,

-against-

THE NEW YORK STATE INDEPENDENT REDISTRICTING COMMISSION, INDEPENDENT REDISTRICTING COMMISSION CHAIRPERSON KEN JENKINS, INDEPENDENT REDISTRICTING COMMISSIONER ROSS BRADY, INDEPENDENT REDISTRICTING COMMISSIONER JOHN CONWAY III, INDEPENDENT REDISTRICTING COMMISSIONER IVELISSE CUEVAS-MOLINAS, INDEPENDENT REDISTRICTING COMMISSIONER ELAINE FRAZIER, INDEPENDENT REDISTRICTING COMMISSIONER LISA HARRIS, INDEPENDENT REDISTRICTING COMMISSIONER CHARLES NESBITT, and INDEPENDENT REDISTRICTING COMMISSIONER WILLIS H. STEPHENS,

AFFIRMATION IN OPPOSITION

No. CV 22-2265

Respondents-Respondents,

-and-

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 VIOLANTE,

Intervenors-Respondents.

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Misha Tseytlin, an attorney admitted to practice in the State of New York, affirms under the penalties of perjury as follows:

1. I am a Partner at Troutman Pepper Hamilton Sanders LLP, counsel for Intervenors-Respondents ("Intervenors") in this Article 78 special proceeding. I am familiar with the facts and circumstances of the proceedings in this matter.

2. I submit this affirmation in opposition to Proposed Amici's Motion For Leave To File As *Amici Curiae*. *See* App. Div. NYSCEF No.56.

3. Proposed Amici Scottie Coads, Mark Favors, and Mark Weisman filed their Motion For Leave To File As *Amici Curiae* after the deadlines for Respondents and Intervenors to file their merits briefs, while improperly raising several new arguments that Petitioners never raised and to which Respondents and Intervenors had no opportunity to respond in their briefs before this Court. Proposed Amici's remaining, limited arguments are similarly unhelpful to this Court, and Proposed Amici's silence on the untimeliness of Petitioner's lawsuit only further underscores this independent ground for affirmance of the dismissal of this lawsuit.

4. Intervenors thus respectfully request that the Court deny Proposed Amici's Motion, and reject their *Amici Curiae* Brief.

THIS COURT SHOULD DENY PROPOSED AMICI'S MOTION FOR LEAVE TO FILE AS *AMICI CURIAE* BECAUSE THEY LARGELY RAISE NEW ARGUMENTS THAT ARE IMPROPER FROM AN AMICUS BRIEF

5. The function of an amicus is "to advise the court of the law and the implication of a decision of the Court on the matter before it on other matters." *Price v. N.Y.C. Bd. of Educ.*, 837 N.Y.S.2d 507, 516 (N.Y. Cnty. Sup. Ct. 2007). Given this function, a proposed amicus may not raise "a new issue that was never raised by [the parties]," *Bd. of Trustees of Vill. of Groton v. Pirro*, 152 A.D.3d 149, 155–56 (3d Dep't 2017), meaning that any new "argument" not made or "errors which were never raised" by the parties "may not be advanced solely by the *amici curiae*," *Reform Educ. Fin. Inequities Today (R.E.F.I.T.) v. Cuomo*, 199 A.D.2d 488, 490 (2d Dep't 1993); *see also Colgate-Palmolive Co. v. Erie Cnty.*, 39 A.D.2d 641, 641 (4th Dep't 1972) ("[A]n Amicus curiae '. . . is not a party, and cannot assume the functions of one; he must accept the case before the court with issues made by the parties, and may not control the litigation. Nor may he . . . introduce any issues; only the issues raised by the parties may be considered.'" (alterations in original)).

6. Here, Proposed Amici's arguments do not satisfy the standard for amicus participation, as they make arguments that Petitioners did not raise, *Pirro*, 152 A.D.3d at 155–56; *R.E.F.I.T.*, 199 A.D.2d at 490, or that are otherwise unhelpful to this Court, *Anschutz Exploration Corp. v. Town of Dryden*, 940 N.Y.S.2d 458, 462 (Thompkins Cnty. Sup. Ct. 2012). Intervenors organize their discussion around

the four Points that Intervenors raised in their Brief For Intervenors-Respondents, App. Div. NYSCEF No.52 ("Intervenors' Br."), as those four points cover the full scope of the issues in dispute among the parties in this appeal.[1]

I. Proposed Amici's Responses To Intervenors' Point That *Harkenrider* Already Remedied Any "Violation Of Law," Meaning That The Judicial Map Governs For The Decade Under Section 4(e), Improperly Presents New Arguments That Petitioners Did Not Raise

7. As Intervenors explained in their briefing before this Court, Article III, Section 4(e) provides that a map adopted under the new process for redistricting under the 2014 Amendments—whether by the Legislature under the IRC-driven process, or by a court after the failure of that process—"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." N.Y. Const. art. III, § 4(e). *Harkenrider* already fully remedied the procedural constitutional violation that Petitioners invoked here by replacing the unconstitutional congressional map from the Legislature with a judicially adopted map, just as the constitution permits, meaning that plan governs until the "subsequent federal decennial census." *Id.*; *see*

[1] To the extent that Proposed Amici make some brief arguments regarding the portion of the Albany County Supreme Court's decision regarding "futility" of returning the redistricting process to the IRC, Amici Br.3–4, no one defended that aspect of the decision before this Court, *see* Intervenors' Br.; Brief For Respondents-Respondents Ross Brady, John Conway III, Lisa Harris, Charles Nesbitt, And Willis H. Stephens, App. Div. NYSCEF No.54, so it is not in dispute between the parties.

Intervenors' Br.26–29. In ordering this judicial remedy for the same violation of constitutional procedure that Petitioners invoke here, the Court of Appeals rejected other proposed remedies that would have returned the process to the IRC and Legislature, concluding that a judicially adopted map fully cured any constitutional defects. Intervenors' Br.30–32. Intervenors also argued that Petitioners do not ask for a "modifi[cation]" under Article III, Section 4(e), but rather seek to replace the Steuben County Supreme Court's map with a different map. *Id.* at 29–30.

8. In their Opening Brief before this Court, Petitioners largely ignored the point that *Harkenrider* already remedied the relevant violation of law—the failure of the constitutional process—for purposes of Article III, Section 4(e), and did not even attempt to address how their lawsuit requested the "modif[ication]" of any map under Article III, Section 4(e). *See generally* Brief For Petitioners-Appellants, App. Div. NYSCEF No.36 ("Appellants' Br.") at 21–30.[2] In their Reply Brief, Petitioners did attempt to grapple with this point, arguing (implausibly, in Intervenors' view) that *Harkenrider* did not remedy the violation of constitutional procedure even while admitting that this was the first Count in Intervenors' petition in *Harkenrider*, and then arguing that they are actually seeking to "modify" the Steuben County Supreme

[2] Democratic Commissioner Respondents-Respondents similarly did not address this issue. *See* Brief For Respondents-Respondents Ken Jenkins, Ivelisse Cuevas-Molina, and Elaine Frazier, App. Div. NYSCEF No.49 ("Dem. Comm'rs' Br.").

Court map under Article III, Section 4(e). Reply Brief For Petitioners-Appellants, App. Div. NYSCEF No.58 ("Appellants' Rep.") at 3–6, 19–15.

9. Proposed Amici take an entirely different approach, arguing that the Court of Appeals in *Harkenrider* limited its ordered remedy only to the 2022 election and that, accordingly, Petitioners' request to reinstitute IRC proceedings to allow the Legislature to adopt a new congressional map is a proper remedy to address this "violation of law" under Article III, Section 4(e), given that the violation was only remedied for 2022. Brief For *Amici Curiae* Scottie Coads, Mark Favors And Mark Weisman In Support Of Petitioners-Appellants ("Amici Br.") at 19–20, 21–25. Proposed Amici's arguments, therefore, rest on a different (but similarly meritless) predicate: that the Court of Appeals ordered a judicially adopted map *only* for the 2022 elections as a remedy for the violation of constitutional procedure. This is fundamentally different from Petitioners' predicate that the Court of Appeals never remedied the violation of constitutional procedure that Intervenors invoked as Count One in *Harkenrider* at all. Thus, Proposed Amici have raised a new argument that is inconsistent with Petitioners' own contentions throughout this case, which Proposed Amici may not insert into this case at this late date. *See Pirro*, 152 A.D.3d at 155–56; *R.E.F.I.T.*, 199 A.D.2d at 490.

10. Even beyond the impropriety of Proposed Amici injecting this new argument into the case, Proposed Amici are simply incorrect. The Court of Appeals

in *Harkenrider* did not limit its remedial decision only to "the 2022 election," thereby leaving no constitutional congressional (or State Senate) map for the 2024 elections and beyond. *Contra* Amici Br.19. Rather, the Court of Appeals' language that Proposed Amici highlight was in the context of that Court resolving the dispute between the parties as to whether, as the State respondents there argued, "no remedy should be ordered for the 2022 election cycle because the election process for this year is already underway," thus "urg[ing] that the 2022 congressional and senate elections be conducted using the unconstitutional maps, deferring any remedy for a future election." *Harkenrider v. Hochul*, 38 N.Y.3d 494, 521 (2022). The Court of Appeals "reject[ed] this invitation to subject the People of this state to an election conducted pursuant to an unconstitutional reapportionment," thereby ordering the Steuben County Supreme Court to adopt a remedial congressional map for the entire decade, as Article III, Section 4(e) mandates. *Id.* Notably, if the Court of Appeals in *Harkenrider* intended to limit the remedy to the 2022 election only, it would render nonsensical Judge Troutman's critique that the remedial maps that the majority ordered would govern "for the next 10 years." *Id.* at 527 (Troutman, J., dissenting in part). Thus, the only plausible reading of *Harkenrider*'s analysis is that the Court of Appeals ordered the remedial map to govern until the next decennial census, just as Article III, Section 4(e)'s unambiguous text requires.

11. Proposed Amici's notably different approach to Intervenors' arguments on this point further defeats any reliance on Article III, Section 4(e) as a possible constitutional source of Petitioners' requested relief. Proposed Amici have argued that the Steuben County Supreme Court's congressional map is presently not in effect, having been limited only to 2022. *See* Amici Br.20–22; *infra* ¶¶ 16–17. But if there is no present governing map, there would no map to "modif[y]" at all, under Article III, Section 4(e)'s text. *See* N.Y. Const. art. III, § 4(e). And, regardless, the Court of Appeals explained that the Constitution "authorizes the judiciary to 'order the adoption of, or changes to, a redistricting plan' in the absence of a constitutionally-viable legislative plan" and this "explicitly authorize[d] judicial oversight of remedial action in the wake of a determination of unconstitutionality" is entirely "familiar to the courts given their obligation to safeguard the constitutional rights of the People under our tripartite form of government." *Harkenrider*, 38 N.Y.3d at 522–23 (quoting N.Y. Const. art. III, § 4(e)). So Proposed Amici's arguments that Article III, Section 4(e) necessarily requires a judicially adopted map to govern for only a single election, as "the adoption of the *narrowest* available remedy necessary to correct the specific violation at issue," Amici Br.23, finds no foothold in New York law.

12. Proposed Amici's related policy-based arguments similarly exceed the scope of what Petitioners have argued. *See Pirro*, 152 A.D.3d at 155–56; *R.E.F.I.T.*,

199 A.D.2d at 490. Proposed Amici first cite precedent from before the 2014 Amendments for the assertion that "judicial restraint is necessary," and judicially created maps should be "a last resort." Amici Br.25–26 (quoting *In re Orans*, 15 N.Y.2d 339, 352 (1965). But, as *Harkenrider* explained, after the 2014 Amendments, the Constitution now "explicitly authorizes judicial oversight of remedial action in the wake of a determination of unconstitutionality." 38 N.Y.3d at 523. No better is Proposed Amici's reliance on articles praising the benefits of independent redistricting commissions. Amici Br.26–27. While justified optimism for the success of such commissions is surely one of the reasons that the People adopted the 2014 Amendments, *see Harkenrider*, 38 N.Y.3d at 503, the 2014 Amendments also value *stability* within the context of the IRC-driven process. That is why these Amendments include the mandate that any map adopted under the Amendments' new process—which can include a judicially adopted map, if the IRC-driven process fails—remains in effect for the full decade, with room only for "modifi[cations]" if a court finds a "violation of law." N.Y. Const. art. III, § 4(e).

13. Finally, contrary to Proposed Amici's claims, the Constitution's provision permitting a decade-long, judicially created map when the IRC-driven process fails advances the People's goal of eliminating the "scourge of hyper-partisanship." *See* Amici Br.27–28 (quoting *Harkenrider*, 38 N.Y.3d at 514). After *Harkenrider*, the Legislature now understands that the courts will enforce the 2014

Amendments and adopt a replacement map in the face of a failure of the IRC-driven process, giving the Legislature every incentive to appoint IRC Commissioners who will do their jobs the first time around, just as Intervenors' counsel explained at the end of the *Harkenrider* oral argument. Transcript of Oral Argument at 57–58, *Harkenrider v. Hochul*, No.60 (N.Y. Apr. 26, 2022).[3] And if future IRC Commissioners still fail to fulfill their constitutional duty, both the Legislature and interested citizens know that they must bring a timely mandamus lawsuit to compel the IRC to complete its constitutional obligations before the expiration of the constitutional timeframe, if they want to avoid a decade-long judicially adopted map. *See Harkenrider*, 38 N.Y.3d at 515 n.10. If, however, Proposed Amici's position prevails, this carefully constructed system will break down again, decade after decade. Partisans will sit back and hope for the IRC-driven process to fail again, bide their time during initial litigation to see if the judicially adopted maps are to their partisan liking and, if not, bring a belated lawsuit—here, almost half a year after the IRC's constitutional deadline—hoping for a better map the second time. This chaotic process would lead to one map governing the first election every decade and then a different map (or more) governing the subsequent elections, undermining the stable system that the 2014 Amendments created.

[3] Available at https://www.nycourts.gov/ctapps/arguments/2022/Apr22/Transcripts/042622-60-Oral%20Argument-Transcript.pdf.

II. Proposed Amici's Response To Intervenors' Argument That This Court Should Affirm Dismissal Because Petitioners' Lawsuit Is An Impermissible Collateral Attack Upon The Steuben County Supreme Court's Map Similarly Makes Arguments That Petitioners Did Not Raise

14. As Intervenors explained in their briefing before this Court, Petitioners' lawsuit is independently worthy of dismissal because it is an impermissible collateral attack on the Steuben County Supreme Court's final judgment in *Harkenrider*. Intervenors' Br.49–56. For Petitioners to obtain effective relief here, any order from the Albany County Supreme Court would *both* have to require the IRC to submit a second congressional map to the Legislature *and* limit the Steuben County Supreme Court map's applicability only to the 2022 election, necessarily amending that judgment. *Id.* at 50–54. Because the Albany County Supreme Court has no authority to amend the judgment of the Steuben County Supreme Court, Petitioners relief is an impermissible collateral attack. *Id.*

15. Both below and before this Court, Petitioners argued (again, erroneously, in Intervenors' view) that the Steuben County Supreme Court's order was silent or ambiguous on its temporal scope. Before the Albany County Supreme Court, Petitioners argued that the Steuben County Supreme Court's order "did not address whether the map would be in place beyond the 2022 midterm elections." NYSCEF No.161 at 9; *see generally id.* at 7–11. And before this Court, Petitioners argued that the order "did not directly address whether the map would be in place

beyond the 2022 midterms," so it was unclear whether "the revised congressional map was meant to remain in place for the entire decade." Appellants' Rep.8.[4]

16. Proposed Amici now contend that the Steuben County Supreme Court's order adopting the remedial congressional map "could not be more clear in certifying those maps as the 2022 Congressional and the 2022 State Senate maps," and that "the Steuben County Court orders were and are self-limiting on their face" to only the 2022 elections. Amici Br.20 & 21 n.3 (citation omitted). This contradicts Petitioners' arguments, as it is impossible for the Steuben County Supreme Court's orders to "not be more clear" or "self-limiting on their face," as Proposed Amici claim, *id.*, *and* "not address whether the map would be in place beyond the 2022 midterms," as Petitioners claim, NYSCEF No.161 at 9; Appellants' Rep.8.

17. Beyond this inconsistency between the arguments of Proposed Amici and Petitioners, Petitioners' requested relief before this Court is also incompatible with Proposed Amici's theory of this case, as noted above. *See supra* ¶¶ 9–11. Again, Petitioners have argued that the relief they seek is under Article III, Section 4(e)'s text, which only allows a redistricting plan to be "modified pursuant to court order," Appellants' Br.26–27 & nn.6–7, because they asked the Albany County Supreme Court to "modify" the Steuben County Supreme Court's remedial map.

[4] Democratic Commissioners' brief before this Court did not address this issue. *See generally* Dem. Comm'rs' Br.

But if the Steuben County Supreme Court orders "were and are self-limiting on their face," thereby depriving New Yorkers of any "valid redistricting plan in effect . . . after 2022," Amici Br.21 n.3, 22, as Proposed Amici contend, there would be no present congressional map to "modify" under Article III, Section 4(e), defeating Petitioners' theory for their requested relief, Appellants' Br.26–27 & nn.6–7.

18. Proposed Amici's arguments that the Steuben County Supreme Court's label of its own judicially adopted map as "the 2022 Congressional . . . map[ ]," R.229, limits them only to that election is incorrect, in any event. By using those labels, the Steuben County Supreme Court's was merely referring to the year in which that map was adopted, just as it did in describing the judicially adopted map that governed New York's congressional elections during the prior decennial. *Compare* R.214 (discussing the unconstitutionality of the "2012 congressional map"), *and* R.227 ("The 2012 Congressional maps are no longer constitutional."),[5] *with* R.229 "("Attached are the maps that this court hereby certifies as being the 2022 Congressional and 2022 New York State Senate maps."). In the same manner, the Steuben County Supreme Court referred to the Legislature's unconstitutionally

[5] Notably, Proposed Amicus Mark Favors was "the lead plaintiff in *Favors v. Cuomo*, No. 11-cv-05632 (E.D.N.Y. 2011), litigation challenging the legislature's redistricting process following the release of the 2010 decennial census that resulted in court-ordered district lines," App. Div. NYSCEF No.56, Affirmation of P. Benjamin Duke In Support Of Motion For Leave To File Brief As *Amicus Cur[i]ae* ¶ 5 ("Duke Aff."), and that 2012 map lasted an entire decade.

adopted map as "the 2022 Congressional Map" in prior orders. *See, e.g.*, R.208. As Intervenors explained, Intervenors' Br.51–52, by far the better reading of the Steuben County Supreme Court's order was that it adopted "the *final* enacted [congressional] redistricting map[ ]" for the State without any temporal restriction, *Harkenrider* No.696 at 1 (emphasis added),[6] notwithstanding Petitioners' request that it limit that map only to the 2022 election, R.328. Thus, the Steuben County Supreme Court's label of its judicially adopted map as "the 2022 Congressional . . . map[ ]," R.229, does not support Proposed Amici's contention that it expressly limited that map to "govern only the 2022 election cycle," Amici Br.20.

19. No better is Proposed Amici's related argument that, "absent further action by the IRC and the legislature to complete the redistricting process mandated under the 2014 Amendments, New York has no valid redistricting plan in effect to govern congressional and State Senate elections after 2022," so this Court must order Petitioners' requested relief "[t]o fill this constitutional vacuum." Amici Br.22. Petitioners have never argued that New York will be without a congressional map absent the relief they seek. Indeed, if the Steuben County Supreme Court's remedial

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[6] Citations to "*Harkenrider* No.___" refer to the e-filings in *Harkenrider v. Hochul*, Index No.E2022-0116CV (Steuben Cnty. Sup. Ct.), which may be found at https://iapps.courts.state.ny.us/nyscef/DocumentList?docketId=kmywkTvfcaoSsQ66zseQsg==&display=all. The Albany County Supreme Court explicitly considered these documents in dismissing Petitioners' Amended Petition. R.19 n.12.

action was self-limiting and would leave New Yorkers without any "valid redistricting plan in effect . . . after 2022," *id.*, then—to every New Yorker's surprise—there is no map in place for the State Senate either for 2024 and beyond (and no present lawsuit seeking the establishment of such a map).

III. Proposed Amici's Responses To Intervenors' Argument That This Court Should Affirm Dismissal Because The Only Remedy For A Violation Of Constitutional Procedure After The Constitutional Deadline Is A Judicially Adopted Map Is Unhelpful To This Court

20. As Intervenors explained, Petitioners' requested relief is also constitutionally impermissible for the independent reason that the only available remedy for a violation of constitutional procedure after the expiration of the constitutional deadline is a court-drawn map. Intervenors' Br.35–43. As *Harkenrider* explained, once "[t]he deadline in the Constitution for the IRC to submit a second set of maps has long since passed," any violation of constitutional procedure becomes "incapable of a legislative cure," leaving only a judicial remedy. Intervenors' Br.37 (quoting *Harkenrider*, 38 N.Y.3d at 523). Proposed Amici's limited arguments on this point, Amici Br.24–25, duplicate Petitioners' arguments, Appellants' Br.21–30; Appellants' Rep.10–15,[7] thereby providing no basis to accept their brief, *Price*, 837 N.Y.S.2d at 516–17; 22 N.Y.C.R.R. § 1250.4(f).

[7] Democratic Commissioners' arguments on this issue similarly track those of Petitioners. *See* Dem. Comm'rs' Br.17–21.

IV. Proposed Amici's Telling Silence As To Intervenors' Independent Argument That Petitioners' Lawsuit Was Untimely Only Further Illustrates That This Court Should Affirm Dismissal

21. As Intervenors explained, Petitioners' claims also fail because they filed their Petition too late, under both the four-month statute of limitations in CPLR 217(1) and general equitable principles. Intervenors' Br.43–49. After the IRC announced on January 24 that it would not proceed with the constitutionally mandated redistricting procedures, and no later than January 25, when the IRC's deadline to do so expired, it was clear that the IRC would not perform its duty. *Id.* at 44–45. Petitioners waited over five months to file this Article 78 Petition, outside CPLR 217(1)'s four-month statute of limitations, and also too late under general equitable principles. *Id.* at 44–46. Petitioners contend only that their claim accrued no earlier than February 28, four months prior to the filing of their Petition, because that is the absolute last date the IRC could hypothetically ever issue second-round maps, Appellants' Rep.21, ignoring that the Constitution established January 25, 2022, in particular, as the deadline for the 2022 redistricting process, because that was 15 days after the Legislature's rejection of the IRC's first round maps, N.Y. Const. art. III, § 4(b); *Harkenrider*, 38 N.Y.3d at 504–05. Beyond this misreading of the Constitution, Petitioners only cite an irrelevant dispute about the Legislature's unconstitutional "gap-filling 2021 legislation," which they argue triggered their injury on April 27, 2022, when the Court of Appeals struck that legislation down in

Harkenrider. Appellants' Rep.20–21. But that legislation only purported to permit the Legislature to draw its own maps "if the [IRC] does not vote on any redistricting plan or plans, for any reason, by the date required for submission of such plan," L.2021, c. 633, § 1, nowhere excusing the IRC from "its constitutional obligations," which is what Petitioners claim as "*the procedural violation at issue in this case*." Appellants' Rep.6, 20–21 (emphasis added).[8] While Proposed Amici dispute Intervenors' other three independent arguments for dismissal, they tellingly have no answer for the untimeliness of this lawsuit. *See generally* Amici Br.

22. Proposed Amici's silence on these points reveals all that this Court needs to know about this cynical, untimely lawsuit. If Proposed Amici wanted the IRC to complete its duty to send a second round of congressional maps to the Legislature, Duke Aff. ¶¶ 3–7, they would have timely sought such relief immediately after January 24 or 25 of 2022, when the courts could have lawfully granted them such relief, within the constitutionally prescribed timeframe and procedure for adopting maps under the 2014 Amendments. Proposed Amici did not do this, and now ask this Court to undue *Harkenrider* because they do not like the political implications of the congressional map that the Steuben County Supreme Court adopted. Proposed Amici—like Petitioners—thus want to give the Legislature

[8] Democratic Commissioners' brief before this Court also failed to address this issue. *See generally* Dem. Comm'rs' Br.

another shot at gerrymandering the congressional map, hoping that new map survives a partisan-gerrymandering challenge the second time around. This cynical ploy violates the Constitution, which promises the People that once a map is adopted under the exclusive constitutional process, that map controls for the whole decade, absent some "modif[ication]" for a "violation of law." N.Y. Const. art. III, § 4(e). Proposed Amici's support of Petitioners' attempt to break this process with this untimely lawsuit—leading to chaos and confusion as to what congressional map will govern the 2024 elections and beyond—is yet another attempt to "impinge[ ] . . . on" both "[f]ree, open, rational elections" and "respect for the courts." Transcript of May 4, 2022, Hearing at 40, *De Gaudemar, et al. v. Kosinski, et al.*, No.1:22-cv-3534 (S.D.N.Y. May 4, 2022), Dkt.38.

23. This Court should deny Proposed Amici's Motion For Leave To File As *Amici Curiae*.

Dated: New York, New York
April 7, 2023

Misha Tseytlin