

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

Michael Williams, José Ramírez-Garofalo, Aixa Torres, and
Melissa Carty,

Petitioners,

-against-

Board of Elections of the State of New York; Kristen
Zebrowski Stavisky, in her official capacity as Co-Executive
Director of the Board of Elections of the State of New York;
Raymond J. Riley, III, in his official capacity as Co-
Executive Director of the Board of Elections of the State of
New York; Peter S. Kosinski, in his official capacity as Co-
Chair and Commissioner of the Board of Elections of the
State of New York; Henry T. Berger, in his official capacity
as Co-Chair and Commissioner of the Board of Elections of
the State of New York; Anthony J. Casale, in his official
capacity as Commissioner of the Board of Elections of the
State of New York; Essma Bagnuola, in her official capacity
as Commissioner of the Board of Elections of the State of
New York; Kathy Hochul, in her official capacity as
Governor of New York; Andrea Stewart-Cousins, in her
official capacity as Senate Majority Leader and President Pro
Tempore of the New York State Senate; Carl E. Heastie, in
his official capacity as Speaker of the New York State
Assembly; and Letitia James, in her official capacity as
Attorney General of New York,

Respondents,

-and-

Representative Nicole Malliotakis, Edward L. Lai, Joel
Medina, Solomon B. Reeves, Angela Sisto, and Faith Togba,

Intervenor-Respondents.

Index No.: 164002/2025

Hon. Jeffrey H. Pearlman

Mot. Seq. 001

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**MEMORANDUM OF LAW
REGARDING AVAILABLE REMEDIES**

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PRELIMINARY STATEMENT

Respondents Peter S. Kosinski, in his official capacity as Co-Chair and Commissioner of the Board of Elections of the State of New York (“BOE”), Anthony J. Casale, in his official capacity as a Commissioner of the BOE, and Raymond J. Riley, III, in his official capacity as Co-Executive Director of the BOE (collectively, “Respondents”), respectfully submit this memorandum of law in response to the Court’s request for briefing on available remedies in the event the Court finds the 2024 Congressional Map unconstitutional.¹ Respondents adopt and expressly incorporate herein the arguments made by Intervenor-Respondents Congresswoman Nicole Malliotakis and Individual Voters Edward L. Lai, Joel Medina, Solomon B. Reeves, Angela Sisto, and Faith Togba on this subject.

ARGUMENT

I. This Court cannot compel the Legislature to enact Petitioners’ redistricting plan

Petitioners request that the Court “order the Legislature to adopt a valid congressional redistricting plan in which Staten Island is paired with voters in lower Manhattan to create a minority influence district in CD-11 that complies with traditional redistricting criteria.”² In other words, Petitioners ask this Court to direct the Legislature to enact a specific redistricting plan combining Staten Island and lower Manhattan. This request violates fundamental principles of separation of powers.

¹ For the reasons explained in Respondents’ motion to dismiss, Respondents respectfully submit that this proceeding should be dismissed as a matter of law and that the Court need not reach the question of an appropriate remedy.

² [NYSCEF Doc. No. 1, Petition, at 27-28 \(Prayer for Relief, section B\)](#).

This Court is without power to direct the Legislature “how it should perform” its legislative function (*Campaign for Fiscal Equity, Inc. v State*, 29 AD3d 175, 186 [1st Dept 2006], *affd as mod*, 8 NY3d 14 [2006]). As the Court of Appeals has explained, the courts may only compel the other branches to “satisfy[] nondiscretionary obligations to perform certain functions” (*Klostermann v Cuomo*, 61 NY2d 525, 541 [1984]), but “[t]he activity that the courts must be careful to avoid is the fashioning of orders or judgments *that go beyond any mandatory directives of existing statutes and regulations* and intrude upon the policy-making and discretionary decisions that are reserved to the legislative and executive branches” (*id.* [emphasis added]; *see also Matter of Gonzalez v Vil. of Port Chester*, 109 AD3d 614, 615 [2d Dept 2013] [“However, mandamus will not lie to compel the performance of a purely legislative function”]; *Davis v Pomeroy*, 283 AD2d 874, 875 [3d Dept 2001] [holding that courts may not compel adoption of a law because that is “itself a discretionary legislative action”]).

Here, Petitioners ask this Court to violate this separation of powers principle by directing the Legislature to draw a map specifically pairing Staten Island with lower Manhattan. This request is wholly improper because the Legislature is under no “nondiscretionary obligation[]” to implement such a map (*id.*). To the contrary, in fact, the NY Constitution *prohibits* the Legislature from drawing district lines unless the Independent Redistricting Commission (“IRC”) proposes two redistricting plans that have been considered and rejected by the Legislature (*see Harkenrider v Hochul*, 38 NY3d 494, 511 [2022] [“Article III, § 4 is permeated with language that, when given its full effect, permits the legislature to undertake the drawing of district lines *only* after two redistricting plans composed by the IRC have been duly considered and rejected.”]). Moreover, the Legislature’s authority is further limited because any redistricting plan it adopts “must be founded upon a plan submitted by the IRC” (*id. at 512*). Thus, as *Harkenrider* makes clear, the

Legislature may not adopt a redistricting plan independent of the IRC process, which is precisely what Petitioners impermissibly request here.

II. *Harkenrider* and *Hoffmann* delineate the available remedies

New York's 2014 constitutional amendments established a structured, bipartisan process for congressional and state legislative redistricting. This process is centered on the IRC's submission of plans to the Legislature followed by legislative consideration and enactment. The amendments both created the IRC process and limited judicial intervention to what is "required as a remedy for a violation of law" (NY Const., Art. III, § 4 [e]).

The Court of Appeals first addressed remedial measures under this provision in *Harkenrider*. There, the Court rejected the argument that, under Article III, § 5, "the legislature possesses exclusive jurisdiction and unrestricted power over redistricting" (*Harkenrider*, 38 NY3d at 523). Article III, § 5 provides that "the legislature shall have a full and reasonable opportunity to correct the law's legal infirmities." The Court found that this provision does not apply in the face of impending electoral deadlines and a breakdown of the IRC process "at that juncture" (*id.*). Under the facts of *Harkenrider*, the unconstitutionality of the redistricting plan was "incapable of a legislative cure" (*id.*). Accordingly, the *Harkenrider* Court held that a court may order the adoption of a redistricting plan with the assistance of a neutral "special master" (*id.*).

Following *Harkenrider*, the Court of Appeals revisited remedial options under the 2014 Amendments in *Hoffmann*. The *Hoffmann* Court explained that the IRC process is preferred over judicial remedies. The Court emphasized that "[c]ourt-drawn judicial districts are generally disfavored because redistricting is predominantly legislative" (*Hoffmann v New York State Ind. Redistricting Commn.*, 41 NY3d 341, 361 [2023]).

The Court further observed that the Constitution prioritizes the IRC-driven legislative process over judicially drawn maps (*id.* at 360). On that point, the Court relied on Article III, § 5-b, which expressly provides that “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” (*id.*). Under this provision, even where a court directs the IRC to create a map, the resulting map is not deemed judicially-created, but “adopted by the IRC and legislature” (*id.*).

III. The election timeline

The accompanying affidavit of Raymond J. Riley, III, Co-Executive Director of the New York State Board of Elections, provides the timeline for implementing a remedial map for the 2026 election.

The election calendar begins on February 24, 2026, which is the first day candidates may circulate designating petitions under Election Law § 6-134(4).³ To implement a new map for the 2026 election, the map must be completed in advance of petitioning to give NYSBOE time to prepare for the possibility that the map will actually be implemented following ensuing emergency appeals to the Court of Appeals and, if necessary, the United States Supreme Court.⁴

NYSBOE’s preparations include changes to election districts resulting from changes to congressional district boundaries, geocoding addresses and migrating voters to the correct election districts, reconciling these changes with the statewide registration system, assessment of poll sites, and generating updated enrollment reports based on the new election districts.⁵ This process requires coordination with the New York City Board of Elections (“NYCBOE”) since CD-10 and

³ Affirmation of Raymond J. Riley, III, [NYSCEF Doc. No. 204](#) (“Riley Aff.”) ¶¶ 3, 11.

⁴ Riley Aff. ¶ 5.

⁵ Riley Aff. ¶ 9.

CD-11 are within the City of New York.⁶ Among other things, the NYCBOE must reapportion local districts,⁷ the NYC Department of City Planning must complete geocoding, and the NYCBOE must apply the geocoded addresses to its voter registration system.⁸ Following this process, NYCBOE confirms any changes against its own records to ensure accuracy.⁹ Finally, any affected EDs must be reassigned to existing poll sites or assigned to new poll sites.¹⁰

As Mr. Riley explains, this process will be particularly challenging in 2026 because both New York County and Queens County are currently conducting three active special elections between them, which will burden NYCBOE with the work of managing these election certifications while also potentially redrawing maps as a result of this proceeding.¹¹

Given the election calendar and the work required before the start of petitioning on February 24, 2026, any remedial map ordered by this Court under *Harkenrider* must be completed by February 6, 2026.¹²

Alternatively, if this Court does not follow *Harkenrider*, it must direct the IRC to reconvene pursuant to Article III, § 5-b, in accordance with *Hoffmann*, and propose a map to the Legislature for the 2028 election cycle. The Court of Appeals has instructed that this alternative is preferred over a judicially drawn map because the “2014 constitutional reforms unambiguously promised New York’s citizens an IRC redistricting process with minimal resort to court-drawn districts” (*Hoffmann*, 41 NY3d at 362-63).

⁶ Riley Aff. ¶ 13.

⁷ Riley Aff. ¶ 15.

⁸ Riley Aff. ¶¶ 18-21.

⁹ Riley Aff. ¶ 23.

¹⁰ Riley Aff. ¶ 24.

¹¹ Riley Aff. ¶ 25.

¹² Riley Aff. ¶ 26.

CONCLUSION

This Court lacks power to grant the relief Petitioners seek in the form of an order compelling the Legislature to adopt a remedial map joining Staten Island and Manhattan. The only lawful remedies available are those endorsed in *Harkenrider* and *Hoffmann*. Based on the election calendar and the work that must precede it, any remedial map ordered by this Court must be completed by February 6, 2026. Alternatively, if this Court follows *Hoffmann*, it may direct the IRC to reconvene and deliver a map to the Legislature for the 2028 election cycle.

Dated: January 12, 2026
Albany, New York

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CERTIFICATE OF COMPLIANCE

The undersigned counsel hereby certifies pursuant to the word count stipulation in this action that, with the exception of the caption, table of contents, table of authorities, and signature block, the foregoing memorandum contains 1,515 words, based on the calculation made by the word-processing system used to prepare this document.

I certify that no generative artificial intelligence program was used in the drafting of any affidavit, affirmation, or memorandum of law contained within the submission.

Dated: January 12, 2026
Albany, New York

/s/ Nicholas J. Faso

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