2024 Warren M. Anderson
Legislative Series

New York State
Redistricting Revisited

April 16, 2024
2024 Warren M. Anderson Legislative Series
New York State Redistricting Revisited
April 16, 2024

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2024 Warren M. Anderson Legislative Series
New York State Redistricting Revisited
April 16, 2024
12:00 p.m. – 1:00 p.m.

Agenda

12:00 p.m. Welcome
Hon. Leslie E. Stein (ret.) ’81 – Director of the Government Law Center at Albany Law School

12:03 p.m. The State of Redistricting in New York
Richard Rifkin, Esq. – Legal Director at the Government Law Center at Albany Law School

12:10 p.m. Legal Developments at the Federal Level
Prof. Jeffrey M. Wice – Senior Fellow of the New York Census and Redistricting Institute and Adjunct Professor of Law at the New York Law School

12:25 p.m. Legal Developments at the State Level
Esmeralda Simmons, Esq. – Founder and Former Executive Director of the Center for Law and Social Justice at Medgar Evers College

12:40 p.m. Potential Reforms
Susan Lerner, Esq. – Executive Director of Common Cause New York

12:50 p.m. Audience Q&A
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Speaker Biographies

SUSAN LERNER, ESQ. is the Executive Director of Common Cause New York, where she has served since December 2007. Passionate about voting rights and accessible, reliable, and secure elections, Ms. Lerner is a founder of Let NY Vote, a statewide coalition that has successfully advocated for election reforms including Early Voting and Automatic Voter Registration in New York State. She also leads Rank the Vote NYC, which is conducting a citywide voter education campaign following the passage of Ranked Choice Voting in New York City in 2019.

Before joining Common Cause, Ms. Lerner served as Executive Director of the California Clean Money Campaign from 2003 to 2007. As a member of the New York State and California bars, Ms. Lerner was a litigator for almost 20 years. She writes and speaks extensively on voting rights, election reform, campaign finance, redistricting, ethics, transparency and other good government issues, and is a go-to source for reporters and editorial board writers throughout New York State on these issues. Ms. Lerner is a graduate of the New York University School of Law.

ESMERALDA SIMMONS, ESQ. is an accomplished lawyer and public servant who has spent decades fighting for human and civil rights on the federal, state, and municipal levels. Ms. Simmons founded the Center for Law and Social Justice at Medgar Evers College, a community-based racial justice advocacy center that focuses on legal work and research on civil rights and domestic human rights violations. Recently retired, she advocated for equity in public education, voting, policing, and the child welfare system as the Center’s executive director for 34 years. Through the Center, Simmons provided community organizations with legal counsel and research assistance.
Before founding and directing the Center for Law and Social Justice, Ms. Simmons served as First Deputy Commissioner at the New York State Division of Human Rights, where she developed and led the implementation of policy in support of New Yorkers’ human and civil rights, and as an Assistant Attorney General for the State of New York. In addition, she has served on several major public boards in New York City government, including the NYC Board of Education and the NYC Districting Commission.

Ms. Simmons has served as counsel or co-counsel on numerous major federal Voting Rights Act cases and election law cases and has secured victories before the United States Supreme Court. She is a graduate of Brooklyn Law School and is admitted to practice law in New York State.

RICHARD RIFKIN, ESQ. is the Legal Director at the Government Law Center at Albany Law School. Prior to joining the Government Law Center, Mr. Rifkin most recently served as Special Counsel and Consultant to the New York State Bar Association. Mr. Rifkin is a graduate of Yale Law School and is admitted to practice law in New York State.

Mr. Rifkin has 40 years of experience working in New York State government. In addition to serving as Special Counsel to former governor Eliot Spitzer, he served as Deputy Attorney General for the State Counsel Division of the Attorney General’s office from 1999 to 2006. He also worked in the Attorney General’s office from 1979 to 1994, serving as counsel to the Attorney General and First Assistant Attorney General, among other positions. From 1994 to 1998, Mr. Rifkin was the Executive Director of the New York State Ethics Commission. Since 1984, Rifkin has served as a member of the Chief Administrative Judge’s Advisory Committee on Civil Practice, which recommends changes in civil procedure in New York State courts. He was an adjunct professor at Albany Law School teaching government ethics from 2002 to 2006.
PROF. JEFFREY M. WICE is a Senior Fellow of the New York Census and Redistricting Institute and Adjunct Professor of Law at the New York Law School. Professor Wice has over 40 years of experience working in redistricting, voting rights, and census law. Of counsel to the Washington, D.C. law firm Sandler Reiff Lamb Rosenstein & Birkenstock, P.C., Prof. Wice has assisted many state legislative leaders, members of Congress, and other state and local government officials on redistricting and voting rights matters across the nation.

In New York, Prof. Wice serves as a long-time counsel to the New York State Legislature and has assisted in all congressional and state legislative redistricting processes since the 1980 cycle. In New York City, he served as a counsel to the post-2000 and 2010 City Council redistricting commissions. He is a co-editor of the National Conference of State Legislatures’ (NCSL) 2020 Redistricting Law Handbook and contributed to the 1990, 2000, and 2010 editions. Professor Wice has also served in several NCSL leadership positions, including on the national Executive Committee and currently as Staff Chair of the Elections and Redistricting Committee. He is also a Fellow at the State University of New York at Buffalo Law School and has taught election law at Hofstra Law School and the Touro Law Center. He has previously served as a Fellow at the SUNY Rockefeller Institute of Government.

During the 1980s, Prof. Wice developed the first national Democratic Party redistricting assistance program, working with state legislative leaders preparing for the 1990 Census and redistricting process. During the 1990s, he served as a counsel to President Bill Clinton’s appointees to the 2000 federal Census Monitoring Board. Since the post-2000 and post-2010 redistricting cycles, Professor Wice served as counsel to the Democratic National Committee and other national redistricting projects.

Prof. Wice is a graduate of the Antioch School of Law. He is a member of the District of Columbia Bar and has been admitted to practice the Federal District Court for the District of Columbia and the United States Supreme Court.
SECTION 4

Readjustments and reapportionments; when federal census to control

Constitution (CNS) CHAPTER, ARTICLE III

§ 4. (a) Except as herein otherwise provided, the federal census taken in the year nineteen hundred thirty and each federal census taken decennially thereafter shall be controlling as to the number of inhabitants in the state or any part thereof for the purposes of the apportionment of members of assembly and readjustment or alteration of senate and assembly districts next occurring, in so far as such census and the tabulation thereof purport to give the information necessary therefor. The legislature, by law, shall provide for the making and tabulation by state authorities of an enumeration of the inhabitants of the entire state to be used for such purposes, instead of a federal census, if the taking of a federal census in any tenth year from the year nineteen hundred thirty be omitted or if the federal census fails to show the number of aliens or Indians not taxed. If a federal census, though giving the requisite information as to the state at large, fails to give the information as to any civil or territorial divisions which is required to be known for such purposes, the legislature, by law, shall provide for such an enumeration of the inhabitants of such parts of the state only as may be necessary, which shall supersede in part the federal census and be used in connection therewith for such purposes. The legislature, by law, may provide in its discretion for an enumeration by state authorities of the inhabitants of the state, to be used for such purposes, in place of a federal census, when the return of a decennial federal census is delayed so that it is not available at the beginning of the regular session of the legislature in the second year after the year nineteen hundred thirty or after any tenth year therefrom, or if an apportionment of members of assembly and readjustment or alteration of senate districts is not made at or before such a session. At the regular session in the year nineteen hundred thirty-two, and at the first regular session after the year nineteen hundred forty and after each tenth year therefrom the senate districts shall be readjusted or altered, but if, in any decade, counting from and including that which begins with the year nineteen hundred thirty-one,
such a readjustment or alteration is not made at the time above
prescribed, it shall be made at a subsequent session occurring not later
than the sixth year of such decade, meaning not later than nineteen
hundred thirty-six, nineteen hundred forty-six, nineteen hundred
fifty-six, and so on; provided, however, that if such districts shall
have been readjusted or altered by law in either of the years nineteen
hundred thirty or nineteen hundred thirty-one, they shall remain
unaltered until the first regular session after the year nineteen
hundred forty. No town, except a town having more than a full ratio of
apportionment, and no block in a city inclosed by streets or public
ways, shall be divided in the formation of senate districts. In the
reapportionment of senate districts, no district shall contain a greater
excess in population over an adjoining district in the same county, than
the population of a town or block therein adjoining such district.
Counties, towns or blocks which, from their location, may be included in
either of two districts, shall be so placed as to make said districts
most nearly equal in number of inhabitants, excluding aliens.

No county shall have four or more senators unless it shall have a full
ratio for each senator. No county shall have more than one-third of all
the senators; and no two counties or the territory thereof as now
organized, which are adjoining counties, or which are separated only by
public waters, shall have more than one-half of all the senators.

(b) The independent redistricting commission established pursuant to
section five-b of this article shall prepare a redistricting plan to
establish senate, assembly, and congressional districts every ten years
commencing in two thousand twenty-one, and shall submit to the
legislature such plan and the implementing legislation therefor on or
before January first or as soon as practicable thereafter but no later
than January fifteenth in the year ending in two beginning in two
thousand twenty-two. The redistricting plans for the assembly and the
senate shall be contained in and voted upon by the legislature in a
single bill, and the congressional district plan may be included in the
same bill if the legislature chooses to do so. The implementing
legislation shall be voted upon, without amendment, by the senate or the
assembly and if approved by the first house voting upon it, such
legislation shall be delivered to the other house immediately to be
voted upon without amendment. If approved by both houses, such
legislation shall be presented to the governor for action.

If either house shall fail to approve the legislation implementing the
first redistricting plan, or the governor shall veto such legislation
and the legislature shall fail to override such veto, each house or the
governor if he or she vetoes it, shall notify the commission that such
legislation has been disapproved. Within fifteen days of such
notification and in no case later than February twenty-eighth, the
redistricting commission shall prepare and submit to the legislature a
second redistricting plan and the necessary implementing legislation for
such plan. Such legislation shall be voted upon, without amendment, by
the senate or the assembly and, if approved by the first house voting
upon it, such legislation shall be delivered to the other house
immediately to be voted upon without amendment. If approved by both
houses, such legislation shall be presented to the governor for action.

If either house shall fail to approve the legislation implementing the
second redistricting plan, or the governor shall veto such legislation
and the legislature shall fail to override such veto, each house shall
introduce such implementing legislation with any amendments each house
of the legislature deems necessary. All such amendments shall comply
with the provisions of this article. If approved by both houses, such
legislation shall be presented to the governor for action.

All votes by the senate or assembly on any redistricting plan
legislation pursuant to this article shall be conducted in accordance
with the following rules:

(1) In the event that the speaker of the assembly and the temporary
president of the senate are members of two different political parties,
approval of legislation submitted by the independent redistricting
commission pursuant to subdivision (f) of section five-b of this article
shall require the vote in support of its passage by at least a majority
of the members elected to each house.

(2) In the event that the speaker of the assembly and the temporary
president of the senate are members of two different political parties,
approval of legislation submitted by the independent redistricting
commission pursuant to subdivision (g) of section five-b of this article
shall require the vote in support of its passage by at least sixty
percent of the members elected to each house.

(3) In the event that the speaker of the assembly and the temporary
president of the senate are members of the same political party,
approval of legislation submitted by the independent redistricting
commission pursuant to subdivision (f) or (g) of section five-b of this article shall require the vote in support of its passage by at least two-thirds of the members elected to each house.

(c) Subject to the requirements of the federal constitution and statutes and in compliance with state constitutional requirements, the following principles shall be used in the creation of state senate and state assembly districts and congressional districts:

(1) When drawing district lines, the commission shall consider whether such lines would result in the denial or abridgement of racial or language minority voting rights, and districts shall not be drawn to have the purpose of, nor shall they result in, the denial or abridgement of such rights. Districts shall be drawn so that, based on the totality of the circumstances, racial or minority language groups do not have less opportunity to participate in the political process than other members of the electorate and to elect representatives of their choice.

(2) To the extent practicable, districts shall contain as nearly as may be an equal number of inhabitants. For each district that deviates from this requirement, the commission shall provide a specific public explanation as to why such deviation exists.

(3) Each district shall consist of contiguous territory.

(4) Each district shall be as compact in form as practicable.

(5) Districts shall not be drawn to discourage competition or for the purpose of favoring or disfavoring incumbents or other particular candidates or political parties. The commission shall consider the maintenance of cores of existing districts, of pre-existing political subdivisions, including counties, cities, and towns, and of communities of interest.

(6) In drawing senate districts, towns or blocks which, from their location may be included in either of two districts, shall be so placed as to make said districts most nearly equal in number of inhabitants. The requirements that senate districts not divide counties or towns, as well as the 'block-on-border' and 'town-on-border' rules, shall remain in effect.

During the preparation of the redistricting plan, the independent
redistricting commission shall conduct not less than one public hearing on proposals for the redistricting of congressional and state legislative districts in each of the following (i) cities: Albany, Buffalo, Syracuse, Rochester, and White Plains; and (ii) counties: Bronx, Kings, New York, Queens, Richmond, Nassau, and Suffolk. Notice of all such hearings shall be widely published using the best available means and media a reasonable time before every hearing. At least thirty days prior to the first public hearing and in any event no later than September fifteen of the year ending in one or as soon as practicable thereafter, the independent redistricting commission shall make widely available to the public, in print form and using the best available technology, its draft redistricting plans, relevant data, and related information. Such plans, data, and information shall be in a form that allows and facilitates their use by the public to review, analyze, and comment upon such plans and to develop alternative redistricting plans for presentation to the commission at the public hearings. The independent redistricting commission shall report the findings of all such hearings to the legislature upon submission of a redistricting plan.

(d) The ratio for apportioning senators shall always be obtained by dividing the number of inhabitants, excluding aliens, by fifty, and the senate shall always be composed of fifty members, except that if any county having three or more senators at the time of any apportionment shall be entitled on such ratio to an additional senator or senators, such additional senator or senators shall be given to such county in addition to the fifty senators, and the whole number of senators shall be increased to that extent.

The senate districts, including the present ones, as existing immediately before the enactment of a law readjusting or altering the senate districts, shall continue to be the senate districts of the state until the expirations of the terms of the senators then in office, except for the purpose of an election of senators for full terms beginning at such expirations, and for the formation of assembly districts.

(e) The process for redistricting congressional and state legislative districts established by this section and sections five and five-b of this article shall govern redistricting in this state 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.
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.
SECTION 5

Apportionment of assembly members; creation of assembly districts
Constitution (CNS) CHAPTER, ARTICLE III

§ 5. The members of the assembly shall be chosen by single districts and shall be apportioned pursuant to this section and sections four and five-b of this article at each regular session at which the senate districts are readjusted or altered, and by the same law, among the several counties of the state, as nearly as may be according to the number of their respective inhabitants, excluding aliens. Every county heretofore established and separately organized, except the county of Hamilton, shall always be entitled to one member of assembly, and no county shall hereafter be erected unless its population shall entitle it to a member. The county of Hamilton shall elect with the county of Fulton, until the population of the county of Hamilton shall, according to the ratio, entitle it to a member. But the legislature may abolish the said county of Hamilton and annex the territory thereof to some other county or counties.

The quotient obtained by dividing the whole number of inhabitants of the state, excluding aliens, by the number of members of assembly, shall be the ratio for apportionment, which shall be made as follows: One member of assembly shall be apportioned to every county, including Fulton and Hamilton as one county, containing less than the ratio and one-half over. Two members shall be apportioned to every other county. The remaining members of assembly shall be apportioned to the counties having more than two ratios according to the number of inhabitants, excluding aliens. Members apportioned on remainders shall be apportioned to the counties having the highest remainders in the order thereof respectively. No county shall have more members of assembly than a county having a greater number of inhabitants, excluding aliens.

The assembly districts, including the present ones, as existing immediately before the enactment of a law making an apportionment of members of assembly among the counties, shall continue to be the assembly districts of the state until the expiration of the terms of
members then in office, except for the purpose of an election of members of assembly for full terms beginning at such expirations.

In any county entitled to more than one member, the board of supervisors, and in any city embracing an entire county and having no board of supervisors, the common council, or if there be none, the body exercising the powers of a common council, shall assemble at such times as the legislature making an apportionment shall prescribe, and divide such counties into assembly districts as nearly equal in number of inhabitants, excluding aliens, as may be, of convenient and contiguous territory in as compact form as practicable, each of which shall be wholly within a senate district formed under the same apportionment, equal to the number of members of assembly to which such county shall be entitled, and shall cause to be filed in the office of the secretary of state and of the clerk of such county, a description of such districts, specifying the number of each district and of the inhabitants thereof, excluding aliens, according to the census or enumeration used as the population basis for the formation of such districts; and such apportionment and districts shall remain unaltered until after the next reapportionment of members of assembly, except that the board of supervisors of any county containing a town having more than a ratio of apportionment and one-half over may alter the assembly districts in a senate district containing such town at any time on or before March first, nineteen hundred forty-six. In counties having more than one senate district, the same number of assembly districts shall be put in each senate district, unless the assembly districts cannot be evenly divided among the senate districts of any county, in which case one more assembly district shall be put in the senate district in such county having the largest, or one less assembly district shall be put in the senate district in such county having the smallest number of inhabitants, excluding aliens, as the case may require. Nothing in this section shall prevent the division, at any time, of counties and towns and the erection of new towns by the legislature.

An apportionment by the legislature, or other body, shall be subject to review by the supreme court, at the suit of any citizen, under such reasonable regulations as the legislature may prescribe; and any court before which a cause may be pending involving an apportionment, shall give precedence thereto over all other causes and proceedings, and if said court be not in session it shall convene promptly for the disposition of the same. The court shall render its decision within sixty days after a petition is filed. In any judicial proceeding
relating to redistricting of congressional or state legislative districts, any law establishing congressional or state legislative districts found to violate the provisions of this article shall be invalid in whole or in part. In the event that a court finds such a violation, the legislature shall have a full and reasonable opportunity to correct the law's legal infirmities.
SECTION 5-B

An independent redistricting commission established

Constitution (CNS) CHAPTER , ARTICLE III

§ 5-b. (a) On or before February first of each year ending with a zero and 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. The independent redistricting commission shall be composed of ten members, appointed as follows:

(1) two members shall be appointed by the temporary president of the senate;

(2) two members shall be appointed by the speaker of the assembly;

(3) two members shall be appointed by the minority leader of the senate;

(4) two members shall be appointed by the minority leader of the assembly;

(5) two members shall be appointed by the eight members appointed pursuant to paragraphs (1) through (4) of this subdivision by a vote of not less than five members in favor of such appointment, and these two members shall not have been enrolled in the preceding five years in either of the two political parties that contain the largest or second largest number of enrolled voters within the state;

(6) one member shall be designated chair of the commission by a majority of the members appointed pursuant to paragraphs (1) through (5) of this subdivision to convene and preside over each meeting of the commission.

(b) The members of the independent redistricting commission shall be
registered voters in this state. No member shall within the last three years:

(1) be or have been a member of the New York state legislature or United States Congress or a statewide elected official;

(2) be or have been a state officer or employee or legislative employee as defined in section seventy-three of the public officers law;

(3) be or have been a registered lobbyist in New York state;

(4) be or have been a political party chairman, as defined in paragraph (k) of subdivision one of section seventy-three of the public officers law;

(5) be the spouse of a statewide elected official or of any member of the United States Congress, or of the state legislature.

c) To the extent practicable, the members of the independent redistricting commission shall reflect the diversity of the residents of this state with regard to race, ethnicity, gender, language, and geographic residence and to the extent practicable the appointing authorities shall consult with organizations devoted to protecting the voting rights of minority and other voters concerning potential appointees to the commission.

d) Vacancies in the membership of the commission shall be filled within thirty days in the manner provided for in the original appointments.

e) The legislature shall provide by law for the compensation of the members of the independent redistricting commission, including compensation for actual and necessary expenses incurred in the performance of their duties.

(f) A minimum of five members of the independent redistricting commission shall constitute a quorum for the transaction of any business or the exercise of any power of such commission prior to the appointment of the two commission members appointed pursuant to paragraph (5) of subdivision (a) of this section, and a minimum of seven members shall constitute a quorum after such members have been appointed, and no exercise of any power of the independent redistricting commission shall
occur without the affirmative vote of at least a majority of the members, provided that, in order to approve any redistricting plan and implementing legislation, the following rules shall apply:

(1) In the event that the speaker of the assembly and the temporary president of the senate are members of the same political party, approval of a redistricting plan and implementing legislation by the commission for submission to the legislature shall require the vote in support of its approval by at least seven members including at least one member appointed by each of the legislative leaders.

(2) In the event that the speaker of the assembly and the temporary president of the senate are members of two different political parties, approval of a redistricting plan by the commission for submission to the legislature shall require the vote in support of its approval by at least seven members including at least one member appointed by the speaker of the assembly and one member appointed by the temporary president of the senate.

(g) In the event that the commission is unable to obtain seven votes to approve a redistricting plan on or before January first in the year ending in two or as soon as practicable thereafter, the commission shall submit to the legislature that redistricting plan and implementing legislation that garnered the highest number of votes in support of its approval by the commission with a record of the votes taken. In the event that more than one plan received the same number of votes for approval, and such number was higher than that for any other plan, then the commission shall submit all plans that obtained such number of votes. The legislature shall consider and vote upon such implementing legislation in accordance with the voting rules set forth in subdivision (b) of section four of this article.

(h) (1) The independent redistricting commission shall appoint two co-executive directors by a majority vote of the commission in accordance with the following procedure:

(i) In the event that the speaker of the assembly and the temporary president of the senate are members of two different political parties, the co-executive directors shall be approved by a majority of the commission that includes at least one appointee by the speaker of the assembly and at least one appointee by the temporary president of the senate.
(ii) In the event that the speaker of the assembly and the temporary president of the senate are members of the same political party, the co-executive directors shall be approved by a majority of the commission that includes at least one appointee by each of the legislative leaders.

(2) One of the co-executive directors shall be enrolled in the political party with the highest number of enrolled members in the state and one shall be enrolled in the political party with the second highest number of enrolled members in the state. The co-executive directors shall appoint such staff as are necessary to perform the commission's duties, except that the commission shall review a staffing plan prepared and provided by the co-executive directors which shall contain a list of the various positions and the duties, qualifications, and salaries associated with each position.

(3) In the event that the commission is unable to appoint one or both of the co-executive directors within forty-five days of the establishment of a quorum of seven commissioners, the following procedure shall be followed:

(i) In the event that the speaker of the assembly and the temporary president of the senate are members of two different political parties, within ten days the speaker's appointees on the commission shall appoint one co-executive director, and the temporary president's appointees on the commission shall appoint the other co-executive director. Also within ten days the minority leader of the assembly shall select a co-deputy executive director, and the minority leader of the senate shall select the other co-deputy executive director.

(ii) In the event that the speaker of the assembly and the temporary president of the senate are members of the same political party, within ten days the speaker's and temporary president's appointees on the commission shall together appoint one co-executive director, and the two minority leaders' appointees on the commission shall together appoint the other co-executive director.

(4) In the event of a vacancy in the offices of co-executive director or co-deputy executive director, the position shall be filled within ten days of its occurrence by the same appointing authority or authorities that appointed his or her predecessor.
(i) The state budget shall include necessary appropriations for the expenses of the independent redistricting commission, provide for compensation and reimbursement of expenses for the members and staff of the commission, assign to the commission any additional duties that the legislature may deem necessary to the performance of the duties stipulated in this article, and require other agencies and officials of the state of New York and its political subdivisions to provide such information and assistance as the commission may require to perform its duties.
CONCURRENT RESOLUTION OF THE SENATE AND ASSEMBLY

proposing an amendment to article 3 of the constitution, in relation to
the establishment of the independent redistricting commission

Section 1. Resolved (if the Senate concur), That sections 4 and 5 of
article 3 of the constitution be amended, and a new section 5-b be added
to read as follows:

S 4. (A) Except as herein otherwise provided, the federal census taken
in the year nineteen hundred thirty and each federal census taken decen-
nially thereafter shall be controlling as to the number of inhabitants
in the state or any part thereof for the purposes of the apportionment
of members of assembly and readjustment or alteration of senate and
assembly districts next occurring, in so far as such census and the
 enumeration thereof  purport to give the information necessary therefor.
The legislature, by law, shall provide for the making and tabulation by
state authorities of an enumeration of the inhabitants of the entire
state to be used for such purposes, instead of a federal census, if the
taking of a federal census in any tenth year from the year nineteen
hundred thirty be omitted or if the federal census fails to show the
number of aliens or Indians not taxed. If a federal census, though
giving the requisite information as to the state at large, fails to give
the information as to any civil or territorial divisions which is
required to be known for such purposes, the legislature, by law, shall
provide for such an enumeration of the inhabitants of such parts of the
state only as may be necessary, which shall supersede in part the feder-
al census and be used in connection therewith for such purposes. The
legislature, by law, may provide in its discretion for an enumeration by
state authorities of the inhabitants of the state, to be used for such

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets
[ ] is old law to be omitted.

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purposes, in place of a federal census, when the return of a decennial federal census is delayed so that it is not available at the beginning of the regular session of the legislature in the second year after the year nineteen hundred thirty or after any tenth year therefrom, or if an apportionment of members of assembly and readjustment or alteration of senate districts is not made at or before such a session. At the regular session in the year nineteen hundred thirty-two, and at the first regular session after the year nineteen hundred forty and after each tenth year therefrom the senate districts shall be readjusted or altered, but if, in any decade, counting from and including that which begins with the year nineteen hundred thirty-one, such a readjustment or alteration is not made at the time above prescribed, it shall be made at a subsequent session occurring not later than the sixth year of such decade, meaning not later than nineteen hundred thirty-six, nineteen hundred forty-six, nineteen hundred fifty-six, and so on; provided, however, that if such districts shall have been readjusted or altered by law in either of the years nineteen hundred thirty or nineteen hundred thirty-one, they shall remain unaltered until the first regular session after the year nineteen hundred forty. [Such districts shall be so readjusted or altered that each senate district shall contain as nearly as may be an equal number of inhabitants, excluding aliens, and be in as compact form as practicable, and shall remain unaltered until the first year of the next decade as above defined, and shall at all times consist of contiguous territory, and no county shall be divided in the formation of a senate district except to make two or more senate districts wholly in such county.] No town, except a town having more than a full ratio of apportionment, and no block in a city inclosed by streets or public ways, shall be divided in the formation of senate districts[; nor shall any]. IN THE REAPPORTIONMENT OF SENATE DISTRICTS, NO district SHALL contain a greater excess in population over an adjoining district in the same county, than the population of a town or block therein adjoining such district. Counties, towns or blocks which, from their location, may be included in either of two districts, shall be so placed as to make said districts most nearly equal in number of inhabitants, excluding aliens.

No county shall have four or more senators unless it shall have a full ratio for each senator. No county shall have more than one-third of all the senators; and no two counties or the territory thereof as now organized, which are adjoining counties, or which are separated only by public waters, shall have more than one-half of all the senators. (B) THE INDEPENDENT REDISTRICTING COMMISSION ESTABLISHED PURSUANT TO SECTION FIVE-B OF THIS ARTICLE SHALL PREPARE A REDISTRICTING PLAN TO ESTABLISH SENATE, ASSEMBLY, AND CONGRESSIONAL DISTRICTS EVERY TEN YEARS COMMENCING IN TWO THOUSAND TWENTY-ONE, AND SHALL SUBMIT TO THE LEGISLATURE SUCH PLAN AND THE IMPLEMENTING LEGISLATION THEREFOR ON OR BEFORE JANUARY FIRST OR AS SOON AS PRACTICABLE THEREAFTER BUT NO LATER THAN JANUARY FIFTEENTH IN THE YEAR ENDING IN TWO BEGINNING IN TWO THOUSAND TWENTY-TWO. THE REDISTRICTING PLANS FOR THE ASSEMBLY AND THE SENATE SHALL BE CONTAINED IN AND VOTED UPON BY THE LEGISLATURE IN A SINGLE BILL, AND THE CONGRESSIONAL DISTRICT PLAN MAY BE INCLUDED IN THE SAME BILL IF THE LEGISLATURE CHOOSES TO DO SO. THE IMPLEMENTING LEGISLATION SHALL BE VOTED UPON, WITHOUT AMENDMENT, BY THE SENATE OR THE ASSEMBLY AND IF APPROVED BY THE FIRST HOUSE VOTING UPON IT, SUCH LEGISLATION SHALL BE DELIVERED TO THE OTHER HOUSE IMMEDIATELY TO BE VOTED UPON WITHOUT AMENDMENT. IF APPROVED BY BOTH HOUSES, SUCH LEGISLATION SHALL BE PRESENTED TO THE GOVERNOR FOR ACTION.
IF EITHER HOUSE SHALL FAIL TO APPROVE THE LEGISLATION IMPLEMENTING THE FIRST REDISTRICTING PLAN, OR THE GOVERNOR SHALL VETO SUCH LEGISLATION AND THE LEGISLATURE SHALL FAIL TO OVERRIDE SUCH VETO, EACH HOUSE OR THE GOVERNOR IF HE OR SHE VETOES IT, SHALL NOTIFY THE COMMISSION THAT SUCH LEGISLATION HAS BEEN DISAPPROVED. WITHIN FIFTEEN DAYS OF SUCH NOTIFICATION AND IN NO CASE LATER THAN FEBRUARY TWENTY-EIGHTH, THE REDISTRICTING COMMISSION SHALL PREPARE AND SUBMIT TO THE LEGISLATURE A SECOND REDISTRICTING PLAN AND THE NECESSARY IMPLEMENTING LEGISLATION FOR SUCH PLAN. SUCH LEGISLATION SHALL BE VOTED UPON, WITHOUT AMENDMENT, BY THE SENATE OR THE ASSEMBLY AND, IF APPROVED BY THE FIRST HOUSE VOTING UPON IT, SUCH LEGISLATION SHALL BE DELIVERED TO THE OTHER HOUSE IMMEDIATELY TO BE VOTED UPON WITHOUT AMENDMENT. IF APPROVED BY BOTH HOUSES, SUCH LEGISLATION SHALL BE PRESENTED TO THE GOVERNOR FOR ACTION.

IF EITHER HOUSE SHALL FAIL TO APPROVE THE LEGISLATION IMPLEMENTING THE SECOND REDISTRICTING PLAN, OR THE GOVERNOR SHALL VETO SUCH LEGISLATION AND THE LEGISLATURE SHALL FAIL TO OVERRIDE SUCH VETO, EACH HOUSE SHALL INTRODUCE SUCH IMPLEMENTING LEGISLATION WITH ANY AMENDMENTS EACH HOUSE OF THE LEGISLATURE DEEMS NECESSARY. ALL SUCH AMENDMENTS SHALL COMPLY WITH THE PROVISIONS OF THIS ARTICLE. IF APPROVED BY BOTH HOUSES, SUCH LEGISLATION SHALL BE PRESENTED TO THE GOVERNOR FOR ACTION.

ALL VOTES BY THE SENATE OR ASSEMBLY ON ANY REDISTRICTING PLAN LEGISLATION PURSUANT TO THIS ARTICLE SHALL BE CONDUCTED IN ACCORDANCE WITH THE FOLLOWING RULES:

1. IN THE EVENT THAT THE SPEAKER OF THE ASSEMBLY AND THE TEMPORARY PRESIDENT OF THE SENATE ARE MEMBERS OF TWO DIFFERENT POLITICAL PARTIES, APPROVAL OF LEGISLATION SUBMITTED BY THE INDEPENDENT REDISTRICTING COMMISSION PURSUANT TO SUBDIVISION (F) OF SECTION FIVE-B OF THIS ARTICLE SHALL REQUIRE THE VOTE IN SUPPORT OF ITS PASSAGE BY AT LEAST A MAJORITY OF THE MEMBERS ELECTED TO EACH HOUSE.

2. IN THE EVENT THAT THE SPEAKER OF THE ASSEMBLY AND THE TEMPORARY PRESIDENT OF THE SENATE ARE MEMBERS OF TWO DIFFERENT POLITICAL PARTIES, APPROVAL OF LEGISLATION SUBMITTED BY THE INDEPENDENT REDISTRICTING COMMISSION PURSUANT TO SUBDIVISION (G) OF SECTION FIVE-B OF THIS ARTICLE SHALL REQUIRE THE VOTE IN SUPPORT OF ITS PASSAGE BY AT LEAST SIXTY PERCENT OF THE MEMBERS ELECTED TO EACH HOUSE.

3. IN THE EVENT THAT THE SPEAKER OF THE ASSEMBLY AND THE TEMPORARY PRESIDENT OF THE SENATE ARE MEMBERS OF THE SAME POLITICAL PARTY, APPROVAL OF LEGISLATION SUBMITTED BY THE INDEPENDENT REDISTRICTING COMMISSION PURSUANT TO SUBDIVISION (F) OR (G) OF SECTION FIVE-B OF THIS ARTICLE SHALL REQUIRE THE VOTE IN SUPPORT OF ITS PASSAGE BY AT LEAST TWO-THIRDS OF THE MEMBERS ELECTED TO EACH HOUSE.

(C) SUBJECT TO THE REQUIREMENTS OF THE FEDERAL CONSTITUTION AND STATUTES AND IN COMPLIANCE WITH STATE CONSTITUTIONAL REQUIREMENTS, THE FOLLOWING PRINCIPLES SHALL BE USED IN THE CREATION OF STATE SENATE AND STATE ASSEMBLY DISTRICTS AND CONGRESSIONAL DISTRICTS:

1. WHEN DRAWING DISTRICT LINES, THE COMMISSION SHALL CONSIDER WHETHER SUCH LINES WOULD RESULT IN THE DENIAL OR ABRIDGEMENT OF RACIAL OR LANGUAGE MINORITY VOTING RIGHTS, AND DISTRICTS SHALL NOT BE DRAWN TO HAVE THE PURPOSE OF, NOR SHALL THEY RESULT IN, THE DENIAL OR ABRIDGEMENT OF SUCH RIGHTS. DISTRICTS SHALL BE DRAWN SO THAT, BASED ON THE TOTALITY OF THE CIRCUMSTANCES, RACIAL OR MINORITY LANGUAGE GROUPS DO NOT HAVE LESS OPPORTUNITY TO PARTICIPATE IN THE POLITICAL PROCESS THAN OTHER MEMBERS OF THE ELECTORATE AND TO ELECT REPRESENTATIVES OF THEIR CHOICE.

2. TO THE EXTENT PRACTICABLE, DISTRICTS SHALL CONTAIN AS NEARLY AS MAY BE AN EQUAL NUMBER OF INHABITANTS. FOR EACH DISTRICT THAT DEVIATES
FROM THIS REQUIREMENT, THE COMMISSION SHALL PROVIDE A SPECIFIC PUBLIC EXPLANATION AS TO WHY SUCH DEVIATION EXISTS.

(3) EACH DISTRICT SHALL CONSIST OF CONTIGUOUS TERRITORY.

(4) EACH DISTRICT SHALL BE AS COMPACT IN FORM AS PRACTICABLE.

(5) DISTRICTS SHALL NOT BE DRAWN TO DISCOURAGE COMPETITION OR FOR THE PURPOSE OF FAVORING OR DISFAVORING INCUMBENTS OR OTHER PARTICULAR CANDIDATES OR POLITICAL PARTIES. THE COMMISSION SHALL CONSIDER THE MAINTENANCE OF CORES OF EXISTING DISTRICTS, OF PRE-EXISTING POLITICAL SUBDIVISIONS, INCLUDING COUNTIES, CITIES, AND TOWNS, AND OF COMMUNITIES OF INTEREST.

(6) IN DRAWING SENATE DISTRICTS, TOWNS OR BLOCKS WHICH, FROM THEIR LOCATION MAY BE INCLUDED IN EITHER OF TWO DISTRICTS, SHALL BE SO PLACED AS TO MAKE SAID DISTRICTS MOST NEARLY EQUAL IN NUMBER OF INHABITANTS. THE REQUIREMENTS THAT SENATE DISTRICTS NOT DIVIDE COUNTIES OR TOWNS, AS WELL AS THE 'BLOCK-ON-BORDER' AND 'TOWN-ON-BORDER' RULES, SHALL REMAIN IN EFFECT.

DURING THE PREPARATION OF THE REDISTRICTING PLAN, THE INDEPENDENT REDISTRICTING COMMISSION SHALL CONDUCT NOT LESS THAN ONE PUBLIC HEARING ON PROPOSALS FOR THE REDISTRICTING OF CONGRESSIONAL AND STATE LEGISLATIVE DISTRICTS IN EACH OF THE FOLLOWING (I) CITIES: ALBANY, BUFFALO, SYRACUSE, ROCHESTER, AND WHITE PLAINS; AND (II) COUNTIES: BRONX, KINGS, NEW YORK, QUEENS, RICHMOND, NASSAU, AND SUFFOLK. NOTICE OF ALL SUCH HEARINGS SHALL BE WIDELY PUBLISHED USING THE BEST AVAILABLE MEANS AND MEDIA A REASONABLE TIME BEFORE EVERY HEARING. AT LEAST THIRTY DAYS PRIOR TO THE FIRST PUBLIC HEARING AND IN ANY EVENT NO LATER THAN SEPTEMBER FIFTEENTH OF THE YEAR ENDING IN ONE OR AS SOON AS PRACTICABLE THEREAFTER, THE INDEPENDENT REDISTRICTING COMMISSION SHALL MAKE WIDELY AVAILABLE TO THE PUBLIC, IN PRINT FORM AND USING THE BEST AVAILABLE TECHNOLOGY, ITS DRAFT REDISTRICTING PLANS, RELEVANT DATA, AND RELATED INFORMATION. SUCH PLANS, DATA, AND INFORMATION SHALL BE IN A FORM THAT ALLOWS AND FACILITATES THEIR USE BY THE PUBLIC TO REVIEW, ANALYZE, AND COMMENT UPON SUCH PLANS AND TO DEVELOP ALTERNATIVE REDISTRICTING PLANS FOR PRESENTATION TO THE COMMISSION AT THE PUBLIC HEARINGS. THE INDEPENDENT REDISTRICTING COMMISSION SHALL REPORT THE FINDINGS OF ALL SUCH HEARINGS TO THE LEGISLATURE UPON SUBMISSION OF A REDISTRICTING PLAN.

(D) The ratio for apportioning senators shall always be obtained by dividing the number of inhabitants, excluding aliens, by fifty, and the senate shall always be composed of fifty members, except that if any county having three or more senators at the time of any apportionment shall be entitled on such ratio to an additional senator or senators, such additional senator or senators shall be given to such county in addition to the fifty senators, and the whole number of senators shall be increased to that extent.

The senate districts, including the present ones, as existing immediately before the enactment of a law readjusting or altering the senate districts, shall continue to be the senate districts of the state until the expirations of the terms of the senators then in office, except for the purpose of an election of senators for full terms beginning at such expirations, and for the formation of assembly districts.

(E) THE PROCESS FOR REDISTRICTING CONGRESSIONAL AND STATE LEGISLATIVE DISTRICTS ESTABLISHED BY THIS SECTION AND SECTIONS FIVE AND FIVE-B OF THIS ARTICLE SHALL GOVERN REDISTRICTING IN THIS STATE 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.

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
5. The members of the assembly shall be chosen by single districts
and shall be apportioned [by the legislature] PURSUANT TO THIS SECTION
AND SECTIONS FOUR AND FIVE-B OF THIS ARTICLE at each regular session at
which the senate districts are readjusted or altered, and by the same
law, among the several counties of the state, as nearly as may be
according to the number of their respective inhabitants, excluding
aliens. Every county heretofore established and separately organized,
except the county of Hamilton, shall always be entitled to one member of
assembly, and no county shall hereafter be erected unless its population
shall entitle it to a member. The county of Hamilton shall elect with
the county of Fulton, until the population of the county of Hamilton
shall, according to the ratio, entitle it to a member. But the legisla-
ture may abolish the said county of Hamilton and annex the territory
thereof to some other county or counties.

The quotient obtained by dividing the whole number of inhabitants of
the state, excluding aliens, by the number of members of assembly, shall
be the ratio for apportionment, which shall be made as follows: One
member of assembly shall be apportioned to every county, including
Fulton and Hamilton as one county, containing less than the ratio and
one-half over. Two members shall be apportioned to every other county.
The remaining members of assembly shall be apportioned to the counties
having more than two ratios according to the number of inhabitants,
excluding aliens. Members apportioned on remainders shall be apportioned
to the counties having the highest remainders in the order thereof
respectively. No county shall have more members of assembly than a coun-
ty having a greater number of inhabitants, excluding aliens.

The assembly districts, including the present ones, as existing imme-
diately before the enactment of a law making an apportionment of members
of assembly among the counties, shall continue to be the assembly
districts of the state until the expiration of the terms of members then
in office, except for the purpose of an election of members of assembly
for full terms beginning at such expirations.

In any county entitled to more than one member, the board of supervi-
sors, and in any city embracing an entire county and having no board of
supervisors, the common council, or if there be none, the body exercis-
ing the powers of a common council, shall assemble at such times as the
legislature making an apportionment shall prescribe, and divide such
counties into assembly districts as nearly equal in number of inhabit-
ants, excluding aliens, as may be, of convenient and contiguous territoy-
ry in as compact form as practicable, each of which shall be wholly
within a senate district formed under the same apportionment, equal to
the number of members of assembly to which such county shall be enti-
tled, and shall cause to be filed in the office of the secretary of
state and of the clerk of such county, a description of such districts,
specifying the number of each district and of the inhabitants thereof,
excluding aliens, according to the census or enumeration used as the
population basis for the formation of such districts; and such appor-
tionment and districts shall remain unaltered until after the next reap-
portionment of members of assembly, except that the board of supervisors
of any county containing a town having more than a ratio of apportion-
ment and one-half over may alter the assembly districts in a senate
district containing such town at any time on or before March first,
nineteen hundred forty-six. In counties having more than one senate
district, the same number of assembly districts shall be put in each
Senate district, unless the assembly districts cannot be evenly divided
among the senate districts of any county, in which case one more assembly
district shall be put in the senate district in such county having the
largest, or one less assembly district shall be put in the senate
district in such county having the smallest number of inhabitants,
excluding aliens, as the case may require. [No town, except a town
having more than a ratio of apportionment and one-half over, and no
block in a city inclosed by streets or public ways, shall be divided in
the formation of assembly districts, nor shall any districts contain a
greater excess in population over an adjoining district in the same
senate district, than the population of a town or block therein adjoin-
ing such assembly district. Towns or blocks which, from their location
may be included in either of two districts, shall be so placed as to
make said districts most nearly equal in number of inhabitants, exclud-
ing aliens.] Nothing in this section shall prevent the division, at any
time, of counties and towns and the erection of new towns by the legis-
lature.

An apportionment by the legislature, or other body, shall be subject
to review by the supreme court, at the suit of any citizen, under such
reasonable regulations as the legislature may prescribe; and any court
before which a cause may be pending involving an apportionment, shall
give precedence thereto over all other causes and proceedings, and if
said court be not in session it shall convene promptly for the disposi-
tion of the same. THE COURT SHALL RENDER ITS DECISION WITHIN SIXTY DAYS
AFTER A PETITION IS FILED. IN ANY JUDICIAL PROCEEDING RELATING TO REDIS-
TRICTING OF CONGRESSIONAL OR STATE LEGISLATIVE DISTRICTS, ANY LAW ESTAB-
LISHING CONGRESSIONAL OR STATE LEGISLATIVE DISTRICTS FOUND TO VIOLATE
THE PROVISIONS OF THIS ARTICLE SHALL BE INVALID IN WHOLE OR IN PART. IN
THE EVENT THAT A COURT FINDS SUCH A VIOLATION, THE LEGISLATURE SHALL
HAVE A FULL AND REASONABLE OPPORTUNITY TO CORRECT THE LAW'S LEGAL
INFIRMITIES.

S 5-B. (A) ON OR BEFORE FEBRUARY FIRST OF EACH YEAR ENDING WITH A ZERO
AND AT ANY OTHER TIME A COURT ORDERS THAT CONGRESSIONAL OR STATE LEGIS-
LATIVE DISTRICTS BE AMENDED, AN INDEPENDENT REDISTRICTING COMMISSION
SHALL BE ESTABLISHED TO DETERMINE THE DISTRICT LINES FOR CONGRESSIONAL
AND STATE LEGISLATIVE OFFICES. THE INDEPENDENT REDISTRICTING COMMISSION
SHALL BE COMPOSED OF TEN MEMBERS, APPOINTED AS FOLLOWS:

(1) TWO MEMBERS SHALL BE APPOINTED BY THE TEMPORARY PRESIDENT OF THE
SENATE;

(2) TWO MEMBERS SHALL BE APPOINTED BY THE SPEAKER OF THE ASSEMBLY;

(3) TWO MEMBERS SHALL BE APPOINTED BY THE MINORITY LEADER OF THE
SENATE;

(4) TWO MEMBERS SHALL BE APPOINTED BY THE MINORITY LEADER OF THE
ASSEMBLY;

(5) TWO MEMBERS SHALL BE APPOINTED BY THE EIGHT MEMBERS APPOINTED
PURSUANT TO PARAGRAPHS (1) THROUGH (4) OF THIS SUBDIVISION BY A VOTE OF
NOT LESS THAN FIVE MEMBERS IN FAVOR OF SUCH APPOINTMENT, AND THESE TWO
MEMBERS SHALL NOT HAVE BEEN ENROLLED IN THE PRECEDING FIVE YEARS IN
EITHER OF THE TWO POLITICAL PARTIES THAT CONTAIN THE LARGEST OR SECOND
LARGEST NUMBER OF ENROLLED VOTERS WITHIN THE STATE;

(6) ONE MEMBER SHALL BE DESIGNATED CHAIR OF THE COMMISSION BY A MAJOR-
ITY OF THE MEMBERS APPOINTED PURSUANT TO PARAGRAPHS (1) THROUGH (5) OF
THIS SUBDIVISION TO CONVENE AND PRESIDE OVER EACH MEETING OF THE COMMI-
SION.
THE MEMBERS OF THE INDEPENDENT REDISTRICTING COMMISSION SHALL BE REGISTERED VOTERS IN THIS STATE. NO MEMBER SHALL WITHIN THE LAST THREE YEARS:

1. BE OR HAVE BEEN A MEMBER OF THE NEW YORK STATE LEGISLATURE OR UNITED STATES CONGRESS OR A STATEWIDE ELECTED OFFICIAL;
2. BE OR HAVE BEEN A STATE OFFICER OR EMPLOYEE OR LEGISLATIVE EMPLOYEE AS DEFINED IN SECTION SEVENTY-THREE OF THE PUBLIC OFFICERS LAW;
3. BE OR HAVE BEEN A REGISTERED LOBBYIST IN NEW YORK STATE;
4. BE OR HAVE BEEN A POLITICAL PARTY CHAIRMAN, AS DEFINED IN PARAGRAPH (K) OF SUBDIVISION ONE OF SECTION SEVENTY-THREE OF THE PUBLIC OFFICERS LAW;
5. BE THE SPOUSE OF A STATEWIDE ELECTED OFFICIAL OR OF ANY MEMBER OF THE UNITED STATES CONGRESS, OR OF THE STATE LEGISLATURE.

TO THE EXTENT PRACTICABLE, THE MEMBERS OF THE INDEPENDENT REDISTRICTING COMMISSION SHALL REFLECT THE DIVERSITY OF THE RESIDENTS OF THIS STATE WITH REGARD TO RACE, ETHNICITY, GENDER, LANGUAGE, AND GEOGRAPHIC RESIDENCE AND TO THE EXTENT PRACTICABLE THE APPOINTING AUTHORITIES SHALL CONSULT WITH ORGANIZATIONS DEVOTED TO PROTECTING THE VOTING RIGHTS OF MINORITY AND OTHER VOTERS CONCERNING POTENTIAL APPOINTEEES TO THE COMMISSION.

VACANCIES IN THE MEMBERSHIP OF THE COMMISSION SHALL BE FILLED WITHIN THIRTY DAYS IN THE MANNER PROVIDED FOR IN THE ORIGINAL APPOINTMENTS.

THE LEGISLATURE SHALL PROVIDE BY LAW FOR THE COMPENSATION OF THE MEMBERS OF THE INDEPENDENT REDISTRICTING COMMISSION, INCLUDING COMPENSATION FOR ACTUAL AND NECESSARY EXPENSES INCURRED IN THE PERFORMANCE OF THEIR DUTIES.

A MINIMUM OF FIVE MEMBERS OF THE INDEPENDENT REDISTRICTING COMMISSION SHALL CONSTITUTE A QUORUM FOR THE TRANSACTION OF ANY BUSINESS OR THE EXERCISE OF ANY POWER OF SUCH COMMISSION PRIOR TO THE APPOINTMENT OF THE TWO COMMISSION MEMBERS APPOINTED PURSUANT TO PARAGRAPH (5) OF SUBDIVISION (A) OF THIS SECTION, AND A MINIMUM OF SEVEN MEMBERS SHALL CONSTITUTE A QUORUM AFTER SUCH MEMBERS HAVE BEEN APPOINTED, AND NO EXERCISE OF ANY POWER OF THE INDEPENDENT REDISTRICTING COMMISSION SHALL OCCUR WITHOUT THE AFFIRMATIVE VOTE OF AT LEAST A MAJORITY OF THE MEMBERS, PROVIDED THAT, IN ORDER TO APPROVE ANY REDISTRICTING PLAN AND IMPLEMENTING LEGISLATION, THE FOLLOWING RULES SHALL APPLY:

1. IN THE EVENT THAT THE SPEAKER OF THE ASSEMBLY AND THE TEMPORARY PRESIDENT OF THE SENATE ARE MEMBERS OF THE SAME POLITICAL PARTY, APPROVAL OF A REDISTRICTING PLAN AND IMPLEMENTING LEGISLATION BY THE COMMISSION FOR SUBMISSION TO THE LEGISLATURE SHALL REQUIRE THE VOTE IN SUPPORT OF ITS APPROVAL BY AT LEAST SEVEN MEMBERS INCLUDING AT LEAST ONE MEMBER APPOINTED BY EACH OF THE LEGISLATIVE LEADERS.

2. IN THE EVENT THAT THE SPEAKER OF THE ASSEMBLY AND THE TEMPORARY PRESIDENT OF THE SENATE ARE MEMBERS OF TWO DIFFERENT POLITICAL PARTIES, APPROVAL OF A REDISTRICTING PLAN BY THE COMMISSION FOR SUBMISSION TO THE LEGISLATURE SHALL REQUIRE THE VOTE IN SUPPORT OF ITS APPROVAL BY AT LEAST SEVEN MEMBERS INCLUDING AT LEAST ONE MEMBER APPOINTED BY THE SPEAKER OF THE ASSEMBLY AND ONE MEMBER APPOINTED BY THE TEMPORARY PRESIDENT OF THE SENATE.

3. IN THE EVENT THAT THE COMMISSION IS UNABLE TO OBTAIN SEVEN VOTES TO APPROVE A REDISTRICTING PLAN ON OR BEFORE JANUARY FIRST IN THE YEAR ENDING IN TWO OR AS SOON AS PRACTICABLE THEREAFTER, THE COMMISSION SHALL SUBMIT TO THE LEGISLATURE THAT REDISTRICTING PLAN AND IMPLEMENTING LEGISLATION THAT GARNERED THE HIGHEST NUMBER OF VOTES IN SUPPORT OF ITS APPROVAL BY THE COMMISSION WITH A RECORD OF THE VOTES TAKEN.
EVENT THAT MORE THAN ONE PLAN RECEIVED THE SAME NUMBER OF VOTES FOR
APPROVAL, AND SUCH NUMBER WAS HIGHER THAN THAT FOR ANY OTHER PLAN, THEN
THE COMMISSION SHALL SUBMIT ALL PLANS THAT OBTAINED SUCH NUMBER OF
VOTES. THE LEGISLATURE SHALL CONSIDER AND VOTE UPON SUCH IMPLEMENTING
LEGISLATION IN ACCORDANCE WITH THE VOTING RULES SET FORTH IN SUBDIVISION
(B) OF SECTION FOUR OF THIS ARTICLE.

(H) (1) THE INDEPENDENT REDISTRICTING COMMISSION SHALL APPOINT TWO
CO-EXECUTIVE DIRECTORS BY A MAJORITY VOTE OF THE COMMISSION IN ACCORD-
ANCE WITH THE FOLLOWING PROCEDURE:
   (I) IN THE EVENT THAT THE SPEAKER OF THE ASSEMBLY AND THE TEMPORARY
   PRESIDENT OF THE SENATE ARE MEMBERS OF TWO DIFFERENT POLITICAL PARTIES,
   THE CO-EXECUTIVE DIRECTORS SHALL BE APPROVED BY A MAJORITY OF THE
   COMMISSION THAT INCLUDES AT LEAST ONE APPOINTEE BY THE SPEAKER OF THE
   ASSEMBLY AND AT LEAST ONE APPOINTEE BY THE TEMPORARY PRESIDENT OF THE
   SENATE.
   (II) IN THE EVENT THAT THE SPEAKER OF THE ASSEMBLY AND THE TEMPORARY
   PRESIDENT OF THE SENATE ARE MEMBERS OF THE SAME POLITICAL PARTY, THE
   CO-EXECUTIVE DIRECTORS SHALL BE APPROVED BY A MAJORITY OF THE COMMISSION
   THAT INCLUDES AT LEAST ONE APPOINTEE BY EACH OF THE LEGISLATIVE LEADERS.
   (2) ONE OF THE CO-EXECUTIVE DIRECTORS SHALL BE ENROLLED IN THE POLI-
   TICAL PARTY WITH THE HIGHEST NUMBER OF ENROLLED MEMBERS IN THE STATE AND
   ONE SHALL BE ENROLLED IN THE POLITICAL PARTY WITH THE SECOND HIGHEST
   NUMBER OF ENROLLED MEMBERS IN THE STATE. THE CO-EXECUTIVE DIRECTORS
   SHALL APPOINT SUCH STAFF AS ARE NECESSARY TO PERFORM THE COMMISSION'S
   DUTIES, EXCEPT THAT THE COMMISSION SHALL REVIEW A STAFFING PLAN PREPARED
   AND PROVIDED BY THE CO-EXECUTIVE DIRECTORS WHICH SHALL CONTAIN A LIST OF
   THE VARIOUS POSITIONS AND THE DUTIES, QUALIFICATIONS, AND SALARIES ASSO-
   CIATED WITH EACH POSITION.
   (3) IN THE EVENT THAT THE COMMISSION IS UNABLE TO APPOINT ONE OR BOTH
   OF THE CO-EXECUTIVE DIRECTORS WITHIN FORTY-FIVE DAYS OF THE ESTABLISH-
   MENT OF A QUORUM OF SEVEN COMMISSIONERS, THE FOLLOWING PROCEDURE SHALL
   BE FOLLOWED:
   (I) IN THE EVENT THAT THE SPEAKER OF THE ASSEMBLY AND THE TEMPORARY
   PRESIDENT OF THE SENATE ARE MEMBERS OF TWO DIFFERENT POLITICAL PARTIES,
   WITHIN TEN DAYS THE SPEAKER'S APPOINTEES ON THE COMMISSION SHALL APPOINT
   ONE CO-EXECUTIVE DIRECTOR, AND THE TEMPORARY PRESIDENT'S APPOINTEES ON
   THE COMMISSION SHALL APPOINT THE OTHER CO-EXECUTIVE DIRECTOR. ALSO WITH-
   IN TEN DAYS THE MINORITY LEADER OF THE ASSEMBLY SHALL SELECT A CO-DEPUTY
   EXECUTIVE DIRECTOR, AND THE MINORITY LEADER OF THE SENATE SHALL SELECT
   THE OTHER CO-DEPUTY EXECUTIVE DIRECTOR.
   (II) IN THE EVENT THAT THE SPEAKER OF THE ASSEMBLY AND THE TEMPORARY
   PRESIDENT OF THE SENATE ARE MEMBERS OF THE SAME POLITICAL PARTY, WITHIN
   TEN DAYS THE SPEAKER'S AND TEMPORARY PRESIDENT'S APPOINTEES ON THE
   COMMISSION SHALL TOGETHER APPOINT ONE CO-EXECUTIVE DIRECTOR, AND THE TWO
   MINORITY LEADERS' APPOINTEES ON THE COMMISSION SHALL TOGETHER APPOINT
   THE OTHER CO-EXECUTIVE DIRECTOR.
   (4) IN THE EVENT OF A VACANCY IN THE OFFICES OF CO-EXECUTIVE DIRECTOR
   OR CO-DEPUTY EXECUTIVE DIRECTOR, THE POSITION SHALL BE FILLED WITHIN TEN
   DAYS OF ITS OCCURRENCE BY THE SAME APPOINTING AUTHORITY OR AUTHORITIES
   THAT APPOINTED HIS OR HER PREDECESSOR.
   (I) THE STATE BUDGET SHALL INCLUDE NECESSARY APPROPRIATIONS FOR THE
   EXPENSES OF THE INDEPENDENT REDISTRICTING COMMISSION, PROVIDE FOR
   COMPENSATION AND REIMBURSEMENT OF EXPENSES FOR THE MEMBERS AND STAFF OF
   THE COMMISSION, ASSIGN TO THE COMMISSION ANY ADDITIONAL DUTIES THAT THE
   LEGISLATURE MAY DEEM NECESSARY TO THE PERFORMANCE OF THE DUTIES STIPU-
   LATED IN THIS ARTICLE, AND REQUIRE OTHER AGENCIES AND OFFICIALS OF THE
STATE OF NEW YORK AND ITS POLITICAL SUBDIVISIONS TO PROVIDE SUCH INFORMATION AND ASSISTANCE AS THE COMMISSION MAY REQUIRE TO PERFORM ITS DUTIES.

Resolved (if the Senate concur), That the foregoing amendment be submitted to the people for approval at the general election to be held in the year 2014 in accordance with the provisions of the election law.
AN ACT to amend the legislative law, in relation to redistricting of congressional, senate and assembly districts

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. This act shall be known and may be cited as the "Redistricting Reform Act of 2012."

Section 2. The legislative law is amended by adding a new article 6-A to read as follows:

ARTICLE 6-A

REDISTRICTING OF CONGRESSIONAL
AND STATE LEGISLATIVE DISTRICTS

SECTION 93. REDISTRICTING.

1. THE INDEPENDENT REDISTRICTING COMMISSION ESTABLISHED PURSUANT TO SECTION NINETY-FOUR OF THIS ARTICLE SHALL PREPARE A REDISTRICTING PLAN TO ESTABLISH SENATE, ASSEMBLY, AND CONGRESSIONAL DISTRICTS EVERY TEN YEARS COMMENCING IN TWO THOUSAND TWENTY-ONE, AND SHALL SUBMIT TO THE LEGISLATURE SUCH PLAN AND THE IMPLEMENTING LEGISLATION THEREFOR ON OR BEFORE JANUARY FIRST OR AS SOON AS PRACTICABLE THEREAFTER BUT NO LATER THAN JANUARY FIFTEENTH IN THE YEAR ENDING IN TWO BEGINNING IN TWO THOUSAND TWENTY-TWO. THE REDISTRICTING PLANS FOR THE ASSEMBLY AND THE SENATE SHALL BE CONTAINED IN AND VOTED UPON BY THE LEGISLATURE IN A SINGLE BILL, AND THE CONGRESSIONAL DISTRICT PLAN MAY BE INCLUDED IN THE SAME BILL IF THE LEGISLATURE CHOOSES TO DO SO. THE IMPLEMENTING LEGISLATION SHALL BE VOTED UPON, WITHOUT AMENDMENT, BY THE SENATE OR THE ASSEMBLY WITHIN TEN DAYS OF THE PLAN'S SUBMISSION OR WITHIN TEN DAYS AFTER JANUARY FIRST IN A YEAR ENDING IN TWO, WHICHEVER IS

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

LBD12110-11-2
LATER. IF APPROVED BY THE FIRST HOUSE VOTING UPON IT, SUCH LEGISLATION
SHALL BE DELIVERED TO THE OTHER HOUSE IMMEDIATELY TO BE VOTED UPON,
WITHOUT AMENDMENT, WITHIN FIVE DAYS FROM DELIVERY. IF APPROVED BY BOTH
HOUSES, SUCH LEGISLATION SHALL BE PRESENTED TO THE GOVERNOR FOR ACTION
WITHIN THREE DAYS.

IF EITHER HOUSE SHALL FAIL TO APPROVE THE LEGISLATION IMPLEMENTING THE
FIRST REDISTRICTING PLAN, OR THE GOVERNOR SHALL VETO SUCH LEGISLATION
AND THE LEGISLATURE SHALL FAIL TO OVERRIDE SUCH VETO WITHIN TEN DAYS OF
SUCH VETO, EACH HOUSE OR THE GOVERNOR IF HE OR SHE VETOEES IT, SHALL
NOTIFY THE COMMISSION THAT SUCH LEGISLATION HAS BEEN DISAPPROVED WITHIN
THREE DAYS OF SUCH DISAPPROVAL. WITHIN FIFTEEN DAYS OF SUCH NOTIFICA-
TION AND IN NO CASE LATER THAN FEBRUARY TWENTY-EIGHTH OF A YEAR ENDING
IN TWO, THE REDISTRICTING COMMISSION SHALL PREPARE AND SUBMIT TO THE
LEGISLATURE A SECOND REDISTRICTING PLAN AND THE NECESSARY IMPLEMENTING
LEGISLATION FOR SUCH PLAN. WITHIN TEN DAYS OF ITS SUBMISSION SUCH
LEGISLATION SHALL BE VOTED UPON, WITHOUT AMENDMENT, BY THE SENATE OR THE
ASSEMBLY AND, IF APPROVED BY THE FIRST HOUSE VOTING UPON IT, SUCH LEGIS-
LATION SHALL BE DELIVERED TO THE OTHER HOUSE IMMEDIATELY TO BE VOTED
UPON, WITHOUT AMENDMENT, WITHIN FIVE DAYS FROM DELIVERY. IF APPROVED BY
BOTH HOUSES, SUCH LEGISLATION SHALL BE PRESENTED TO THE GOVERNOR FOR
ACTION WITHIN THREE DAYS.

IF EITHER HOUSE SHALL FAIL TO APPROVE THE LEGISLATION IMPLEMENTING THE
SECOND REDISTRICTING PLAN, OR THE GOVERNOR SHALL VETO SUCH LEGISLATION
AND THE LEGISLATURE SHALL FAIL TO OVERRIDE SUCH VETO WITHIN TEN DAYS OF
SUCH VETO, EACH HOUSE SHALL INTRODUCE SUCH IMPLEMENTING LEGISLATION WITH
ANY AMENDMENTS EACH HOUSE OF THE LEGISLATURE DEEMS NECESSARY. ALL SUCH
AMENDMENTS SHALL COMPLY WITH THE PROVISIONS OF THIS ARTICLE. IF APPROVED
BY BOTH HOUSES, SUCH LEGISLATION SHALL BE PRESENTED TO THE GOVERNOR FOR
ACTION WITHIN THREE DAYS.

ALL VOTES BY THE SENATE OR ASSEMBLY ON ANY REDISTRICTING PLAN LEGIS-
LATION PURSUANT TO THIS ARTICLE SHALL BE CONDUCTED IN ACCORDANCE WITH
THE FOLLOWING RULES:

(A) IN THE EVENT THAT THE SPEAKER OF THE ASSEMBLY AND THE TEMPORARY
PRESIDENT OF THE SENATE ARE MEMBERS OF TWO DIFFERENT POLITICAL PARTIES,
APPROVAL OF LEGISLATION DULY APPROVED AND SUBMITTED BY THE INDEPENDENT
REDISTRICTING COMMISSION PURSUANT TO SUBDIVISION SIX OF SECTION NINETY-
FOUR OF THIS ARTICLE SHALL REQUIRE THE VOTE IN SUPPORT OF ITS PASSAGE BY
AT LEAST A MAJORITY OF THE MEMBERS ELECTED TO EACH HOUSE.

(B) IN THE EVENT THAT THE SPEAKER OF THE ASSEMBLY AND THE TEMPORARY
PRESIDENT OF THE SENATE ARE MEMBERS OF TWO DIFFERENT POLITICAL PARTIES,
APPROVAL OF LEGISLATION THAT WAS SUBMITTED BY THE INDEPENDENT REDIS-
TRICTING COMMISSION PURSUANT TO SUBDIVISION SEVEN OF SECTION NINETY-FOUR
OF THIS ARTICLE SHALL REQUIRE THE VOTE IN SUPPORT OF ITS PASSAGE BY AT
LEAST SIXTY PERCENT OF THE MEMBERS ELECTED TO EACH HOUSE.

(C) IN THE EVENT THAT THE SPEAKER OF THE ASSEMBLY AND THE TEMPORARY
PRESIDENT OF THE SENATE ARE MEMBERS OF THE SAME POLITICAL PARTY,
APPROVAL OF LEGISLATION SUBMITTED BY THE INDEPENDENT REDISTRICTING
COMMISSION PURSUANT TO SUBDIVISION SIX OR SEVEN OF SECTION NINETY-FOUR
OF THIS ARTICLE SHALL REQUIRE THE VOTE IN SUPPORT OF ITS PASSAGE BY AT
LEAST TWO-THIRDS OF THE MEMBERS ELECTED TO EACH HOUSE.

2. SUBJECT TO THE REQUIREMENTS OF THE FEDERAL CONSTITUTION AND STAT-
UTES AND IN COMPLIANCE WITH STATE CONSTITUTIONAL REQUIREMENTS, THE
FOLLOWING PRINCIPLES SHALL BE USED IN THE CREATION OF STATE SENATE AND
STATE ASSEMBLY DISTRICTS AND CONGRESSIONAL DISTRICTS:

(A) WHEN DRAWING DISTRICT LINES, THE COMMISSION SHALL CONSIDER WHETHER
SUCH LINES WOULD RESULT IN THE DENIAL OR ABRIDGEMENT OF RACIAL OR
LANGUAGE MINORITY VOTING RIGHTS, AND DISTRICTS SHALL NOT BE DRAWN TO HAVE THE PURPOSE OF, NOR SHALL THEY RESULT IN, THE DENIAL OR ABRIDGEMENT OF SUCH RIGHTS. DISTRICTS SHALL BE DRAWN SO THAT, BASED ON THE TOTALITY OF THE CIRCUMSTANCES, RACIAL OR MINORITY LANGUAGE GROUPS DO NOT HAVE LESS OPPORTUNITY TO PARTICIPATE IN THE POLITICAL PROCESS THAN OTHER MEMBERS OF THE ELECTORATE AND TO ELECT REPRESENTATIVES OF THEIR CHOICE.

(B) TO THE EXTENT PRACTICABLE, DISTRICTS SHALL CONTAIN AS NEARLY AS MAY BE AN EQUAL NUMBER OF INHABITANTS. FOR EACH DISTRICT THAT DEVIATES FROM THIS REQUIREMENT, THE COMMISSION SHALL PROVIDE A SPECIFIC PUBLIC EXPLANATION AS TO WHY SUCH DEVIATION EXISTS.

(C) EACH DISTRICT SHALL CONSIST OF CONTIGUOUS TERRITORY.

(D) EACH DISTRICT SHALL BE AS COMPACT IN FORM AS PRACTICABLE.

(E) DISTRICTS SHALL NOT BE DRAWN TO DISCOURAGE COMPETITION OR FOR THE PURPOSE OF FAVORING OR DISFAVORING INCUMBENTS OR OTHER PARTICULAR CANDIDATES OR POLITICAL PARTIES. THE COMMISSION SHALL CONSIDER THE MAINTENANCE OF CORES OF EXISTING DISTRICTS, OF PRE-EXISTING POLITICAL SUBDIVISIONS, INCLUDING COUNTIES, CITIES, AND TOWNS, AND OF COMMUNITIES OF INTEREST.

(F) IN DRAWING SENATE DISTRICTS, TOWNS OR BLOCKS WHICH, FROM THEIR LOCATION MAY BE INCLUDED IN EITHER OF TWO DISTRICTS, SHALL BE SO PLACED AS TO MAKE SAID DISTRICTS MOST NEARLY EQUAL IN NUMBER OF INHABITANTS. THE REQUIREMENTS THAT SENATE DISTRICTS NOT DIVIDE COUNTIES OR TOWNS, AS WELL AS THE 'BLOCK-ON-BORDER' AND 'TOWN-ON-BORDER' RULES, SHALL REMAIN IN EFFECT.

DURING THE PREPARATION OF THE REDISTRICTING PLAN, THE INDEPENDENT REDISTRICTING COMMISSION SHALL CONDUCT NOT LESS THAN ONE PUBLIC HEARING ON PROPOSALS FOR THE REDISTRICTING OF CONGRESSIONAL AND STATE LEGISLATIVE DISTRICTS IN EACH OF THE FOLLOWING (I) CITIES: ALBANY, BUFFALO, SYRACUSE, ROCHESTER, AND WHITE Plains; AND (II) COUNTIES: BRONX, KINGS, NEW YORK, QUEENS, RICHMOND, NASSAU, AND SUFFOLK. NOTICE OF ALL SUCH HEARINGS SHALL BE WIDELY PUBLISHED USING THE BEST AVAILABLE MEANS AND MEDIA A REASONABLE TIME BEFORE EVERY HEARING. AT LEAST THIRTY DAYS PRIOR TO THE FIRST PUBLIC HEARING AND IN ANY EVENT NO LATER THAN SEPTEMBER FIFTEENTH OF THE YEAR ENDING IN ONE OR AS SOON AS PRACTICABLE THEREAFTER, THE INDEPENDENT REDISTRICTING COMMISSION SHALL MAKE WIDELY AVAILABLE TO THE PUBLIC, IN PRINT FORM AND USING THE BEST AVAILABLE TECHNOLOGY, ITS DRAFT REDISTRICTING PLANS, RELEVANT DATA, AND RELATED INFORMATION. SUCH PLANS, DATA, AND INFORMATION SHALL BE IN A FORM THAT ALLOWS AND FACILITATES THEIR USE BY THE PUBLIC TO REVIEW, ANALYZE, AND COMMENT UPON SUCH PLANS AND TO DEVELOP ALTERNATIVE REDISTRICTING PLANS FOR PRESENTATION TO THE COMMISSION AT THE PUBLIC HEARINGS. THE INDEPENDENT REDISTRICTING COMMISSION SHALL REPORT THE FINDINGS OF ALL SUCH HEARINGS TO THE LEGISLATURE UPON SUBMISSION OF A REDISTRICTING PLAN.

3. THE PROCESS FOR REDISTRICTING CONGRESSIONAL AND STATE LEGISLATIVE DISTRICTS ESTABLISHED BY THIS ARTICLE SHALL GOVERN REDISTRICTING IN THIS STATE 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.

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.

4. IN ANY JUDICIAL PROCEEDING RELATING TO REDISTRICTING OF CONGRESSIONAL OR STATE LEGISLATIVE DISTRICTS, ANY LAW ESTABLISHING CONGRESSIONAL OR STATE LEGISLATIVE DISTRICTS FOUND TO VIOLATE THE PROVISIONS OF THIS ARTICLE SHALL BE INVALID IN WHOLE OR IN PART. IN THE EVENT THAT A
COURT FINDS SUCH A VIOLATION, THE LEGISLATURE SHALL HAVE A FULL AND
REASONABLE OPPORTUNITY TO CORRECT THE LAW'S LEGAL INFIRMITIES.

S 94. INDEPENDENT REDISTRICTING COMMISSION. 1. ON OR BEFORE FEBRUARY
FIRST OF EACH YEAR ENDING WITH A ZERO AND 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. THE
INDEPENDENT REDISTRICTING COMMISSION SHALL BE COMPOSED OF TEN MEMBERS,
APPOINTED AS FOLLOWS:
(A) TWO MEMBERS SHALL BE APPOINTED BY THE TEMPORARY PRESIDENT OF THE
SENATE;
(B) TWO MEMBERS SHALL BE APPOINTED BY THE SPEAKER OF THE ASSEMBLY;
(C) TWO MEMBERS SHALL BE APPOINTED BY THE MINORITY LEADER OF THE
SENATE;
(D) TWO MEMBERS SHALL BE APPOINTED BY THE MINORITY LEADER OF THE
ASSEMBLY;
(E) TWO MEMBERS SHALL BE APPOINTED BY THE EIGHT MEMBERS APPOINTED
Pursuant to Paragraphs (A) Through (D) of This Subdivision by a Vote of
Not Less Than Five Members in Favor of Such Appointment, and These Two
Members Shall Not Have Been Enrolled in the Preceding Five Years in
Either of the Two Political Parties That Contain the Largest or Second
Largest Number of Enrolled Voters Within the State;
(F) ONE MEMBER SHALL BE DESIGNATED CHAIR OF THE COMMISSION BY A MAJOR-
ITY OF THE MEMBERS APPOINTED PURSUANT TO PARAGRAPHS (A) THROUGH (E) OF
THIS SUBDIVISION TO CONVENE AND PRESIDE OVER EACH MEETING OF THE COMMIS-
SION.

2. THE MEMBERS OF THE INDEPENDENT REDISTRICTING COMMISSION SHALL BE
REGISTERED VOTERS IN THIS STATE. NO MEMBER SHALL WITHIN THE LAST THREE
YEARS:
(A) BE OR HAVE BEEN A MEMBER OF THE NEW YORK STATE LEGISLATURE OR
UNITED STATES CONGRESS OR A STATEWIDE ELECTED OFFICIAL;
(B) BE OR HAVE BEEN A STATE OFFICER OR EMPLOYEE OR LEGISLATIVE EMPLOY-
EE AS DEFINED IN SECTION SEVENTY-THREE OF THE PUBLIC OFFICERS LAW.
(C) BE OR HAVE BEEN A REGISTERED LOBBYIST IN NEW YORK STATE;
(D) BE OR HAVE BEEN A POLITICAL PARTY CHAIRMAN, AS DEFINED IN PARA-
GRAPH (K) OF SUBDIVISION ONE OF SECTION SEVENTY-THREE OF THE PUBLIC
OFFICERS LAW;
(E) BE THE SPOUSE OF A STATEWIDE ELECTED OFFICIAL OR OF ANY MEMBER OF
THE UNITED STATES CONGRESS, OR OF THE STATE LEGISLATURE.

3. TO THE EXTENT PRACTICABLE, THE MEMBERS OF THE INDEPENDENT REDIS-
TRICTING COMMISSION SHALL REFLECT THE DIVERSITY OF THE RESIDENTS OF THIS
STATE WITH REGARD TO RACE, ETHNICITY, GENDER, LANGUAGE, AND GEOGRAPHIC
RESIDENCE AND TO THE EXTENT PRACTICABLE THE APPOINTING AUTHORITIES SHALL
CONSULT WITH ORGANIZATIONS DEVOTED TO PROTECTING THE VOTING RIGHTS OF
MINORITY AND OTHER VOTERS CONCERNING POTENTIAL APPOINTEES TO THE COMMIS-
SION.

4. VACANCIES IN THE MEMBERSHIP OF THE COMMISSION SHALL BE FILLED WITH-
IN THIRTY DAYS IN THE MANNER PROVIDED FOR IN THE ORIGINAL APPOINTMENTS.
5. THE MEMBERS OF THE INDEPENDENT REDISTRICTING COMMISSION SHALL
receive reimbursement for actual and necessary expenses incurred in the
performance of their duties.
6. A MINIMUM OF FIVE MEMBERS OF THE INDEPENDENT REDISTRICTING COMMI-
SION SHALL CONSTITUTE A QUORUM FOR THE TRANSACTION OF ANY BUSINESS OR
THE EXERCISE OF ANY POWER OF SUCH COMMISSION PRIOR TO THE APPOINTMENT OF
THE TWO COMMISSION MEMBERS APPOINTED PURSUANT TO PARAGRAPH (E) OF SUBDI-
VISION ONE OF THIS SECTION, AND A MINIMUM OF SEVEN MEMBERS SHALL CONSTI-
A quorum after such members have been appointed, and no exercise of
any power of the independent redistricting commission shall occur with-
out the affirmative vote of at least a majority of the members, provided
that, in order to approve any redistricting plan and implementing legis-
lation, the following rules shall apply:

(A) in the event that the speaker of the assembly and the temporary
president of the senate are members of the same political party,
approval of a redistricting plan and implementing legislation by the
commission for submission to the legislature shall require the vote in
support of its approval by at least seven members including at least one
member appointed by each of the legislative leaders.

(B) in the event that the speaker of the assembly and the temporary
president of the senate are members of two different political parties,
approval of a redistricting plan by the commission for submission to the
legislature shall require the vote in support of its approval by at
least seven members including at least one member appointed by the
speaker of the assembly and one member appointed by the temporary presi-
dent of the senate.

7. In the event that the commission is unable to obtain seven votes to
approve a redistricting plan on or before January first in the year
ending in two or as soon as practicable thereafter, the commission shall
submit to the legislature that redistricting plan and implementing
legislation that garnered the highest number of votes in support of its
approval by the commission with a record of the votes taken. In the
event that more than one plan received the same number of votes for
approval, and such number was higher than that for any other plan, then
the commission shall submit all plans that obtained such number of
votes. The legislature shall consider and vote upon such implementing
legislation in accordance with the voting rules set forth in section
ninety-three of this article. Any amendments to such plans by the legis-
lature shall comply with the provisions of this article.

8. (A) the independent redistricting commission shall appoint two
co-executive directors by a majority vote of the commission in accord-
ance with the following procedure:

(1) in the event that the the speaker of the assembly and the tempo-
rary president of the senate are members of two different political
parties, the co-executive directors shall be approved by a majority of
the commission that includes at least one appointee by the speaker of
the assembly and at least one appointee by the temporary president of
the senate.

(2) in the event that the speaker of the assembly and the temporary
president of the senate are members of the same political party, the
co-executive directors shall be approved by a majority of the commission
that includes at least one appointee by each of the legislative leaders.

(B) one of the co-executive directors shall be enrolled in the poli-
tical party with the highest number of enrolled members in the state and
one shall be enrolled in the political party with the second highest
number of enrolled members in the state. The co-executive directors
shall appoint such staff as are necessary to perform the commission's
duties, except that the commission shall review a staffing plan prepared
and provided by the co-executive directors which shall contain a list of
the various positions and the duties, qualifications, and salaries asso-
ciated with each position.

(C) in the event that the commission is unable to appoint one or both
of the co-executive directors within forty-five days of the establish-
MENT OF A QUORUM OF SEVEN COMMISSIONERS, THE FOLLOWING PROCEDURE SHALL
BE FOLLOWED:

(1) IN THE EVENT THAT THE SPEAKER OF THE ASSEMBLY AND THE TEMPORARY
PRESIDENT OF THE SENATE ARE MEMBERS OF TWO DIFFERENT POLITICAL PARTIES,
WITHIN TEN DAYS THE SPEAKER'S APPOINTEES ON THE COMMISSION SHALL APPOINT
ONE CO-EXECUTIVE DIRECTOR, AND THE TEMPORARY PRESIDENT'S APPOINTEES ON
THE COMMISSION SHALL APPOINT THE OTHER CO-EXECUTIVE DIRECTOR. ALSO WITHIN
TEN DAYS THE MINORITY LEADER OF THE ASSEMBLY SHALL SELECT A CO-DEPUTY
EXECUTIVE DIRECTOR, AND THE MINORITY LEADER OF THE SENATE SHALL SELECT
THE OTHER CO-DEPUTY EXECUTIVE DIRECTOR.

(2) IN THE EVENT THAT THE SPEAKER OF THE ASSEMBLY AND THE TEMPORARY
PRESIDENT OF THE SENATE ARE MEMBERS OF THE SAME POLITICAL PARTY, WITHIN
TEN DAYS THE SPEAKER'S AND TEMPORARY PRESIDENT'S APPOINTEES ON THE
COMMISSION SHALL TOGETHER APPOINT ONE CO-EXECUTIVE DIRECTOR, AND THE TWO
MINORITY LEADERS' APPOINTEES ON THE COMMISSION SHALL TOGETHER APPOINT
THE OTHER CO-EXECUTIVE DIRECTOR.

(D) IN THE EVENT OF A VACANCY IN THE OFFICES OF CO-EXECUTIVE DIRECTOR
OR CO-DEPUTY EXECUTIVE DIRECTOR, THE POSITION SHALL BE FILLED WITHIN TEN
DAYS OF ITS OCCURRENCE BY THE SAME APPOINTING AUTHORITY OR AUTHORITIES
THAT APPOINTED HIS OR HER PREDECESSOR.

9. THE STATE BUDGET SHALL INCLUDE NECESSARY APPROPRIATIONS FOR THE
EXPENSES OF THE INDEPENDENT REDISTRICTING COMMISSION, PROVIDE FOR
COMPENSATION AND REIMBURSEMENT OF EXPENSES FOR THE MEMBERS AND STAFF OF
THE COMMISSION, ASSIGN TO THE COMMISSION ANY ADDITIONAL DUTIES THAT THE
LEGISLATURE MAY DEEM NECESSARY TO THE PERFORMANCE OF THE DUTIES STIPULATED IN THIS ARTICLE, AND REQUIRE OTHER AGENCIES AND OFFICIALS OF THE
STATE OF NEW YORK AND ITS POLITICAL SUBDIVISIONS TO PROVIDE SUCH INFOR-
MATION AND ASSISTANCE AS THE COMMISSION MAY REQUIRE TO PERFORM ITS
DUTIES.

S 3. Any amendments by the senate or assembly to a redistricting plan
submitted by the independent redistricting commission, shall not affect
more than two percent of the population of any district contained in
such plan. If two or more plans for districts in the same legislative
house or for congressional districts are submitted by the commission and
voted upon by the legislature, such plans shall be considered individ-
ually and not combined.

S 4. (a) The independent redistricting commission established pursuant
to section 5-b of article 3 of the constitution shall submit to the
legislature such plan and the implementing legislation therefore on or
before January first or as soon as practicable thereafter but no later
than January fifteenth in the year ending in two beginning in two thou-
sand twenty-two. Within ten days of the plan's submission or within ten
days after January first in a year ending in two, whichever is later,
the implementing legislation shall be voted upon without amendment by
the senate or the assembly. If approved by the first house voting upon
it, such legislation shall be delivered to the other house immediately
to be voted upon, without amendment, within five days from delivery. If
approved by both houses such legislation shall be presented to the
governor for action within three days.

(b) If either house shall fail to approve the legislation implementing
the first redistricting plan, or the governor shall veto such legis-
lation and the legislature shall fail to override such veto within ten
days of such veto, each house or the governor, if he or she vetoes it,
shall notify the commission that such legislation has been disapproved
within three days of such disapproval. Within fifteen days of such
notification and in no case later than February twenty-eighth of a year
ending in two, the redistricting commission shall prepare and submit to
the legislature a second redistricting plan and the necessary implement-
ing legislation for such plan. Within ten days of its submission such
legislation shall be voted upon, without amendment, by the senate or
assembly and, if approved by the first house voting upon it, such legis-
lation shall be delivered to the other house immediately to be voted
upon without amendment, within five days from delivery. If approved by
both houses, such legislation shall be presented to the governor for
action within three days.

(c) If either house shall fail to approve the legislation implementing
the second redistricting plan, or the governor shall veto such legis-
lation and the legislature shall fail to override such veto within ten
days of such veto, each house shall introduce such implementing legis-
lation with any amendments each house deems necessary. If approved by
both houses, such legislation shall be presented to the governor for
action within three days.

S 5. The house that first approved in 2012 the amendment entitled
"Concurrent Resolution of the Senate and Assembly proposing an amendment
to article 3 of the constitution, in relation to the establishment of
the independent redistricting commission" (hereinafter "the amendment")
shall when considering the resolution in 2013 vote upon the amendment
first in the next session of the legislature and in any event shall do
so no later than January 15, 2013. The house that approved the amendment
second in 2012 shall also vote upon the amendment second in the next
session and in any event no later than January 30, 2013.

S 6. (a) If the house that first votes upon the amendment in the next
session approves such amendment, and the other house approves it there-
after, then the amendment shall be considered for approval by the voters
and this act shall not take effect except that sections three and four
of this act shall then take effect upon the people approving and ratify-
ing such amendment by a majority of the electors voting thereon. If the
house that first votes upon the amendment in the next session approves
such amendment, and the other house disapproves it thereafter or fails
to vote upon the amendment within fifteen days of the first house's vote
or by January 30, 2013, whichever is sooner, then this act shall take
effect immediately in its entirety except that wherever in this act the
legislative leaders of the house that failed to approve the amendment
shall appoint a member of the independent redistricting commission or a
staff member of the commission, then the governor shall replace that
house's legislative leaders as the appointing authority and shall make
such appointments as provided for in this act.

(b) If the house that first votes upon the amendment in the next
session disapproves such amendment or fails to vote upon the amendment
prior to January 15, 2013, and the other house approves it thereafter,
then this act shall take effect immediately except that wherever in this
act the legislative leaders of the house that failed to approve the amendment
shall appoint a member of the independent redistricting commission or a
staff member of the commission, then the governor shall replace that
house's legislative leaders as the appointing authority and shall make
such appointments as provided for in this act.

(c) If the house that first votes upon the amendment in the next
session disapproves such amendment or fails to vote upon the amendment
prior to January 15, 2013, and the other house disapproves it thereafter
or fails to vote upon the amendment within fifteen days of the first
house's vote or by January 30, 2013, whichever is sooner, then this act
shall take effect immediately in its entirety except that wherever in
this act the legislative leaders shall appoint a member of the independent redistricting commission or a staff member of the commission, then the governor shall replace each legislative leader as the appointing authority and shall make such appointments as provided for in this act.
VOTING RIGHTS ACT OF 1965

[Public Law 89–110, 79 Stat. 437]

[As Amended Through P.L. 110–258, Enacted July 1, 2008]

AN ACT To enforce the fifteenth amendment to the Constitution of the United States, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act shall be known as the “Voting Rights Act of 1965”.

TITLE I—VOTING RIGHTS

SEC. 2. [52 U.S.C. 10301] (a) No voting qualification or prerequisite to voting or standard, practice, or procedure shall be imposed or applied by any State or political subdivision in a manner which results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color, or in contravention of the guarantees set forth in section 4(f)(2), as provided in subsection (b).

(b) A violation of subsection (a) is established if, based on the totality of circumstances, it is shown that the political processes leading to nomination or election in the State or political subdivision are not equally open to participation by members of a class of citizens protected by subsection (a) in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice. The extent to which members of a protected class have been elected to office in the State or political subdivision is one circumstance which may be considered: Provided, That nothing in this section establishes a right to have members of a protected class elected in numbers equal to their proportion in the population.

SEC. 3. [52 U.S.C. 10302] (a) Whenever the Attorney General or an aggrieved person institutes a proceeding under any statute to enforce the voting guarantees of the fourteenth or fifteenth amendment in any State or political subdivision the court shall au-
authorize the appointment of Federal observers by the United States Civil Service Commission in accordance with section 6 to serve for such period of time and for such political subdivisions as the court shall determine is appropriate to enforce the voting guarantees of the fourteenth or fifteenth amendment (1) as part of any interlocutory order if the court determines that the appointment of such observers is necessary to enforce such voting guarantees or (2) as part of any final judgment if the court finds that violations of the fourteenth or fifteenth amendment justifying equitable relief have occurred in such State or subdivision: Provided, That the court need not authorize the appointment of observers if any incidents of denial or abridgement of the right to vote on account of race or color, or in contravention of the guarantees set forth in section 4(f)(2), (1) have been few in number and have been promptly and effectively corrected by State or local action, (2) the continuing effect of such incidents has been eliminated, and (3) there is no reasonable probability of their recurrence in the future.

(b) If in a proceeding instituted by the Attorney General or an aggrieved person under any statute to enforce the voting guarantees of the fourteenth or fifteenth amendment in any State or political subdivision the court finds that a test or device has been used for the purpose or with the effect of denying or abridging the right of any citizen of the United States to vote on account of race or color, or in contravention of the guarantees set forth in section 4(f)(2), it shall suspend the use of tests and devices in such State or political subdivisions as the court shall determine is appropriate and for such period as it deems necessary.

(c) If in any proceeding instituted by the Attorney General or an aggrieved person under any statute to enforce the voting guarantees of the fourteenth or fifteenth amendment in any State or political subdivision the court finds that violations of the fourteenth or fifteenth amendment justifying equitable relief have occurred within the territory of such State or political subdivision, the court, in addition to such relief as it may grant, shall retain jurisdiction for such period as it may deem appropriate and during such period no voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect at the time the proceeding was commenced shall be enforced unless and until the court finds that such qualification, prerequisite, standard, practice, or procedure does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color, or in contravention of the guarantees set forth in section 4(f)(2): Provided, That such qualification, prerequisite, standard, practice, or procedure may be enforced if the qualification, prerequisite, standard, practice, or procedure has been submitted by the chief legal officer or other appropriate official of such State or subdivision to the Attorney General and the Attorney General has not interposed an objection within sixty days after such submission, except that neither the court's finding nor the Attorney General's failure to object shall bar a subsequent ac-

1 All functions vested in the United States Civil Service Commission are transferred to the Director of the Office of Personnel Management pursuant to Reorg. Plan No. 2 of 1978, section 162, 43 F.R. 36037, 92 Stat. 3783.
To assure that the right of citizens of the United States to vote is not denied or abridged on account of race or color, no citizen shall be denied the right to vote in any Federal, State, or local election because of his failure to comply with any test or device in any State with respect to which the determinations have been made under the first two sentences of subsection (b) or in any political subdivision of such State (as such subdivision existed on the date such determinations were made with respect to such State), though such determinations were not made with respect to such subdivision as a separate unit, or in any political subdivision with respect to which such determinations have been made as a separate unit, unless the United States District Court for the District of Columbia issues a declaratory judgment under this section. No citizen shall be denied the right to vote in any Federal, State, or local election because of his failure to comply with any test or device in any State with respect to which the determinations have been made under the third sentence of subsection (b) of this section or in any political subdivision of such State (as such subdivision existed on the date such determinations were made with respect to such State), though such determinations were not made with respect to such subdivision as a separate unit, unless the United States District Court for the District of Columbia issues a declaratory judgment under this section. A declaratory judgment under this section shall issue only if such court determines that during the ten years preceding the filing of the action, and during the pendency of such action—

(A) no such test or device has been used within such State or political subdivision for the purpose or with the effect of denying or abridging the right to vote on account of race or color or (in the case of a State or subdivision seeking a declaratory judgment under the second sentence of this subsection) in contravention of the guarantees of subsection (f)(2);

(B) no final judgment of any court of the United States, other than the denial of declaratory judgment under this section, has determined that denials or abridgements of the right to vote on account of race or color have occurred anywhere in the territory of such State or political subdivision or (in the case of a State or subdivision seeking a declaratory judgment under the second sentence of this subsection) that denials or abridgements of the right to vote in contravention of the guarantees of subsection (f)(2) have occurred anywhere in the territory of such State or subdivision and no consent decree, settlement, or agreement has been entered into resulting in any abandonment of a voting practice challenged on such grounds; and no declaratory judgment under this section shall be entered during the pendency of an action commenced before the filing of an action under this section and alleging such denials or abridgements of the right to vote;

(C) no Federal examiners or observers under this Act have been assigned to such State or political subdivision;
(D) such State or political subdivision and all governmental units within its territory have complied with section 5 of this Act, including compliance with the requirement that no change covered by section 5 has been enforced without preclearance under section 5, and have repealed all changes covered by section 5 to which the Attorney General has successfully objected or as to which the United States District Court for the District of Columbia has denied a declaratory judgment;

(E) the Attorney General has not interposed any objection (that has not been overturned by a final judgment of a court) and no declaratory judgment has been denied under section 5, with respect to any submission by or on behalf of the plaintiff or any governmental unit within its territory under section 5, and no such submissions or declaratory judgment actions are pending; and

(F) such State or political subdivision and all governmental units within its territory—

(i) have eliminated voting procedures and methods of election which inhibit or dilute equal access to the electoral process;

(ii) have engaged in constructive efforts to eliminate intimidation and harassment of persons exercising rights protected under this Act; and

(iii) have engaged in other constructive efforts, such as expanded opportunity for convenient registration and voting for every person of voting age and the appointment of minority persons as election officials throughout the jurisdiction and at all stages of the election and registration process.

(2) To assist the court in determining whether to issue a declaratory judgment under this subsection, the plaintiff shall present evidence of minority participation, including evidence of the levels of minority group registration and voting, changes in such levels over time, and disparities between minority-group and non-minority-group participation.

(3) No declaratory judgment shall issue under this subsection with respect to such State or political subdivision if such plaintiff and governmental units within its territory have, during the period beginning ten years before the date the judgment is issued, engaged in violations of any provision of the Constitution or laws of the United States or any State or political subdivision with respect to discrimination in voting on account of race or color or (in the case of a State or subdivision seeking a declaratory judgment under the second sentence of this subsection) in contravention of the guarantees of subsection (f)(2) unless the plaintiff establishes that any such violations were trivial, were promptly corrected, and were not repeated.

(4) The State or political subdivision bringing such action shall publicize the intended commencement and any proposed settlement of such action in the media serving such State or political subdivision and in appropriate United States post offices. Any aggrieved party may as of right intervene at any stage in such action.
(5) An action pursuant to this subsection shall be heard and determined by a court of three judges in accordance with the provisions of section 2284 of title 28 of the United States Code and any appeal shall lie to the Supreme Court. The court shall retain jurisdiction of any action pursuant to this subsection for ten years after judgment and shall reopen the action upon motion of the Attorney General or any aggrieved person alleging that conduct has occurred which, had that conduct occurred during the ten-year periods referred to in this subsection, would have precluded the issuance of a declaratory judgment under this subsection. The court, upon such reopening, shall vacate the declaratory judgment issued under this section if, after the issuance of such declaratory judgment, a final judgment against the State or subdivision with respect to which such declaratory judgment was issued, or against any governmental unit within that State or subdivision, determines that denials or abridgements of the right to vote on account of race or color have occurred anywhere in the territory of such State or political subdivision or (in the case of a State or subdivision which sought a declaratory judgment under the second sentence of this subsection) that denials or abridgements of the right to vote in contravention of the guarantees of subsection (f)(2) have occurred anywhere in the territory of such State or subdivision, or if, after the issuance of such declaratory judgment a consent decree, settlement, or agreement has been entered into resulting in any abandonment of a voting practice challenged on such grounds.

(6) If, after two years from the date of the filing of a declaratory judgment under this subsection, no date has been set for a hearing in such action, and that delay has not been the result of an avoidable delay on the part of counsel for any party, the chief judge of the United States District Court for the District of Columbia may request the Judicial Council for the Circuit of the District of Columbia to provide the necessary judicial resources to expedite any action filed under this section. If such resources are unavailable within the circuit, the chief judge shall file a certificate of necessity in accordance with section 292(d) of title 28 of the United States Code.

(7) The Congress shall reconsider the provisions of this section at the end of the fifteen-year period following the effective date of the amendments made by the Fannie Lou Hamer, Rosa Parks, Coretta Scott King, César E. Chávez, Barbara C. Jordan, William C. Velásquez, and Dr. Hector P. Garcia Voting Rights Act Reauthorization and Amendments Act of 2006.

(8) The provisions of this section shall expire at the end of the twenty-five-year period following the effective date of the amendments made by the Fannie Lou Hamer, Rosa Parks, Coretta Scott King, César E. Chávez, Barbara C. Jordan, William C. Velásquez, and Dr. Hector P. Garcia Voting Rights Act Reauthorization and Amendments Act of 2006.

(9) Nothing in this section shall prohibit the Attorney General from consenting to an entry of judgment if based upon a showing of objective and compelling evidence by the plaintiff, and upon investigation, he is satisfied that the State or political subdivision has complied with the requirements of section 4(a)(1). Any aggrieved party may as of right intervene at any stage in such action.
(b) The provisions of subsection (a) shall apply in any State or in any political subdivision of a State which (1) the Attorney General determines maintained on November 1, 1964, any test or device, and with respect to which (2) the Director of the Census determines that less than 50 per centum of the persons of voting age residing therein were registered on November 1, 1964, or that less than 50 per centum of such persons voted in the presidential election of November 1964. On and after August 6, 1970, in addition to any State or political subdivision of a State determined to be subject to subsection (a) pursuant to the previous sentence, the provisions of subsection (a) shall apply in any State or any political subdivision of a State which (i) the Attorney General determines maintained on November 1, 1968, any test or device, and with respect to which (ii) the Director of the Census determines that less than 50 per centum of the persons of voting age residing therein were registered on November 1, 1968, or that less than 50 per centum of such persons voted in the presidential election of November 1968. On and after August 6, 1975, in addition to any State or political subdivision of a State determined to be subject to subsection (a) pursuant to the previous two sentences, the provisions of subsection (a) shall apply in any State or any political subdivision of a State which (i) the Attorney General determines maintained on November 1, 1972, any test or device, and with respect to which (ii) the Director of the Census determines that less than 50 per centum of the citizens of voting age were registered on November 1, 1972, or that less than 50 per centum of such persons voted in the Presidential election of November 1972.

A determination or certification of the Attorney General or of the Director of the Census under this section or under section 8 or section 13 shall not be reviewable in any court and shall be effective upon publication in the Federal Register.

(c) The phrase “test or device” shall mean any requirement that a person as a prerequisite for voting or registration for voting (1) demonstrate the ability to read, write, understand, or interpret any matter, (2) demonstrate any educational achievement or his knowledge of any particular subject, (3) possess good moral character, or (4) prove his qualifications by the voucher of registered voters or members of any other class.

(d) For purposes of this section no State or political subdivision shall be determined to have engaged in the use of tests or devices for the purpose or with the effect of denying or abridging the right to vote on account of race or color, or in contravention of the guarantees set forth in section 4(f)(2) if (1) incidents of such use have been few in number and have been promptly and effectively corrected by State or local action, (2) the continuing effect of such incidents has been eliminated, and (3) there is no reasonable probability of their recurrence in the future.

(e)(1) Congress hereby declares that to secure the rights under the fourteenth amendment of persons educated in American-Flag schools in which the predominant classroom language was other than English, it is necessary to prohibit the States from conditioning the right to vote of such persons on ability to read, write, understand, or interpret any matter in the English language.
(2) No person who demonstrates that he has successfully completed the sixth primary grade in a public school in, or a private school accredited by, any State or territory, the District of Columbia, or the Commonwealth of Puerto Rico in which the predominant classroom language was other than English, shall be denied the right to vote in any Federal, State, or local election because of his inability to read, write, understand, or interpret any matter in the English language, except that in States in which State law provides that a different level of education is presumptive of literacy, he shall demonstrate that he has successfully completed an equivalent level of education in a public school in, or a private school accredited by, any State of territory, the District of Columbia, or the Commonwealth of Puerto Rico in which the predominant classroom language was other than English.

(f)(1) The Congress finds that voting discrimination against citizens of language minorities is pervasive and national in scope. Such minority citizens are from environments in which the dominant language is other than English. In addition they have been denied equal educational opportunities by State and local governments, resulting in severe disabilities and continuing illiteracy in the English language. The Congress further finds that, where State and local officials conduct elections only in English, language minority citizens are excluded from participating in the electoral process. In many areas of the country, this exclusion is aggravated by acts of physical, economic, and political intimidation. The Congress declares that, in order to enforce the guarantees of the fourteenth and fifteenth amendments to the United States Constitution, it is necessary to eliminate such discrimination by prohibiting English-only elections, and by prescribing other remedial devices.

(2) No voting qualification or prerequisite to voting, or standard, practice, or procedure shall be imposed or applied by any State or political subdivision to deny or abridge the right of any citizen of the United States to vote because he is a member of a language minority group.

(3) In addition to the meaning given the term under section 4(c), the term “test or device” shall also mean any practice or requirement by which any State or political subdivision provided any registration or voting notices, forms, instructions, assistance, or other materials or information relating to the electoral process, including ballots, only in the English language, where the Director of the Census determines that more than five per centum of the citizens of voting age residing in such State or political subdivision are members of a single language minority. With respect to section 4(b), the term “test or device”, as defined in this subsection, shall be employed only in making the determinations under the third sentence of that subsection.

(4) Whenever any State or political subdivision subject to the prohibitions of the second sentence of section 4(a) provides any registration or voting notices, forms, instructions, assistance, or other materials or information relating to the electoral process, including ballots, it shall provide them in the language of the applicable minority group as well as in the English language: Provided, That where the language of the applicable minority group is oral or unwritten or in the case of Alaskan Natives and American Indian...
Sec. 5  VOTING RIGHTS ACT OF 1965

ans, if the predominate language is historically unwritten, the State or political subdivision is only required to furnish oral instructions, assistance, or other information relating to registration and voting.

Sec. 5. [52 U.S.C. 10304] (a) Whenever a State or political subdivision with respect to which the prohibitions set forth in section 4(a) based upon determinations made under the first sentence of section 4(b) are in effect shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1964, or whenever a State or political subdivision with respect to which the prohibitions set forth in section 4(a) based upon determinations made under the second sentence of section 4(b) are in effect shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1968, or whenever a State or political subdivision with respect to which the prohibitions set forth in section 4(a) based upon determinations made under the third sentence of section 4(b) are in effect shall enact or seek to administer any voting qualifications or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1972, such State or subdivision may institute an action in the United States District Court for the District of Columbia for a declaratory judgment that such qualification, prerequisite, standard, practice, or procedure neither has the purpose nor will have the effect of denying or abridging the right to vote on account of race or color, or in contravention of the guarantees set forth in section 4(f)(2), and unless and until the court enters such judgment no person shall be denied the right to vote for failure to comply with such qualification, prerequisite, standard, practice, or procedure: Provided, That such qualification, prerequisite, standard, practice, or procedure may be enforced without such proceeding if the qualification, prerequisite, standard, practice, or procedure has been submitted by the chief legal officer or other appropriate official of such State or subdivision to the Attorney General and the Attorney General has not interposed an objection within sixty days after such submission, or upon good cause shown, to facilitate an expedited approval within sixty days after such submission, the Attorney General has affirmatively indicated that such objection will not be made. Neither an affirmative indication by the Attorney General that no objection will be made, nor the Attorney General’s failure to object, nor a declaratory judgment entered under this section shall bar a subsequent action to enjoin enforcement of such qualification, prerequisite, standard, practice, or procedure. In the event the Attorney General affirmatively indicates that no objection will be made within the sixty-day period following receipt of a submission, the Attorney General may reserve the right to reexamine the submission if additional information comes to his attention during the remainder of the sixty-day period which would otherwise require objection in accordance with this section. Any action under this section shall be heard and determined by a court of three judges in accordance with the provisions of section 2284 of
title 28 of the United States Code and any appeal shall lie to the Supreme Court.

(b) Any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting that has the purpose of or will have the effect of diminishing the ability of any citizens of the United States on account of race or color, or in contravention of the guarantees set forth in section 4(f)(2), to elect their preferred candidates of choice denies or abridges the right to vote within the meaning of subsection (a) of this section.

(c) The term “purpose” in subsections (a) and (b) of this section shall include any discriminatory purpose.

(d) The purpose of subsection (b) of this section is to protect the ability of such citizens to elect their preferred candidates of choice.

[Sections 6 and 7 repealed by section 3(c) of Public Law 109–246, July 27, 2006]

Sec. 8. [52 U.S.C. 10305] (a) Whenever—

(1) a court has authorized the appointment of observers under section 3(a) for a political subdivision; or

(2) the Attorney General certifies with respect to any political subdivision named in, or included within the scope of, determinations made under section 4(b), unless a declaratory judgment has been rendered under section 4(a), that—

(A) the Attorney General has received written meritorious complaints from residents, elected officials, or civic participation organizations that efforts to deny or abridge the right to vote under the color of law on account of race or color, or in contravention of the guarantees set forth in section 4(f)(2) are likely to occur; or

(B) in the Attorney General’s judgment (considering, among other factors, whether the ratio of nonwhite persons to white persons registered to vote within such subdivision appears to the Attorney General to be reasonably attributable to violations of the 14th or 15th amendment or whether substantial evidence exists that bona fide efforts are being made within such subdivision to comply with the 14th or 15th amendment), the assignment of observers is otherwise necessary to enforce the guarantees of the 14th or 15th amendment;

the Director of the Office of Personnel Management shall assign as many observers for such subdivision as the Director may deem appropriate.

(b) Except as provided in subsection (c), such observers shall be assigned, compensated, and separated without regard to the provisions of any statute administered by the Director of the Office of Personnel Management, and their service under this Act shall not be considered employment for the purposes of any statute administered by the Director of the Office of Personnel Management, except the provisions of section 7324 of title 5, United States Code, prohibiting partisan political activity.

(c) The Director of the Office of Personnel Management is authorized to, after consulting the head of the appropriate department or agency, designate suitable persons in the official service of the United States, with their consent, to serve in these positions.
(d) Observers shall be authorized to—
   (1) enter and attend at any place for holding an election in such subdivision for the purpose of observing whether persons who are entitled to vote are being permitted to vote; and
   (2) enter and attend at any place for tabulating the votes cast at any election held in such subdivision for the purpose of observing whether votes cast by persons entitled to vote are being properly tabulated.

(e) Observers shall investigate and report to the Attorney General, and if the appointment of observers has been authorized pursuant to section 3(a), to the court.

[Section 9 repealed by section 3(c) of Public Law 109–246, July 27, 2006]

SEC. 10. [52 U.S.C. 10306] (a) The Congress finds that the requirement of the payment of a poll tax as a precondition to voting (i) precludes persons of limited means from voting or imposes unreasonable financial hardship upon such persons as a precondition to their exercise of the franchise, (ii) does not bear a reasonable relationship to any legitimate State interest in the conduct of elections, and (iii) in some areas has the purpose or effect of denying persons the right to vote because of race or color. Upon the basis of these findings, Congress declares that the constitutional right of citizens to vote is denied or abridged in some areas by the requirement of the payment of a poll tax as a precondition to voting.

(b) In the exercise of the powers of Congress under section 5 of the fourteenth amendment, section 2 of the fifteenth amendment and section 2 of the twenty-fourth amendment, the Attorney General is authorized and directed to institute forthwith in the name of the United States such actions, including actions against States or political subdivisions, for declaratory judgment or injunctive relief against the enforcement of any requirement of the payment of a poll tax as a precondition to voting, or substitute there for enacted after November 1, 1964, as will be necessary to implement the declaration of subsection (a) and the purposes of this section.

(c) The district courts of the United States shall have jurisdiction of such actions which shall be heard and determined by a court of three judges in accordance with the provisions of section 2284 of title 28 of the United States Code and any appeal shall lie to the Supreme Court. It shall be the duty of the judges designated to hear the case to assign the case for hearing at the earliest practicable date, to participate in the hearing and determination thereof, and to cause the case to be in every way expedited.

SEC. 11. [52 U.S.C. 10307] (a) No person acting under color of law shall fail or refuse to permit any person to vote who is entitled to vote under any provision of this Act or is otherwise qualified to vote, or willfully fail or refuse to tabulate, count and report such person's vote.

(b) No person, whether acting under color of law or otherwise, shall intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce any person for voting or attempting to vote, or intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce any person for urging or aiding any person to vote or attempt to vote, or intimidate, threaten, or coerce any person for ex-
ercising any powers or duties under section 3(a), 6, 8, 9, 10, or 12(e).

(c) Whoever knowingly or willfully give false information as to his name, address, or period of residence in the voting district for the purpose of establishing his eligibility to register or vote, or conspires with another individual for the purpose of encouraging his false registration to vote or illegal voting, or pays or offers to pay or accepts payment either for registration to vote or for voting shall be fined not more than $10,000 or imprisoned not more than five years, or both: Provided, however, That this provision shall be applicable only to general, special, or primary elections held solely or in part for the purpose of selecting or electing any candidate for the office of President, Vice President, presidential elector, Member of the United States Senate, Member of the United States House of Representatives, Delegate from the District of Columbia, Guam, or the Virgin Islands, or Resident Commissioner of the Commonwealth of Puerto Rico.

(d) Whoever, in any matter within the jurisdiction of an examiner or hearing officer knowingly and willfully falsifies or conceals a material fact, or makes any false, fictitious, or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry, shall be fined not more than $10,000 or imprisoned not more than five years, or both.

(e)(1) Whoever votes more than once in an election referred to in paragraph (2) shall be fined not more than $10,000 or imprisoned not more than five years, or both.

(2) The prohibition of this subsection applies with respect to any general, special, or primary election held solely or in part for the purpose of selecting or election any candidate for the office of President, Vice President, presidential elector, Member of the United States Senate, Member of the United States House of Representatives, Delegate from the District of Columbia, Guam, or the Virgin Islands, or Resident Commissioner of the Commonwealth of Puerto Rico.

(3) As used in this subsection, the term “votes more than once” does not include the casting of an additional ballot if all prior ballots of that voter were in validated, nor does it include the voting in two jurisdictions under section 202 of this Act, to the extent two ballots are not cast for an election to the same candidacy or office.

Sec. 12. [52 U.S.C. 10308] (a) Whoever shall deprive or attempt to deprive any person of any right secured by section 2, 3, 4, 5, or 10 or shall violate section 11(a), shall be fined not more than $5,000, or imprisoned not more than five years, or both.

(b) Whoever, within a year following an election in a political subdivision in which an observer has been assigned (1) destroys, defaces, mutilates, or otherwise alters the marking of a paper ballot which has been cast in such election, or (2) alters any official record of voting in such election tabulated from a voting machine or otherwise, shall be fined not more than $5,000, or imprisoned not more than five years, or both.

(c) Whoever conspires to violate the provisions of subsection (a) or (b) of this section, or interferes with any right secured by section
2, 3, 4, 5, 10, or 11(a) shall be fined not more than $5,000, or imprisoned not more than five years, or both.

(d) Whenever any person has engaged or there are reasonable grounds to believe that any person is about to engage in any act or practice prohibited by section 2, 3, 4, 5, 7, 10, 11, or subsection (b) of this section, the Attorney General may institute for the United States, or in the name of the United States, an action for preventive relief, including an application for a temporary or permanent injunction, restraining order, or other order, and including an order directed to the State and State or local election officials to require them (1) to permit persons listed under this Act to vote and (2) to count such votes.

(e) Whenever in any political subdivision in which there are observers appointed pursuant to this Act any persons allege to such an observer within forty-eight hours after the closing of the polls that notwithstanding (1) their listing under this Act or registration by an appropriate election official and (2) their eligibility to vote, they have not been permitted to vote in such election, the observer shall forthwith notify the Attorney General if such allegations in his opinion appear to be well founded. Upon receipt of such notification the Attorney General may forthwith file with the district court an application for an order providing for the marking, casting, and counting of the ballots of such persons and requiring the inclusion of their votes in the total vote before the results of such election shall be deemed final and any force or effect given thereto. The district court shall hear and determine such matters immediately after the filing of such application. The remedy provided in this subsection shall not preclude any remedy available under State or Federal law.

(f) The district courts of the United States shall have jurisdiction of proceedings instituted pursuant to this section and shall exercise the same without regard to whether a person asserting rights under the provisions of this Act shall have exhausted any administrative or other remedies that may be provided by law.

Sec. 13. [52 U.S.C. 10309] (a) The assignment of observers shall terminate in any political subdivision of any State—

(1) with respect to observers appointed pursuant to section 8 or with respect to examiners certified under this Act before the date of the enactment of the Fannie Lou Hamer, Rosa Parks, Coretta Scott King, César E. Chávez, Barbara C. Jordan, William C. Velásquez, and Dr. Hector P. Garcia Voting Rights Act Reauthorization and Amendments Act of 2006, whenever the Attorney General notifies the Director of the Office of Personnel Management, or whenever the District Court for the District of Columbia determines in an action for declaratory judgment brought by any political subdivision described in subsection (b), that there is no longer reasonable cause to believe that persons will be deprived of or denied the right to vote on account of race or color, or in contravention of the guarantees set forth in section 4(f)(2) in such subdivision; and

(2) with respect to observers appointed pursuant to section 3(a), upon order of the authorizing court.

(b) A political subdivision referred to in subsection (a)(1) is one with respect to which the Director of the Census has determined
that more than 50 per centum of the nonwhite persons of voting age residing therein are registered to vote.

(c) A political subdivision may petition the Attorney General for a termination under subsection (a)(1).


(b) No court other than the District Court for the District of Columbia shall have jurisdiction to issue any declaratory judgment pursuant to section 4 or section 5 or any restraining order or temporary or permanent injunction against the execution or enforcement of any provision of this Act or any action of any Federal officer or employee pursuant hereto.

(c)(1) The terms “vote” or “voting” shall include all action necessary to make a vote effective in any primary, special, or general election, including, but not limited to, registration, listing pursuant to this Act, or other action required by law prerequisite to voting, casting a ballot, and having such a ballot counted properly and included in the appropriate totals of votes cast with respect to candidates for public or party office and propositions for which votes are received in an election.

(2) The term “political subdivision” shall mean any county or parish, except that where registration for voting is not conducted under the supervision of a county or parish, the term shall include any other subdivision of a State which conducts registration for voting.

(3) The term “language minorities” or “language minority group” means persons who are American Indian, Asian American, Alaskan Natives or of Spanish heritage.

(d) In any action for a declaratory judgment brought pursuant to section 4 or section 5 of this Act, subpenas for witnesses who are required to attend the District Court for the District of Columbia may be served in any judicial district of the United States: Provided, That no writ of subpena shall issue for witnesses without the District of Columbia at a greater distance than one hundred miles from the place of holding court without the permission of the District Court for the District of Columbia being first had upon proper application and cause shown.

(e) In any action or proceeding to enforce the voting guarantees of the fourteenth or fifteenth amendment, the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney’s fee, reasonable expert fees, and other reasonable litigation expenses as part of the costs.


SEC. 16. The Attorney General and the Secretary of Defense, jointly, shall make a full and complete study to determine whether, under the laws or practices of any State or States, there are preconditions to voting, which might tend to result in discrimination against citizens serving in the Armed Forces of the United States seeking to vote. Such officials shall, jointly, make a report to the Congress not later than June 30, 1966, containing the results of such study, together with a list of any States in which such preconditions exist, and shall include in such report such rec-
ommendations for legislation as they deem advisable to prevent discrimination in voting against citizens serving in the Armed Forces of the United States.

SEC. 17. [52 U.S.C. 10311] Nothing in this Act shall be construed to deny, impair, or otherwise adversely affect the right to vote of any person registered to vote under the law of any State or political subdivision.

SEC. 18. [52 U.S.C. 10312] There are hereby authorized to be appropriated such sums as are necessary to carry out the provisions of this Act.

SEC. 19. [52 U.S.C. 10313] If any provision of this Act or the application thereof to any person or circumstances is held invalid, the remainder of the Act and the application of the provision to other persons not similarly situated or to other circumstances shall not be affected thereby.

SEC. 20. [52 U.S.C. 10314] A reference in this title to the effective date of the amendments made by, or the date of the enactment of, the Fannie Lou Hamer, Rosa Parks, Coretta Scott King, César E. Chávez, Barbara C. Jordan, William C. Velásquez, and Dr. Hector P. Garcia Voting Rights Act Reauthorization and Amendments Act of 2006 shall be considered to refer to, respectively, the effective date of the amendments made by, or the date of the enactment of, the Fannie Lou Hamer, Rosa Parks, and Coretta Scott King Voting Rights Act Reauthorization and Amendments Act of 2006.

TITLE II—SUPPLEMENTAL PROVISIONS

APPLICATION OF PROHIBITION TO OTHER STATES

SEC. 201. [52 U.S.C. 10501] (a) No citizen shall be denied, because of his failure to comply with any test or device, the right to vote in any Federal, State, or local election conducted in any State or political subdivision of a State.

(b) As used in this section, the term “test or device” means any requirement that a person as a prerequisite for voting or registration for voting (1) demonstrate the ability to read, write, understand, or interpret any matter, (2) demonstrate any educational achievement of his knowledge of any particular subject, (3) possess good moral character, or (4) prove his qualifications by the voucher of registered voters or members of any other class.

RESIDENCE REQUIREMENTS FOR VOTING

SEC. 202. [52 U.S.C. 10502] (a) The Congress hereby finds that the imposition and application of the durational residency requirement as a precondition to voting for the offices of President and Vice President, and the lack of sufficient opportunities for absentee registration and absentee balloting in presidential elections—

(1) denies or abridges the inherent constitutional right of citizens to vote for their President and Vice President;

(2) denies or abridges the inherent constitutional right of citizens to enjoy their free movement across State lines;
(3) denies or abridges the privileges and immunities guaranteed to the citizens of each State under article IV, section 2, clause 1, of the Constitution;

(4) in some instances has the impermissible purpose or effect of denying citizens the right to vote for such officers because of the way they may vote;

(5) has the effect of denying to citizens the equality of civil rights, and due process and equal protection of the laws that are guaranteed to them under the fourteenth amendment; and

(6) does not bear a reasonable relationship to any compelling State interest in the conduct of presidential elections.

(b) Upon the basis of these findings, Congress declares that in order to secure and protect the above-stated rights of citizens under the Constitution, to enable citizens to better obtain the enjoyment of such rights, and to enforce the guarantees of the fourteenth amendment, it is necessary (1) to completely abolish the durational residency requirement as a precondition to voting for President and Vice President, and (2) to establish nationwide, uniform standards relative to absentee registration and absentee balloting in presidential elections.

(c) No citizen of the United States who is otherwise qualified to vote in any election for President and Vice President shall be denied the right to vote for electors for President and Vice President, or for President and Vice President, in such election because of the failure of such citizen to comply with any durational residency requirement of such State or political subdivision; nor shall any citizen of the United States be denied the right to vote for electors for President and Vice President, or for President and Vice President, in such election because of the failure of such citizen to be physically present in such State or political subdivision at the time of such election, if such citizen shall have complied with the requirements prescribed by the law of such State or political subdivision providing for the casting of absentee ballots in such election.

(d) For the purposes of this section, each State shall provide by law for the registration or other means of qualification of all duly qualified residents of such State who apply, not later than thirty days immediately prior to any presidential election, for registration or qualification to vote for the choice of electors for President and Vice President or for President and Vice President in such election; and each State shall provide by law for the casting of absentee ballots for the choice of electors for President and Vice President, or for President and Vice President, by all duly qualified residents of such State who may be absent from their election district or unit in such State on the day such election is held and who have applied therefor not later than seven days immediately prior to such election and have returned such ballots to the appropriate election official of such State not later than the time of closing of the polls in such State on the day of such election.

(e) If any citizen of the United States who is otherwise qualified to vote in any State or political subdivision in any election for President and Vice President has begun residence in such State or political subdivision after the thirtieth day next preceding such election and, for that reason, does not satisfy the registration requirements of such State or political subdivision he shall be al-
allowed to vote for the choice of electors for President and Vice President, or for President and Vice President, in such election, (1) in person in the State or political subdivision in which he resided immediately prior to his removal if he had satisfied, as of the date of his change of residence, the requirements to vote in that State or political subdivision, or (2) by absentee ballot in the State or political subdivision in which he resided immediately prior to his removal if he satisfies, but for his nonresident status and the reason for his absence, the requirements for absentee voting in that State or political subdivision.

(f) No citizen of the United States who is otherwise qualified to vote by absentee ballot in any State or political subdivision in any election for President and Vice President shall be denied the right to vote for the choice of electors for President and Vice President, or for President and Vice President, in such election because of any requirement of registration that does not include a provision for absentee registration.

(g) Nothing is this section shall prevent any State or political subdivision from adopting less restrictive voting practices than those that are prescribed herein.

(h) The term “State” as used in this section includes each of the several States and the District of Columbia.

(i) The provisions of section 11(c) shall apply to false registrations, and other fraudulent acts and conspiracies, committed under this section.

BILINGUAL ELECTION REQUIREMENTS

SEC. 203. [52 U.S.C. 10503] (a) The Congress finds that, through the use of various practices and procedures, citizens of language minorities have been effectively excluded from participation in the electoral process. Among other factors, the denial of the right to vote of such minority group citizens is ordinarily directly related to the unequal educational opportunities afforded them, resulting in high illiteracy and low voting participation. The Congress declares that, in order to enforce the guarantees of the fourteenth and fifteenth amendments to the United States Constitution, it is necessary to eliminate such discrimination by prohibiting these practices, and by prescribing other remedial devices.

(b) BILINGUAL VOTING MATERIALS REQUIREMENT.—

(1) Generally.—Before August 6, 2032, no covered State or political subdivision shall provide voting materials only in the English language.

(2) COVERED STATES AND POLITICAL SUBDIVISIONS.—

(A) Generally.—A State or political subdivision is a covered State or political subdivision for the purposes of this subsection if the Director of the Census determines, based on the 2010 American Community Survey census data and subsequent American Community Survey data in 5-year increments, or comparable census data, that

(i) more than 5 percent of the citizens of voting age of such State or political subdivision are members of a single language minority and are limited-English proficient;
(II) more than 10,000 of the citizens of voting age of such political subdivision are members of a single language minority and are limited-English proficient; or

(III) in the case of a political subdivision that contains all or any part of an Indian reservation, more than 5 percent of the American Indian or Alaska Native citizens of voting age within the Indian reservation are members of a single language minority and are limited-English proficient; and

(ii) the illiteracy rate of the citizens in the language minority as a group is higher than the national illiteracy rate.

(B) EXCEPTION.—The prohibitions of this subsection do not apply in any political subdivision that has less than 5 percent voting age limited-English proficient citizens of each language minority which comprises over 5 percent of the statewide limited-English proficient population of voting age citizens, unless the political subdivision is a covered political subdivision independently from its State.

(3) DEFINITIONS.—As used in this section—

(A) the term “voting materials” means registration or voting notices, forms, instructions, assistance, or other materials or information relating to the electoral process, including ballots;

(B) the term “limited-English proficient” means unable to speak or understand English adequately enough to participate in the electoral process;

(C) the term “Indian reservation” means any area that is an American Indian or Alaska Native area, as defined by the Census Bureau for the purposes of the 1990 decennial census;

(D) the term “citizens” means citizens of the United States; and

(E) the term “illiteracy” means the failure to complete the 5th primary grade.

(4) SPECIAL RULE.—The determinations of the Director of the Census under this subsection shall be effective upon publication in the Federal Register and shall not be subject to review in any court.

(c) Whenever any State or political subdivision subject to the prohibition of subsection (b) of this section provides any registration or voting notices, forms, instructions, assistance, or other materials or information relating to the electoral process, including ballots, it shall provide them in the language of the applicable minority group as well as in the English language: Provided, That where the language of the applicable minority group is oral or unwritten or in the case of Alaskan natives and American Indians, if the predominant language is historically unwritten, the State or political subdivision is only required to furnish oral instructions, assistance, or other information relating to registration and voting.

(d) Any State or political subdivision subject to the prohibition of subsection (b) of this section, which seeks to provide English-only registration or voting materials or information, including ballots,
may file an action against the United States in the United States District Court for a declaratory judgment permitting such provision. The court shall grant the requested relief if it determines that the illiteracy rate of the applicable language minority group within the State or political subdivision is equal to or less than the national illiteracy rate.

(e) For purposes of this section, the term “language minorities” or “language minority group” means persons who are American Indian, Asian American, Alaskan Natives, or of Spanish heritage.

JUDICIAL RELIEF

SEC. 204. [52 U.S.C. 10504] Whenever the Attorney General has reason to believe that a State or political subdivision (a) has enacted or is seeking to administer any test or device as a prerequisite to voting in violation of the prohibition contained in section 201, or (b) undertakes to deny the right to vote in any election in violation of section 202, or 203, he may institute for the United States, or in the name of the United States, an action in a district court of the United States, in accordance with sections 1391 through 1393 of title 28, United States Code, for a restraining order, a preliminary or permanent injunction, or such other order as he deems appropriate. An action under this subsection shall be heard and determined by a court of three judges in accordance with the provisions of section 2284 of title 28 of the United States Code and any appeal shall be to the Supreme Court.

PENALTY

SEC. 205. [52 U.S.C. 10505] Whoever shall deprive or attempt to deprive any person of any right secured by section 201, 202, or 203 of this title shall be fined not more than $5,000, or imprisoned not more than five years, or both.

SEPARABILITY

SEC. 206. [52 U.S.C. 10506] If any provision of this Act or the application of any provision thereof to any person or circumstance is judicially determined to be invalid, the remainder of this Act or the application of such provision to other persons or circumstances shall not be affected by such determination.

SEC. 207. [52 U.S.C. 10507] (a) Congress hereby directs the Director of the Census forthwith to conduct a survey to compile registration and voting statistics: (i) in every State or political subdivision with respect to which the prohibitions of section 4(a) of the Voting Rights Act of 1965 are in effect, for every statewide general election for Members of the United States House of Representatives after January 1, 1974; and (ii) in every State or political subdivision for any election designated by the United States Commission on Civil Rights. Such surveys shall only include a count of citizens of voting age, race or color, and national origin, and a determination of the extent to which such persons are registered to vote and have voted in the elections surveyed.

(b) In any survey under subsection (a) of this section no person shall be compelled to disclose his race, color, national origin, political party affiliation, or how he voted (or the reasons therefor), nor
shall any penalty be imposed for his failure or refusal to make such disclosures. Every person interrogated orally, by written survey or questionnaire, or by any other means with respect to such information shall be fully advised of his right to fail or refuse to furnish such information.

(c) The Director of the Census shall, at the earliest practicable time, report to the Congress the results of every survey conducted pursuant to the provisions of subsection (a) of this section.

(d) The provisions of section 9 and chapter 7 of title 13 of the United States Code shall apply to any survey, collection, or compilation of registration and voting statistics carried out under subsection (a) of this section.

VOTING ASSISTANCE

SEC. 208. [52 U.S.C. 10508] Any voter who requires assistance to vote by reason of blindness, disability, or inability to read or write may be given assistance by a person of the voter’s choice, other than the voter’s employer or agent of that employer or officer or agent of the voter’s union.

TITLE III—EIGHTEEN-YEAR-OLD VOTING AGE

ENFORCEMENT OF TWENTY-SIXTH AMENDMENT

SEC. 301. [52 U.S.C. 10701] (a)(1) The Attorney General is directed to institute, in the name of the United States, such actions against States or political subdivisions, including actions for injunctive relief, as he may determine to be necessary to implement the twenty-sixth article of amendment to the Constitution of the United States.

(2) The district courts of the United States shall have jurisdiction of proceedings instituted under this title, which shall be heard and determined by a court of three judges in accordance with section 2284 of title 28 of the United States Code, and any appeal shall lie to the Supreme Court. It shall be the duty of the judges designated to hear the case to assign the case for hearing and determination thereof, and to cause the case to be in every way expedited.

(b) Whoever shall deny or attempt to deny any person of any right secured by the twenty-sixth article of amendment to the Constitution of the United States shall be fined not more than $5,000 or imprisoned not more than five years, or both.

DEFINITION

SEC. 302. [52 U.S.C. 10702] As used in this title, the term “State” includes the District of Columbia.
In the Matter of Tim Harkenrider et al., Respondents-Appellants,
v Kathy Hochul, as Governor, et al., Appellants-Respondents, et al., Respondents.

Argued April 26, 2022; decided April 27, 2022

Matter of Harkenrider v Hochul, 204 AD3d 1366, modified.

{**38 NY3d at 501} OPINION OF THE COURT

Chief Judge DiFiore.

In 2014, the people of the State of New York amended the State Constitution to adopt historic reforms of the redistricting process by requiring, in a carefully structured process, the creation of electoral maps by an Independent Redistricting Commission (IRC) and by declaring unconstitutional certain undemocratic practices such as partisan and racial gerrymandering. No one disputes that this year, during the first redistricting cycle to follow adoption of the 2014 amendments, the IRC and the legislature failed to follow the procedure commanded by the State Constitution. A stalemate within the IRC resulted in a breakdown in the mandatory process for submission of electoral maps to the legislature. The legislature responded by creating and enacting maps in a nontransparent manner controlled exclusively by the dominant political party—doing exactly what they would have done had the 2014 constitutional reforms never been passed. On these appeals, the primary questions before us are whether this failure to follow the prescribed constitutional procedure warrants invalidation{**38 NY3d at 502} of the legislature's congressional and state senate maps and whether there is record support for the determination of both courts below that the district
lines for congressional [*2] races were drawn with an unconstitutional partisan intent. We answer both questions in the affirmative and therefore declare the congressional and senate maps void. As a result, judicial oversight is required to facilitate the expeditious creation of constitutionally conforming maps for use in the 2022 election and to safeguard the constitutionally protected right of New Yorkers to a fair election.

I.

Every 10 years, following the federal census, reapportionment of the state senate, assembly, and congressional districts in New York must be undertaken to account for population shifts and potential changes in the state's allocated number of congressional representatives (see NY Const, art III, § 4). Redistricting—which is "primarily the duty and responsibility of the State" (Perry v Perez, 565 US 388, 392 [2012] [internal quotation marks and citation omitted]; see Growe v Emison, 507 US 25, 34 [1993])—is a complex and contentious process that, historically, has been "within the legislative power . . . subject to constitutional regulation and limitation" (Matter of Orans, 15 NY2d 339, 352 [1965]). In New York, prior to 2012, the process of drawing district lines was entirely within the purview of the legislature,[FN1] subject to state and federal constitutional restraint and federal voting laws, as well as judicial review.

Particularly with respect to congressional maps, exclusive legislative control has repeatedly resulted in stalemates, with opposing political parties unable to reach consensus on district lines—often necessitating federal court involvement in the development of New York's congressional maps (see e.g. Favors v Cuomo, 2012 WL 928223 *2, 2012 US Dist LEXIS 36910, *10 [ED NY, Mar. 19, 2012, No. 11-CV-5632 (RR)(GEL)(DLI)(RLM), Raggi, Lynch and Irizarry, JJ.]; Rodriguez v Pataki, 2002 WL 1058054, *7, 2002 US Dist LEXIS 9272, *25-27 [SD NY, May 24, 2002, No. 02 Civ 618(RMB), Walker, Ch. J., Koeltl and Berman, JJ.]; Puerto Rican Legal Defense & Educ. Fund, Inc. v{**38 NY3d at 503}Gantt, 796 F Supp 681, 684 [ED NY 1992]). Among other concerns, the redistricting process has been plagued with allegations of partisan gerrymandering—that is, one political party manipulating district lines in order to disproportionately increase its advantage in the upcoming elections, disenfranchising voters of the opposing party (see generally Rucho v Common Cause, 588 US —, —, 139 S Ct 2484, 2494 [2019]).
By adopting the 2014 constitutional amendments, the people significantly altered both substantive standards governing the determination of district lines and the redistricting process established to achieve those standards. Given the history of legislative stalemates and persistent allegations of partisan gerrymandering, the constitutional reforms were intended to introduce a new era of bipartisanship and transparency through the creation of an independent redistricting commission and the adoption of additional limitations on legislative discretion in redistricting, including explicit prohibitions on partisan and racial gerrymandering (see Assembly Mem in Support of 2012 NY Senate-Assembly Concurrent Resolution S6698, A9526; Senate Introducer's Mem in Support of 2013 NY Senate-Assembly Concurrent Resolution S2107, A2086). The Constitution now requires that the IRC—a bipartisan commission working under a constitutionally mandated timeline—is charged with the obligation of drawing a set of redistricting maps that, with appropriate implementing legislation, must be submitted to the legislature for a vote, without amendment (see NY Const, art III, §§ 4 [b]; 5-b [a]). [FN2] If this first set of maps is rejected, the IRC is required to prepare a second set that, again, would be subject to an up or down vote by the legislature, without amendment (see NY Const, art III, § 4 [b]). Under that constitutional framework, only upon [*3]rejection of a second{**38 NY3d at 504} set of IRC maps is the legislature free to offer amendments to the maps created by the IRC (see NY Const, art III, § 4 [b]) and, even then, a statutory restriction enacted as a companion to the constitutional reforms precluded legislative alterations that would affect more than two percent of the population in any district (see L 2012, ch 17, § 3).

II.

Following receipt of the results of the 2020 federal census, the redistricting process began in New York—the first opportunity for district lines to be drawn under the new IRC procedures established by the 2014 constitutional amendments. Due to shifts in New York's population, the state lost a congressional seat and other districts were malapportioned, undisputedly rendering the 2012 congressional apportionment—developed by a federal court following a legislative impasse (see Favors, 2012 WL 928223, *2, 2012 US Dist LEXIS 36910, *10)—unconstitutional and necessitating the drawing of new district lines. Throughout 2021, the IRC held the requisite public hearings, gathering input from stakeholders and voters across the state to inform their composition of redistricting maps. In December 2021 and January 2022, however, negotiations between the IRC members deteriorated and the IRC,
split along party lines, was unable to agree upon consensus maps. According to the IRC members appointed by the minority party, after agreement had been reached on many of the district lines, the majority party delegation of the IRC declined to continue negotiations on a consensus map, insisting they would proceed with discussions only if further negotiations were based on their preferred redistricting maps.

As a result of their disagreements, the IRC submitted, as a first set of maps, two proposed redistricting plans to the legislature—maps from each party delegation—as is constitutionally permitted if a single consensus map fails to garner sufficient votes (see NY Const, art III, § 5-b [g]). The legislature voted on this first set of plans without amendment as required by the Constitution and rejected both plans. The legislature notified the IRC of that rejection, triggering the IRC's obligation to compose—within 15 days—a second redistricting plan for the legislature's review (see NY Const, art III, § 4 [b]). On January 24, 2022—the day before the 15-day deadline but more than one month before the February 28, 2022 deadline—the IRC announced that it was deadlocked and, as a result, would not present a second plan to the legislature. Within a week, the Democrats in the legislature—in control of both the Senate and Assembly—composed and enacted new congressional, senate, and assembly redistricting maps (see 2022 NY Senate-Assembly Bill S8196, A9167; 2022 NY Senate-Assembly Bill S8172A, A9039A; 2022 NY Senate-Assembly Bill S8197, A9168; 2022 NY Senate-Assembly Bill S8185A, A9040A), undisputedly without any consultation or participation by the minority Republican Party. On February 3rd, the Governor signed into law this new redistricting legislation, which also superseded the two percent limitation imposed in 2012 on the legislature's authority to amend IRC plans (Senate Introducer's Mem in Support, Bill Jacket, L 2012, ch 17 at 11, 2012 McKinney's Session Laws of NY at 1484-1485).

That same day, petitioners—New York voters residing in several different congressional districts—commenced this special proceeding under article III, § 5 of the State Constitution and McKinney's Unconsolidated Laws of NY § 4221 against various state respondents, including the Governor, Senate Majority Leader, Speaker of the Assembly, and the New York State Board of Elections, challenging the congressional and senate maps. Petitioners alleged that the process by which the 2022 maps were enacted was constitutionally defective because the IRC failed to submit a second redistricting plan as required under the 2014 constitutional amendments and, as such, the legislature lacked authority to compose and enact
its own plan. Petitioners also asserted that the congressional map is unconstitutionally gerrymandered in favor of the majority party because it both "packed" minority-party voters into a select few districts and "cracked" other pockets of those voters across multiple districts, thereby diluting the [*4]competitiveness of those districts. Petitioners asked Supreme Court to enjoin{**38 NY3d at 506} any elections from proceeding on the 2022 congressional map and to either adopt its own map or direct the legislature to cure the infirmities. Petitioners subsequently sought to amend their petition to include similar challenges to the state senate map. The state respondents answered that petitioners lacked standing to challenge most of the districts they claimed were gerrymandered, that the IRC's failure to perform its duty did not strip the legislature of its enduring authority to enact redistricting plans, and that petitioners could not meet their burden of proving that the maps were unconstitutionally partisan.

A trial ensued, at which petitioners and the state respondents presented expert testimony regarding the maps. Petitioners' expert, Sean P. Trende—a doctoral candidate who has a Juris Doctor, a master's degree in political science, and a master's degree in applied statistics, and who has participated as an expert in several redistricting proceedings in other states—was qualified as an expert in election analysis with particular knowledge in redistricting, with no objection from the state respondents or any request for a Frye hearing to challenge the efficacy of his methodology or the basis of his opinion. Trende testified that a comparison of the enacted congressional map to ensembles of 5,000 or 10,000 maps created by computer simulation revealed that the enacted map was an "extreme outlier" that likely reduced the number of Republican congressional seats from eight to four by "packing" Republican voters into four discrete districts and "cracking" Republican voter blocks across the remaining districts in such manner as to dilute the strength of their vote and render such districts noncompetitive.

Opposing experts called by the state respondents challenged Trende's methodology and asserted that the enacted congressional map actually resulted in more Republican districts than the simulated maps, although several conceded that they did not analyze the level of competitiveness of the new districts. Further, the State's experts defended various choices made by the legislature as justifiable based on constitutionally required considerations, contending that the enacted maps were not reflective of partisan intent.

After determining petitioners had standing to challenge the statewide maps, Supreme Court declared the congressional, state senate, and state assembly maps "void" under the State
Constitution, reasoning that the legislature's enactment of {**38 NY3d at 507} redistricting maps absent submission of a second redistricting plan by the IRC was unconstitutional and that 2021 legislation purporting to authorize the enactment (the 2021 legislation) was also unconstitutional (76 Misc 3d 171 [Sup Ct, Steuben County 2022]). Further, crediting Trende's testimony, Supreme Court found that petitioners had proved that the congressional map violated the constitutional prohibition on partisan gerrymandering by packing Republican voters into four districts while ensuring there were "virtually zero competitive districts" (76 Misc 3d at 189-190). Supreme Court declared all three maps void, enjoined the state respondents from using the maps in the impending 2022 election, and directed the legislature to submit new "bipartisanly supported" maps that meet constitutional requirements for the court's review by a particular date (76 Misc 3d at 194-195).

The state respondents appealed, and a Justice of the Appellate Division stayed much of Supreme Court's order pending that appeal, including the deadline for submission of new redistricting maps by the legislature. However, the stay order did not prohibit Supreme Court from retaining a neutral expert to prepare a proposed new congressional map, which would have no force and effect until certain contingencies occurred, including the legislature's failure to proffer its own new congressional maps by April 30th—30 days after the date of Supreme Court's order. [FN5] Thereafter, in a divided decision, the Appellate Division modified Supreme Court's order by denying the petition, in part, vacating the declaration that the senate and assembly maps and the 2021 legislation were unconstitutional, but otherwise affirmed and remitted, with three Justices agreeing with Supreme Court that petitioners had met their burden of proving that the constitutional prohibition against partisan gerrymandering had been violated with respect to the 2022 congressional map, rendering that map void and unenforceable (204 AD3d 1366 [4th Dept 2022]). [FN6] In reaching that conclusion, the Appellate Division relied on "evidence {**38 NY3d at 508} of [5]the largely one-party process used to enact the 2022 congressional map, a comparison of the 2022 congressional map to the 2012 congressional map, and the expert opinion and supporting analysis of Sean P. Trende" (id. at 1371). However, the Court rejected petitioners' argument that both the congressional and senate maps were void due to the failure to adhere to the constitutional procedure, with one Justice dissenting on that point. The parties now cross-appeal as of right (see CPLR 5601 [b] [1]), challenging certain aspects of the Appellate Division order.
As a threshold matter, relying on common-law standing principles, the state respondents assert that petitioners lack standing to challenge many of the districts that they claim reflect unconstitutional partisan gerrymandering because none of the individual petitioners reside in those districts. Even absent the procedural challenge applicable to all districts, this contention is unavailing because standing is expressly conferred by constitution and statute. Article III, § 5 of the New York Constitution provides that "[a]n apportionment by the legislature, or other body, shall be subject to review by the supreme court, at the suit of any citizen, under such reasonable regulations as the legislature may prescribe" (emphasis added; see 3 Rev Rev, 1894 NY Constitutional Convention at 987; Matter of Dowling, 219 NY 44, 50 [1916]; Schieffelin v Komfort, 212 NY 520, 529 [1914]). Moreover, statutes may identify the class of persons entitled to challenge particular governmental action, relieving courts of the need to resolve the question under common-law principles (see Matter of Mental Hygiene Legal Serv. v Daniels, 33 NY3d 44, 50 n 2 [2019]; Society of Plastics Indus. v County of Suffolk, 77 NY2d 761, 769 [1991]; Wein v Comptroller of State of N.Y., 46 NY2d 394, 399 [1979]; see e.g. State Finance Law § 123) and, here, Unconsolidated Laws § 4221 likewise authorizes "any citizen" of the state to seek judicial review of a legislative act establishing electoral districts. We therefore turn to consideration of the merits of petitioners' challenges to the 2022 redistricting maps.

Petitioners first assert that, in light of the lack of compliance by the IRC and the legislature with the procedures set forth in {**38 NY3d at 509} the Constitution, the legislature's enactment of the 2022 redistricting maps contravened the Constitution. To conclude otherwise, petitioners contend, would be to render the 2014 amendments—touted as an important reform of the redistricting process—functionally meaningless. We agree.

Legislative enactments, including those implementing redistricting plans, are entitled to a "strong presumption of constitutionality" and redistricting legislation will be declared unconstitutional by the courts " 'only when it can be shown beyond reasonable doubt that it conflicts' " with the Constitution after "'every reasonable mode of reconciliation of the statute with the Constitution has been resorted to, and reconciliation has been found impossible' " (Matter of Wolpoff v Cuomo, 80 NY2d 70, 78 [1992] [some internal quotation marks omitted], quoting Matter of Fay, 291 NY 198, 207 [1943]; see Cohen v Cuomo, 19 NY3d 196, 201-202 [2012]). Nevertheless, invalidation of a legislative enactment is required when such act
amounts to "a gross and deliberate violation of the plain intent of the Constitution and a disregard of its spirit and the purpose for which express limitations are included therein" (Cohen, 19 NY3d at 202, quoting Matter of Sherrill v O'Brien, 188 NY 185, 198 [1907]).

To determine whether the legislature's 2022 enactment of redistricting legislation comports with the Constitution, our starting point must be the text thereof. "In construing the language of the Constitution as in construing the language of a statute, . . . [we] look for the intention of the People and give to the language used its ordinary meaning" (Matter of Sherrill, 188 NY at 207; see White v Cuomo, 38 NY3d 209, 219-220 [2022]; Burton v New York State Dept. of Taxation & Fin., 25 NY3d 732, 739 [2015]; Matter of Carey v Morton, 297 NY 361, 366 [1948]). Upon careful review of the plain language of the Constitution and the history pertaining to the adoption of the 2014 reforms, it is evident that the legislature and the IRC deviated from the constitutionally mandated procedure.

From a procedural standpoint, the Constitution—as amended in 2014—requires that, every 10 years commencing in 2020, an "independent redistricting commission" comprising 10 members—eight of whom are appointed by the majority and minority leaders of the senate and assembly and the remaining two by those eight appointees—shall be established (see NY Const, art III, § 5-b [a]). The members must be a diverse group of registered voters and cannot be (or recently have been) (**38 NY3d at 510**) members of the state or federal legislature, statewide elected officials, state officers or legislative employees, registered lobbyists, or political party chairmen, or the spouses of state or federal elected officials (see NY Const, art III, § 5-b [b], [c]).

[*6]

Under the Constitution, the IRC must make its draft redistricting plans available to the public and hold no less than 12 public hearings throughout the state regarding proposals for redistricting, ensuring transparency and giving New Yorkers a voice in the redistricting process (see NY Const, art III, § 4 [c]). After considering public comments and working together across party lines to compose new redistricting lines, the IRC must submit its approved plan and implementing legislation to the legislature no later than January 15th in a redistricting year (see NY Const, art III, § 4 [b]), with the caveat that, if the IRC is unable to muster the requisite number of votes for a single plan, it must provide the legislature with each plan that "garnered the highest number of votes in support of its approval by the [IRC]"
(NY Const, art III, § 5-b [g]). If the legislature rejects the IRC's first plan, the Constitution requires the IRC to go back to the drawing board, work to reach consensus, and "prepare and submit to the legislature a second redistricting plan and the necessary implementing legislation" to the legislature within 15 days and in no case later than February 28th (NY Const, art III, § 4 [b]). "If" the legislature fails to approve the second plan without amendment, the Constitution then directs that "each house shall introduce such implementing legislation"—a clear reference to the IRC's second plan—with any amendments each house of the legislature deems necessary (NY Const, art III, § 4 [b]). As a further safeguard against one party dominating redistricting, the Constitution dictates that the number of votes required for the IRC and legislature to approve a plan differs depending on whether the legislature is controlled by one political party or control of the houses are split between the parties (see NY Const, art III, §§ 4 [b] [1]-[3]; 5-b [f] [1], [2]).

The Redistricting Reform Act of 2012, legislation enacted in conjunction with the 2012 constitutional resolution, further provides as a matter of statutory law that "[a]ny amendments by the senate or assembly to a redistricting plan submitted by the [IRC] . . . shall not affect more than two percent of the population of any district contained in such plan" (L 2012, ch 17, § 3). As the sponsor of the legislation explained, "[i]f the [IRC's] second plan [was] also rejected . . ., each house may {**38 NY3d at 511}then amend that plan prior to approval except that such amendments . . . cannot affect more than two percent of the population of any district in the commission's plan," a limitation designed to "provide reasonable restrictions on the legislature's changes to the commission's plans" (Senate Introducer's Mem in Support, Bill Jacket, L 2012, ch 17 at 15, 2012 McKinney's Session Laws of NY at 1487 [emphasis added]).

The plain language of article III, § 4 dictates that the IRC "shall prepare" and "shall submit" to the legislature a redistricting plan with implementing legislation, that IRC plan "shall be voted upon, without amendment" by the legislature, and—in the event the first plan is rejected—the IRC "shall prepare and submit to the legislature a second redistricting plan and the necessary implementing legislation," which again "shall be voted upon, without amendment" (NY Const, art III, § 4 [b] [emphasis added]). "If" and only "if" that second plan is rejected, does the Constitution permit the legislature to introduce its own implementing legislation, "with any amendments" to the IRC plans deemed necessary that otherwise comply with constitutional directives (NY Const, art III, § 4 [b] [emphasis added]).
"In the construction of constitutional provisions, the language used, if plain and precise, should be given its full effect" and "[i]t must be presumed that its framers understood the force of the language used and, as well, the people who adopted it" (People v Rathbone, 145 NY 434, 438 [1895]). Our Constitution is "an instrument framed deliberately and with care, and adopted by the people as the organic law of the State" and, when interpreting it, we may "not allow for interstitial and interpretative gloss . . . by the other [b]ranches [of the government] that substantially alters the specified law-making regimen" set forth in the Constitution (Matter of King v Cuomo, 81 NY2d 247, 253 [1993]).

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 text of section 4 contemplates that any redistricting act ultimately adopted must be founded upon a plan submitted by the IRC; in the event the IRC plan is rejected, the Constitution authorizes "amendments" to such plan, not the wholesale drawing of entirely new maps (NY Const, art III, § 4 [b]; see NY Assembly Debate on 2012 NY Assembly Bill A9557, Mar. 15, 2012 at 39 ["The Constitutional amendment allows the (l)egislature to amend the plan [submitted by the independent redistricting commission] if the (l)egislature has twice rejected submitted plans" (emphasis added)]).

Despite clear constitutional language, the state respondents posit that it is wrong to interpret the 2014 constitutional amendments as requiring two separate IRC plans as a precondition to the legislature's exercise of its long-standing and historically unbridled authority to enact redistricting legislation. They further rely on the 2021 legislation authorizing the legislature to move forward on redistricting even if the IRC fails to submit maps as permissibly filling a purported gap in the constitutional design. However, in addition to being contrary to the text of the Constitution as we have explained, the state respondents' arguments are also belied by the purpose of the 2014 amendments and the relevant legislative history—including the legislature's own statements regarding the intent and effect of the 2014 constitutional reform effort.

Indeed, the state respondents studiously ignore events that gave rise to the 2014 amendments. During the previous redistricting cycle in 2012, the New York Legislature was unable to reach agreement on legislation setting the congressional district lines and, as a
result, a federal court ordered the adoption of a judicially-drafted congressional redistricting plan (see Favors, 2012 WL 928223, *2, 2012 US Dist LEXIS 36910, *10). While the 2012 legislature did agree on state senate and assembly maps, the proposed maps were widely criticized as a product of partisan gerrymandering, prompting the then-Governor to threaten to veto the plans absent a concrete legislative commitment to redistricting reform (see Micah Altman & Michael P. McDonald, A Half-Century of Virginia Redistricting Battles: Shifting from Rural Malapportionment to Voting Rights to Public Participation, 47 U Rich L Rev 771, 829 [2013]; Thomas Kaplan, An Update on New York Redistricting, NY Times, Mar. 7, 2012, § A at 25; Thomas Kaplan, An Update on New York Redistricting, NY Times, Mar. 9, 2012, § A at 25). Thus, as we have discussed, in conjunction with enactment of the 2012 redistricting acts (see L 2012, ch 16), the legislature affirmed its commitment to redistricting reform by passing the Redistricting Reform Act of 2012 (see L 2012, ch 17) and the first of the two concurrent resolutions proposing the constitutional amendments creating the IRC process (see 2012 NY Senate-Assembly Concurrent Resolution S6698, A9526 [Mar. 11, 2012]). Characterizing the legislature's 2012 senate and assembly district lines as "significantly flawed," the Governor nevertheless approved the redistricting legislation that year in light of the legislature's demonstrated agreement to "permanent[ly]" and "meaningful[ly]" reform the redistricting process for future years and "provide[ ] transparency to a process [otherwise] cloaked in secrecy and largely immune from legal challenges to partisan gerrymandering" (Governor's Approval Mem, Bill Jacket, L 2012, ch 17 at 5-6, 2012 NY Legis Ann at 12-13).

As the surrounding context and history of the 2014 amendments illustrate, the constitutional amendments adopted by the two consecutive legislatures and the voters—from the provisions detailing the composition of the IRC to those setting forth the voting metrics—were carefully crafted to guarantee that redistricting maps have their origin in the collective and transparent work product of a bipartisan commission that is constitutionally required to [*8]pursue consensus to draw district{**38 NY3d at 514} lines. The procedural amendments—along with a novel substantive amendment of the State Constitution expressly prohibiting partisan gerrymandering, discussed further below—were enacted in response to criticism of the scourge of hyper-partisanship, which the United States Supreme Court has recognized as "incompatible with democratic principles" (Arizona State Legislature v Arizona Independent Redistricting Comm'n, 576 US at 791 [internal quotation marks, brackets and citation omitted]).
As reflected in the legislative record, the IRC's fulfillment of its constitutional obligations was unquestionably intended to operate as a necessary precondition to, and limitation on, the legislature's exercise of its discretion in redistricting. The legislative record shows that the 2012 legislature—the drafters of the constitutional amendments—intended to "comprehensively" reform and "implement historic changes to achieve a fair and readily transparent process" to "ensure that the drawing of legislative district lines in New York will be done by a bipartisan, independent body"—rather than entirely by the legislature itself (Assembly Mem in Support, 2012 NY Senate-Assembly Concurrent Resolution S6698, A9526; Senate Introducer's Mem in Support, 2013 NY Senate-Assembly Concurrent Resolution S2107, A2086). As the sponsors explained, the reforms were designed to "substantively and fundamentally" alter the redistricting process, allowing "[f]or the first time, both the majority and minority parties in the legislature [to] have an equal role in the process of drawing lines," with these "far-reaching" constitutional reforms touted as a template "for independent redistricting throughout the United States" (Assembly Mem in Support, 2013 NY Senate-Assembly Concurrent Resolution S2107, A2086).

The senate debate indicates that the constitutional provision allowing the legislature to amend the second redistricting plan submitted by the IRC only after twice voting on and rejecting IRC plans was intended to encourage bipartisan participation by the legislature in the redistricting process. The senate sponsor explained that "[o]n the third enactment, there could be amendments under this provision. But again, it would be the third time—not first time, not the second time, but the third time in order to get ultimately a product produced" (NY Senate Debate on 2013 NY Assembly Bill A2086, Jan. 23, 2013 at 222). In other words, ":the there cannot be agreement, if the Governor vetoes the provision twice, . . . that third time the Legislature (**38 NY3d at 515) would be acting. But not until that time" (id. at 224) because "the intent of th[e] resolution [wa]s to have the Legislature act and vote on . . . a [second] plan" before undertaking any amendments of its own (id. at 226). Answering a charge that the IRC would essentially be only "an advisory commission" since the legislature could ultimately reject both sets of IRC maps, the senate sponsor explained that the IRC process was intended, in part, to impose consequences on the legislature for rejecting plans developed through a bipartisan process by forcing it to take a public position refusing to adopt district lines that were developed with an "enormous amount of citizen input" and effort (id. at 228).
It is no surprise, then, that the Constitution dictates that the IRC-based process for redistricting established therein "shall govern redistricting in this state 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" (NY Const, art III, § 4 [e] [emphasis added]). Contrary to the state respondents' contentions, the detailed amendments leave no room for legislative discretion regarding the particulars of implementation; this is not a scenario where the Constitution fails to provide "specific guidance" or is "silently on th[e] issue" (Cohen, 19 NY3d at 200, 202). Under the 2014 amendments, compliance with the IRC process enshrined in the Constitution is the exclusive method of redistricting, absent court intervention following a violation of the law, incentivizing the legislature to encourage and support fair bipartisan participation and compromise throughout the redistricting process. [FN10]

That the IRC process was intended to operate as a limitation on the legislature's power to compose district lines is further underscored by the Redistricting Reform Act of 2012 (see L 2012, ch 17). That legislation, adopted simultaneously with the 2012 constitutional resolution, instituted the two percent limitation on the legislature's authority (see L 2012, ch 17, § 3). In describing this particular reform, the sponsor of the bill explained that "[i]f the legislature fails to pass" the IRC's second plan "it may then amend such plans and vote upon them as amended. However, any such amendments shall be limited . . . to affect no more than two percent of the population of any district in such plan" (Senate Introducer's Mem in Support, Bill Jacket, L 2012, ch 17 at 11, 2012 McKinney's Session Laws of NY at 1484-1485). Thus, although the legislature retains the ultimate authority to enact districting maps upon completion of the IRC process, the constitutional reforms were clearly intended to promote fairness, transparency, and bipartisanship by requiring, as a precondition to redistricting legislation, that the IRC fulfill a substantial and constitutionally required role in the map drawing process. [FN11]

Indeed, recent events suggest that the legislature itself recognized that the Constitution did not permit it to proceed with redistricting absent compliance with the bipartisan IRC process. Apparently forecasting that the IRC would not comply with its constitutional obligations, in the summer of 2021—before the IRC had even been given a chance to fulfill its constitutional role—the legislature attempted to amend the Constitution to add language authorizing it to introduce redistricting legislation "[i]f . . . the redistricting commission fails to vote on a redistricting plan and implementing legislation by the required deadline" for any
reason (2021 NY Senate-Assembly Concurrent Resolution S515, A1916). After New York voters rejected this constitutional amendment (among others)—and with the first redistricting cycle since the 2014 amendments on the horizon—the legislature attempted to fill a purported "gap" in constitutional language by *statutorily* {**38 NY3d at 517} amending the IRC procedure in the same manner (*see* L 2021, ch 633). In this Court, the state respondents attempt to rely on the 2021 legislation to justify the deviation from constitutional requirements. Needless to say, the bipartisan process was placed in the State Constitution specifically to insulate it from capricious legislative action and to ensure permanent redistricting reform absent further amendment to the Constitution, which has not occurred. The 2021 legislation is unconstitutional to the extent that it permits the legislature to avoid a central requirement of the reform amendments (*see* Matter of King, 81 NY2d at 252 ["The (l)egislature must be guided and governed in this particular function by the Constitution, not by a self-generated additive"])..

In sum, there can be no question that the drafters of the 2014 constitutional amendments and the voters of this state intended compliance with the IRC process to be a constitutionally required precondition to the legislature's enactment of redistricting legislation. In urging this Court to adopt their view that the IRC may abandon its constitutional mandate with no impact on the ultimate result and by contending that the legislature may seize upon such inaction to bypass the IRC process and compose its own redistricting maps with impunity, the state respondents ask us to effectively nullify the 2014 amendments. This we will not do. Indeed, such an approach would encourage partisans involved in the IRC process to avoid consensus, thereby permitting the legislature to step in and create new maps merely by engineering a stalemate at any stage of the IRC process, or even by failing to appoint members or withholding funding from the IRC. Through the 2014 amendments, the people of this state adopted substantial redistricting reforms aimed at ensuring that the starting point for redistricting legislation would be district lines proffered by a bipartisan commission following significant public participation, thereby ensuring each political party and all interested persons a voice in the composition of those lines. We decline to render the constitutional IRC process inconsequential in the manner requested by the state respondents, a result that would "violate[e] . . . the plain [*9]intent of the Constitution and . . . disregard [the] spirit and the purpose" of the 2014 constitutional amendments (*Cohen*, 19 NY3d at 202 [internal quotation marks omitted]).{**38 NY3d at 518}
Having addressed the procedural violation, we turn to the substantive partisan gerrymandering claim. As a threshold matter, despite our invalidation of the maps on procedural grounds, we nevertheless must determine on the state respondents' cross appeal whether the courts below properly declared that the congressional map was also substantively unconstitutional.  

In addition to the procedural amendments, in 2014, the people also amended the New York State Constitution to include certain substantive limitations on redistricting, including an express prohibition on partisan gerrymandering, commanding that "[d]istricts shall not be drawn to discourage competition or for the purpose of favoring or disfavoring incumbents or other particular candidates or political parties" (NY Const, art III, § 4 [c] [5]). This amendment was made in recognition that the practice of partisan gerrymandering "jeopardizes the ordered working of our Republic, and of the democratic process" and, "at its most extreme, the practice amounts to 'rigging elections,'" which violates "the most fundamental of all democratic principles—that the voters should choose their representatives, not the other way around" (Gill v Whitford, 585 US ---, ---, 138 S Ct 1916, 1940 [2018], quoting Arizona State Legislature, 576 US at 824).

In this case, petitioners asserted that, along with being procedurally flawed, the 2022 congressional map enacted by the legislature violates the constitutional provision prohibiting partisan gerrymandering. To prevail on such claim, petitioners bore the burden of proving beyond a reasonable doubt that the congressional districts were drawn with a particular impermissible intent or motive—that is, to "discourage competition" or to "favor[ ] or disfavor[ ] incumbents or other particular candidates or political parties" (NY Const, art III, § 4 [c] [5]). Such invidious intent could be demonstrated directly or circumstantially through proof of a partisan process excluding participation by the minority party and evidence of discriminatory results (i.e., lines that impactfully and unduly favor or disfavor a political party or reduce competition).

Here, at the conclusion of the nonjury trial, Supreme Court—based on the partisan process, the map enacted by the legislature itself, and the expert testimony proffered by petitioners—found by "clear evidence and beyond a reasonable doubt that the congressional map was unconstitutionally drawn with political bias" to "significantly reduce[ ]" the number
of competitive districts (76 Misc 3d at 190-191). The Appellate Division affirmed, similarly
drawing an inference of invidious partisan purpose based on "evidence of the largely one-
party process used to enact the 2022 congressional map, a comparison of the 2022
congressional map to the 2012 congressional map, and the expert opinion and supporting
analysis of Sean P. Trende," finding that "the 2022 congressional map was drawn to
discourage competition and favor democrats" (204 AD3d at 1371).

We reject respondents' assertion that the evidence was legally insufficient to establish an
unconstitutional partisan{**38 NY3d at 520} purpose. Viewing the evidence in the light most
favorable to petitioners and drawing every inference in their favor, there is a "valid line of
reasoning and permissible inferences which could possibly lead [a] rational [factfinder] to the
conclusion reached by the [factfinder] on the basis of the evidence presented at trial" (Cohen v
Hallmark Cards, 45 NY2d 493, 499 [1978]). Moreover, where, as here, this Court is
presented with affirmed findings of fact in a civil case, our review is limited to whether there
is record support for those findings (see Matter of Rittersporn v Sadowski, 48 NY2d 618
[1979]). There is record support in the undisputed facts and evidence presented by petitioners
for the affirmed finding that the 2022 congressional map was drawn to discourage
competition. Indeed, several of the state respondents' experts, who urged the court to draw the
contrary inference, concededly did not take into account the reduction in competitive districts.
Thus, we find no basis to disturb the determination of the courts below (see Matter of
Rittersporn, 48 NY2d at 619).[FN14]{**38 NY3d at 521}

V

[*11]Based on the foregoing, the enactment of the congressional and senate maps by the
legislature was procedurally unconstitutional, and the congressional map is also substantively
unconstitutional as drawn with impermissible partisan purpose, leaving the state without
constitutional district lines for use in the 2022 primary and general elections.[FN15] The
parties dispute the proper remedy for these constitutional violations, with the state
respondents arguing no remedy should be ordered for the 2022 election cycle because the
election process for this year is already underway. In other words, the state respondents urge
that the 2022 congressional and senate elections be conducted using the unconstitutional
maps, deferring any remedy for a future election.[FN16] We reject this invitation to subject the
people of this state to an election conducted pursuant to an unconstitutional reapportionment.
"The power of the judiciary of a State to require valid reapportionment or to formulate a valid redistricting plan has not only been recognized by [the United States Supreme] Court but appropriate action by the States in such cases has been specifically encouraged" (Scott v Germano, 381 US 407, 409 [1965]; see Growe, 507 US at 33). [FN17] Indeed, our State Constitution both requires expedited judicial review of redistricting challenges (see NY Const, art III, § 5)—as occurred here—and authorizes the judiciary to "order the adoption of, or changes to, a redistricting plan" in the absence of a constitutionally-viable legislative plan (NY Const, art III, § 4[e]). Where, as here, legislative maps have been determined to be unenforceable, we are left in the same predicament as if no maps had been enacted. Prompt judicial intervention is both necessary and appropriate to guarantee the people's right to a free and fair election.

We are cognizant of the logistical difficulties involved in preparing for and executing an election—and appreciate that rescheduling a primary election impacts administrative officials, candidates for public office, and the voters themselves. Like the courts below, however, we are not convinced that we have no choice but to allow the 2022 primary election to proceed on unconstitutionally enacted and gerrymandered maps. With judicial supervision and the support of a neutral expert designated a special master, there is sufficient time for the adoption of new district lines. [FN18] Although it will likely be necessary to move the congressional and senate primary elections to August, New York routinely held a bifurcated primary until recently, with some primaries occurring as late as September. We are confident that, in consultation with the Board of Elections, Supreme Court can swiftly develop a schedule to facilitate an August primary election, allowing time for the adoption of new constitutional maps, the dissemination of correct information to voters, the completion of the petitioning process, and compliance with federal voting laws, including the Uniformed and Overseas Citizens Absentee Voting Act (see 52 USC § 20302).

Finally, the state respondents protest that the legislature must be provided a "full and reasonable opportunity to correct . . . legal infirmities" in redistricting legislation (NY Const, art III, § 5). 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. [FN19] Although the state respondents assert that, even following a constitutional violation, the legislature possesses exclusive jurisdiction and unrestricted power over redistricting, the Constitution explicitly authorizes
judicial oversight of remedial action in the wake of a determination of unconstitutionality—a function familiar to the courts given their obligation to safeguard the constitutional rights of the people under our tripartite form of government. Thus, we endorse the procedure directed by Supreme Court to "order the adoption of . . . a redistricting plan" (NY Const, art III, § 4[e]) with the assistance of a neutral expert, designated a special master, following submissions from the parties, the legislature, and any interested stakeholders who wish to be heard. [FN20]

{**38 NY3d at 524}Nearly a century and a half ago, we wrote that "[t]he Constitution is the voice of the people speaking in their sovereign capacity, and it must be heeded" (Matter of New York El. R.R. Co., 70 NY 327, 342 [1877]). Thirty years later, we relied on that fundamental principle to conclude that "[a] legislative apportionment act cannot stand as a valid exercise of discretionary power by the legislature when it is manifest that the constitutional provisions have [*13]been disregarded . . . [because] [a]ny other determination by the courts might result in the constitutional standards being broken down and wholly disregarded" (Matter of Sherrill v O'Brien, 188 NY at 198). Today, we again uphold those constitutional standards by adhering to the will of the people of this state and giving meaningful effect to the 2014 constitutional amendments.

We therefore remit the matter to Supreme Court which, with the assistance of the special master and any other relevant submissions (including any submissions any party wishes to promptly offer), shall adopt constitutional maps with all due haste. Accordingly, the Appellate Division order should be modified, with costs to petitioners, in accordance with this opinion and, as so modified affirmed.

Troutman, J. (dissenting in part). I agree with the majority that petitioners have standing, and I further agree with the majority's holding that the 2022 congressional and state senate redistricting plans (2022 plans) were not enacted by the legislature in compliance with the constitutional process. However, I dissent as to the majority's advisory opinion on the substantive issue of whether the plans constitute political gerrymandering and as to the remedy.

The majority correctly concludes that sections 4, 5, and 5-b of article III of the State Constitution, as ratified by the citizens of the state, provide the exclusive process for redistricting (see NY Const, art III, § 4 [e]). This process requires, among other things, that any redistricting plan to be voted on by the legislature must be initiated by the Independent
Redistricting Committee (IRC) (see § 4 [b]). Once this Court holds that the {**38 NY3d at 525} 2022 plans were unconstitutionally enacted and must be stricken on that threshold basis, it should not then step out of its judicial role to further opine on the purely academic issue of whether the 2022 congressional map failed to comply with the substantive requirements of section 4 (c) (5). The 2022 plans, which the majority concludes are void ab initio, are no longer substantively at issue, nor can the majority seriously claim them to be so. Furthermore, although the majority purports to provide "necessary guidance to inform the development of a new congressional map on remittal" (majority op at 518 n 12), the majority's opinion provides no such guidance. Its conclusion, based on affirmed findings of fact that the congressional map was drawn with partisan intent, is not illuminating in the least because the majority does not engage in the kind of careful district-specific analysis that might provide any practical guidance to an actual mapmaker, nor could it on this record (cf. Wilson, J., dissenting op at 534-543). By opining on this academic issue, the majority renders "an inappropriate advisory opinion" by "prospectively declar[ing] the [redistricting] invalid on additional . . . constitutional grounds" (T.D. v New York State Off. of Mental Health, 91 NY2d 860, 862 [1997]; see Self-Insurer's Assn. v State Indus. Commn., 224 NY 13, 16 [1918, Cardozo, J.] ["The function of the courts is to determine controversies between litigants . . . They do not give advisory opinions. The giving of such opinions is not the exercise of the judicial function"]).

[*14]

Given the procedural violation flowing from the breakdown in the constitutional process, we must fashion a remedy that matches the error.[FN*] The Constitution contemplates that a court may be "required to order the adoption of . . . a redistricting plan as a remedy for a violation of law" (NY Const, art III, § 4 [c]). In so ordering, where a court finds that redistricting legislation violates article III, "the legislature shall have a full and reasonable opportunity to correct the law's legal infirmities" (§ 5). Consistent with these provisions, this Court should order the legislature to adopt either of the two plans that the IRC has already approved pursuant to section 5-b (g). Those plans show significant areas of bipartisan consensus among the IRC commissioners. The boundaries of the districts of Upstate New York, in particular, are nearly identical between the two plans and similar to those in the procedurally infirm plan{**38 NY3d at 526} enacted by the legislature (see Matter of Harkenrider v Hochul, 204 AD3d 1366, 1377-1378 [4th Dept, Apr. 21, 2022, Whalen, P.J. &
Winslow, J., dissenting in part]). Given the existence of these IRC-approved plans, there is no need for a redistricting plan to be crafted out of whole cloth and adopted by a court. Rather, the legislature should be ordered to adopt one of the IRC-approved plans on a strict timetable, with limited opportunity to make amendments thereto. As part of our judicially crafted remedy, we could order that any amendments to either plan "shall not affect more than [2%] of the population of any district contained in such plan" (L 2012, ch 17, § 3). In other words, the legislature would be bound by its own self-imposed restrictions, which were in effect at the time these plans were first presented for legislative approval.

Such a remedy not only adheres more closely to the constitutional redistricting process, but it discourages political gamesmanship. Throughout this proceeding, respondents have asserted that the legislature has near-plenary authority to adopt a redistricting plan, whereas petitioners have sought to take the process out of the hands of the legislature and to place it into the hands of the judiciary. It is of course disputed why the constitutional process broke down, but it is readily apparent that the IRC's bipartisan commissioners failed to fulfill their constitutional duty. None of the parties is entitled to the resolution that he or she seeks.

In addition, this remedy allows the legislature to enact a plan that minimizes the impact on the reliance interests of both the voters and candidates. Petitions have been circulated, citizens have contributed monetary donations to the candidates of their choice, and eligible voters have had the opportunity to educate themselves on the candidates who are campaigning for their votes, all in reliance on the procedurally infirm redistricting plan enacted by the legislature. Of course, entrenched candidates have the party apparatus to support them in the event that further redistricting causes excessive upset to the current plan. In such a circumstance, outside candidates, upstart candidates, and independent candidates, who lack the resources of the well-heeled, will be disadvantaged most, leaving the voters who support them without suitable options. The legislature, duly elected by the citizens of this state, is in the best position to take these considerations into account.

Yet, the remedy ordered by the majority takes the ultimate decision-making authority out of the hands of the legislature {**38 NY3d at 527} and entrusts it to a single trial court judge. Moreover, it may ultimately subject the citizens of this state, for the next 10 years, to an electoral map created by an unelected individual, with no apparent ties to this state, whom our citizens never envisioned having such a profound effect on their democracy. That is simply not what the people voted for when they enacted the constitutional provision at issue.
Although the IRC process is not perfect, it is preferable to a process that removes the people's representatives entirely from the process. The majority states that it "decline[s] to render the constitutional IRC process inconsequential in the manner requested by the state respondents" (majority op at 517); however, the majority does just that by crafting a remedy that cuts the legislature out of the process. The citizens of the state are entitled to a resolution that adheres as closely to the constitutional process as possible. By ordering the legislature to enact redistricting legislation duly initiated by the IRC, this Court could afford the legislature its "full and reasonable" opportunity while honoring the constitutional process ratified by the people.

Wilson, J. (dissenting). I agree with Judge Troutman that article III, § 5 of the New York Constitution means that the majority's referral of this matter to a special referee is not allowable, and I further agree that her proposed solution of requiring the legislature to act on the Independent Redistricting Commission (IRC) maps that have been submitted, though novel, would be acceptable in the unusual circumstances presented here. I also fully concur in Judge Rivera's dissenting opinion, and I do not view Judge Rivera's opinion as necessarily inconsistent with Judge Troutman's proposed remedy. Therefore, I address the merits of the claim that the 2022 redistricting itself violates the Constitution. It does not.

The burden a plaintiff must meet to overturn legislative action as violative of the New York Constitution is extraordinarily high. We have often (though not always) described that burden as proving unconstitutionality "beyond reasonable doubt" (Matter of Wolpoff v Cuomo, 80 NY2d 70, 78 [1992]; but see Matter of City of Utica [Zumpano], 91 NY2d 964 [1998] [upholding a state statute's constitutionality without reference to the beyond a reasonable doubt standard]; Matter of Sherrill v O'Brien, 188 NY 185, 198 [1907] ["A legislative apportionment act cannot stand as a valid exercise of discretionary power by the legislature when it is manifest that the constitutional provisions {**38 NY3d at 528} have been disregarded"]; Matter of Whitney, 142 NY 531, 533 [1894] [upholding the apportionment of Kings County into assembly districts because, although flawed, "the division has seemed to us a reasonable approach to equality, and under all the circumstances of the case a substantial obedience to the writ"]). Both Supreme Court and the Appellate Division described the test that way. Thus, to prevail, the petitioners need to have proved beyond a reasonable doubt that the legislature's 2022 congressional and state senatorial districts were "drawn to discourage competition or for the purpose of favoring or disfavoring
incumbents or other particular candidates or political parties" (NY Const, art III, § 4 [c] [5]). It is important to pay close attention to the wording of the Constitution. It does not prohibit the creation (or maintenance) of districts that are highly partisan in one direction or the other. Indeed, both in New York [*15] and around the rest of the nation, voters tend to cluster in geographic areas that reflect party affiliation. As a simple example, rural areas in New York and in the United States generally tend to have much higher concentrations of Republican voters than do urban areas. What the Constitution prevents is purposefully drawing districts to discourage competition or favor particular parties or candidates.

After a review of the record, I am certain that the petitioners failed to satisfy the "beyond reasonable doubt" standard. By that, I do not mean to say that I know the legislature did not draw some districts in a way that violated our State Constitution; rather, the evidence here does not prove that to be the case at the level of certainty required to invalidate the 2022 redistricting as unconstitutional. Perhaps with a different record, petitioners could make such a showing, but they have failed to do so here.

The question before us, then, is whether the petitioners introduced sufficient evidence to discharge their very high burden of proving that the legislature adopted gerrymandered district lines in violation of the Constitution. That is unequivocally a question of law, and thus within the heartland of our Court's power of review (see Glenbriar Co. v Lipsman, 5 NY3d 388, 392 [2005]; see also People v Jin Cheng Lin, 26 NY3d 701, 719 [2016] [noting that whether "the proof does not meet the reasonable doubt standard" is "a matter of law" (brackets omitted)]; People v Tarsia, 50 NY2d 1, 13 [1980] [evaluating "the total evidence" as to whether "the proof was insufficient as a matter of law to support the affirmed findings that defendant's {**38 NY3d at 529} inculpatory statements . . . were voluntary"]; People v Anderson, 42 NY2d 35, 39 [1977] ["(W)hether the proof met the reasonable doubt standard at all is a matter of law"]; People v Leonti, 18 NY2d 384, 389 [1966] ["(W)hether the evidence adduced meets the standard required is one of law for our review"]). The majority incorrectly treats this as an unreviewable question of fact, characterizing Supreme Court's finding that the 2022 congressional map was drawn to discourage competition as a factual "determination" that has "record support" and thus should not be "disturb[ed]" (majority op at 520)—a distinct, and here inapt, standard (see Stiles v Batavia Atomic Horseshoes, 81 NY2d 950, 951 [1993]).
Indeed, it is remarkably inaccurate to suggest that our Court is without power to review the Appellate Division's ruling on the partisan gerrymander claim. This case is before us as an appeal as of right based on CPLR 5601 (b). This case satisfies the conditions for an appeal as of right because the question presented—whether a congressional map, i.e., a legislative enactment, is constitutionally invalid—is a question of law that is reviewable by this Court (see Cayuga Indian Nation of N.Y. v Gould, 14 NY3d 614, 635 [2010] ["(A) query concerning the scope and interpretation of a statute or a challenge to its constitutional validity" is a "pure question of law"]).

Petitioners' evidence falls into three basic categories. First, petitioners primarily rely on the testimony of Sean P. Trende, an elections analyst and doctoral candidate at Ohio State University. At best, Mr. Trende's results are incomplete and inconclusive, but they are also legally insufficient to meet the above standard. Second, petitioners rely on the projected loss of four Republican congressional seats (out of eight that currently exist). The difficulty with that proof is that it assumes that factors unrelated to how the districts were drawn have not caused the result. Third, petitioners contend that the 2022 redistricting was accomplished through the complete exclusion of Republican members of the legislature from the process and a failed attempt by Democrats to further amend the Constitution, followed by the enactment of a statute. I view that as their best argument in support of their gerrymander claim but one that, without more, does not meet the high bar for invalidating the legislature's 2022 redistricting plan.

The petitioners, Supreme Court, and the Appellate Division plurality each relied heavily on the testimony of Mr. Trende. {**38 NY3d at 530} Mr. Trende's testimony is based on simulations in which a computer algorithm uses demographic data, takes parameters set by the user, and draws districting maps for the region (in this case, New York State) specified by the user. This is the first time Mr. Trende has testified in a case in which he prepared redistricting simulations of any kind. Instead of using the Markov Chain Monte Carlo simulation algorithm, which has been regularly used in redistricting cases, Mr. Trende used a new simulation algorithm developed by Dr. Kosuke Imai, a Harvard professor, along with publicly available political and demographic data at the census block and precinct levels. Dr. Imai's new algorithm appeared in an unpublished paper that had yet to be peer-reviewed. In that paper, Dr. Imai reported that he [*16] had tested the reliability of his new model by
applying it to a 50-precinct map and running 10,000 simulations. By comparison, New York State has more than 14,000 precincts; uncontroverted evidence (including from Mr. Trende) establishes that the complexity of producing a working algorithm increases as the number of precincts increases.

In brief, Dr. Imai's algorithm draws possible maps, starting from a blank page, but taking into account parameters the user sets. For example, a user can specify to avoid splitting a county (or city) into different districts, though sometimes splitting is inevitable and may be accomplished in myriad ways. By running thousands of simulations and comparing them to what the legislature has done, the model allows for measurement of the difference in party breakdown between the collection of simulated maps and the legislatively drawn map. The model can produce summary statistics showing, for example, that, when compared to the legislative map, the simulated maps distribute voters of one party or another (here, Republicans) in a way that concentrates a lot of them into some districts where Republicans would likely have won elections anyway, thus removing them from districts where Democrats might have faced a close election. In simple terms, Mr. Trende concluded that the legislative map consolidated Republican voters into a few Republican-leaning districts and spread Democratic voters in an efficient fashion. Of course, the model cannot tell you why the legislature drew the districts that way, but, provided that a scientific method is proved to be reliable, the data entered is of good quality, the parameters chosen are correct, and the results are robust (i.e., not susceptible to material swings in output when parameters are varied within reasonable {**38 NY3d at 531} ranges for those parameters), the law allows intent to be inferred from results in a variety of areas (e.g. People v Guzman, 60 NY2d 403, 412 [1983] [discriminatory intent inferred from underrepresentation in grand jury selection]; Matter of 303 W. 42nd St. Corp. v Klein, 46 NY2d 686, 695 [1979] [discriminatory intent inferred from "a convincing showing of a grossly disproportionate incidence of nonenforcement against others similarly situated in all relevant respects save for that which furnishes the basis of the claimed discrimination"]).

Again, article III, § 4 (c) (5) of the Constitution states that "[d]istricts shall not be drawn to discourage competition or for the purpose of favoring or disfavoring incumbents or other particular candidates or political parties" (emphasis added). The prohibition, then, is against drawing maps with the intention to discourage competition or favor or disfavor incumbents, political candidates, or political parties. In other words, if a given map ends up discouraging
competition or favoring a political party, that map does not necessarily run afoul of the Constitution's prohibition. Instead, an intent to discourage competition or to favor that political party must be shown for the map to violate the Constitution.

Staten Island provides a good example to keep in mind, one to which I will return later. Staten Island is traditionally Republican. It does not have quite enough people in it to constitute an entire congressional district, but it forms the vast portion of Congressional District 11, both in the 2012 districting and the legislature's 2022 districting, with the added voters coming from Brooklyn. No one suggests that, by keeping Staten Island intact within a single congressional district instead of splitting it across two districts with more Brooklynnites, the legislature in 2012 or 2022 did so with the intent to advantage Republicans. If you split Staten Island into two different congressional districts and added enough Brooklynnites to fill out those districts, each of the districts would have more Brooklynnites than Staten Islanders, and the strength of the Republican voting of Staten Island would be diluted. The two new districts might be more competitive—i.e., closer to 50/50 than District 11 is or has been—but it is sufficient, to reject a claim of intent to advantage Republicans by keeping Staten Island whole within a single district, to say that it is an island and people there live in communities that are distinct from those in Brooklyn. Again, the why is important, not the what. {**38 NY3d at 532}

Mr. Trende's testimony and analysis were legally insufficient to bear on the question of intent for three reasons. First, the New York Constitution requires the consideration of several specifically identified factors when creating congressional districts, with some additional factors required for state senatorial districts. Thus, Mr. Trende's results at most show that if we amended the New York Constitution to strike out those factors, he could conclude the legislature acted with intent to disfavor Republicans or reduce competition. Second, close examination of districts in the real world, as compared to those hidden in thousands of hypothetical unseen maps, further exposes the unreliability of Mr. Trende's conclusions. Finally, the novelty of Dr. Imai's algorithm and the opacity of Mr. Trende's implementation of it create very substantial doubt as to his conclusions. The method is novel and not peer-reviewed. Mr. Trende did not attempt the established Markov Chain Monte Carlo simulation to compare it to his results, nor did he provide the model, inputs, data sets, or output maps that formed the basis for his analysis. Indeed, neither he nor anyone has seen the algorithm-
produced maps underlying his analysis. We are being asked to determine unconstitutionality based on shadows.

New York's Constitution requires that the following factors be considered when drawing congressional districts:

1. Compliance with "the federal constitution and statutes" (NY Const, art III, § 4 [c]);

2. "[W]hether such lines would result in the denial or abridgement of racial or language minority voting rights, and districts shall not be drawn to have the purpose of, nor shall they result in, the denial or abridgement of such rights" (id. § 4 [c] [1]);

3. "Districts shall be drawn so that, based on the totality of the circumstances, racial or minority language groups do not have less opportunity to participate in the political process than other members of the electorate and to elect representatives of their choice" (id.);

4. "Each district shall consist of contiguous territory" (id. § 4 [c] [3]);

5. "Each district shall be as compact in form as practicable" (id. § 4 [c] [4]);

6. "Districts shall not be drawn to discourage competition or for the purpose of favoring or disfavoring incumbents or other particular candidates or political parties" (id. § 4 [c] [5]);

7. Consideration of "the maintenance of cores of existing districts" (id.); and

8. Consideration of the maintenance of "pre-existing political subdivisions, including counties, cities, and towns, and of communities of interest" (id.).

For senatorial districts, the Constitution adds requirements that "senate districts not divide counties or towns, as well as the 'block-on-border' and 'town on border' rules" (id. § 4 [c] [6]).

Mr. Trende admittedly did not attempt to have his simulations account for several of the constitutionally required factors listed above. For that reason alone, his simulations do not provide evidence of the legislature's intent to disfavor Republicans or reduce competition. Putting aside all other methodological and implementation problems, a proper comparison would ask: what would an unbiased mapmaker (the algorithm) do if given the same constitutional requirements as the legislature has? Instead, Mr. Trende has attempted to
answer a different question: what would an unbiased mapmaker do if it lacked some of the constitutional requirements the legislature is required to follow?

This is not merely a conceptual problem, which is readily seen by identifying the constitutional factors Mr. Trende omitted. First, under the Equal Protection Clause and the federal Voting Rights Act (VRA), the composition of congressional districts must not discriminate on the basis of race or color (52 USC § 10301; US Const, Amend XIV, § 1). New York's constitutional requirements, listed as items 2 and 3 above, represent similar protections not just on the basis of race, but language as well. Mr. Trende gave no instruction to his algorithm to take any consideration of those constitutional requirements for drawing districts. Mr. Trende noted that his "simulated maps are not drawn with any racial data available to the simulation"—that is, the simulation could not even take race into account in drawing districts if Mr. Trende had specified that as a parameter. Likewise, nothing in the record suggests that Mr. Trende's simulation used any data concerning the language of inhabitants, and he made no claim to have done so.

[*17]

Faced with criticism that he had omitted consideration of factors 1 through 3 above, Mr. Trende responded generally that{**38 NY3d at 534} "every one of Respondents' experts could readily demonstrate that . . . fixing the purported omissions might lead this Court to arrive at different conclusions," which, as explained below, attempts to shift the burden of proof onto respondents. He then explained his omission on the ground that "there is no evidence proffered by any party of racially polarized voting in New York City or in particularized boroughs, nor is there evidence that any single minority group can form a reasonably compact majority in a district." Besides lacking any evidentiary support, his assertion is patently and commonly understood to be wrong. Looking just to last year's New York City mayoral election, Curtis Sliwa, the Republican nominee, "scored 44% of the vote in precincts where more than half of residents are Asian—surpassing his 40% of votes in white enclaves, 20% in majority-Hispanic districts and 6% in majority-Black districts" (Rong Xiaqing et al., Chinese Voters Came Out in Force for the GOP in NYC, Shaking Up Politics, The City, Nov. 11, 2021, [https://www.thecity.nyc/politics/2021/11/11/22777346/chinese-new-yorkers-voted-for-sliwa-gop-republicans](https://www.thecity.nyc/politics/2021/11/11/22777346/chinese-new-yorkers-voted-for-sliwa-gop-republicans)). In the same election, now-Mayor Eric Adams "dominated" the "Black Bloc," a "63 percent non-Hispanic Black and 23 percent college-educated swath of Brooklyn and Queens," where Adams grew up and where he won "63

Mr. Trende attempted to make some account of the omission of the federal and state protections for racial minority voting rights by "freezing" certain census blocks in nine districts to remove them from his analysis, explaining that those districts are "plausible candidates for protection under the VRA or the State Constitution." Even assuming that his choice of districts is sound, his results demonstrate the importance of his omission of constitutionally required factors: his "frozen" simulations produced results that "mak[e] Petitioners' case more difficult." Specifically, those "plausible" protections for minority voters produced results that "accept[ ] the Legislature's decision to pair Yorktown with Yonkers in the Sixteenth District, and to crack Republican-leaning areas in Midwood and Sheepshead Bay between the Ninth and Eighth districts." In other words, by including even a rough proxy for protection of minorities, he admits that some of what he described as gerrymandering {**38 NY3d at 535} is explainable instead by protection of minority voting rights. Mr. Trende's utter lack of consideration of the constitutional requirement to consider protection of non-English language groups inherently means his simulations do not show what an unbiased mapmaker would do if that constitutional command mattered.

Likewise, Mr. Trende completely neglected considering keeping "communities of interest" together (item 8 above), as the Constitution requires. Keeping in mind that differences in party affiliation within a district do not matter unless they were created with the *intent* to disadvantage a party or candidate or to reduce competition, Mr. Trende ignored that the IRC—composed in equal parts of persons appointed by Democrats and Republicans—reached agreement on keeping together many communities of interest. For example, both sets of IRC maps (one produced by the Democratic faction and the other by the Republican faction) agreed that the Southern Tier of New York should be unified in a district. The Southern Tier is a strip of eight counties along upstate New York's southern edge, the part of the state that shares a border with Pennsylvania. [FN1] Those counties are grouped as a region in New York State's materials on economic development (see New York State Empire State Development, Southern Tier, [https://esd.ny.gov/regions/southern-tier](https://esd.ny.gov/regions/southern-tier) [last accessed Apr. 26, 2022]). Indeed, the region has a storied history of being a manufacturing powerhouse, though the region also faced struggles within the past decade due to a decline in manufacturing and
uncertain economic development (Susanne Craig, *New York's Southern Tier, Once a Home for Big Business, Is Struggling*, NY Times, Sept. 29, 2015, https://www.nytimes.com/2015/09/30/nyregion/new-yorks-southern-tier-once-a-home-for-big-business-is-struggling.html). Those counties are more Republican than Democratic; in a show of how culturally distinct the region is, hundreds of residents in the Southern Tier in 2015 rallied in support of seceding from the state of New York (*id.*). One Republican lawmaker even applauded the fact that the maps proposed by the Democratic and Republican commissioners to the IRC both kept the Southern Tier [*18]* intact (Rick Miller, *Southern Tier Congressional District Essentially Maintained in NY{**38 NY3d at 536} Redistricting Maps*, Olean Times Herald, Jan. 4, 2022, available at https://www.oleantimesherald.com/news/southern-tier-congressional-district-essentially-maintained-in-ny-redistricting-maps/article_56c5d543-6c8a-55d3-a3de-e662bdb0f6dd.html). For Upstate New York, the Democratic Commissioners and the Republican Commissioners agreed that there should be three Republican-leaning districts: one uniting the Southern Tier, one uniting the North Country, and one by Lake Ontario. The Commissioners from the two parties also agreed that there should be Democratic-leaning districts in the four urban areas in Upstate New York: in and around Albany, Syracuse, Rochester, and Buffalo. The result of those bipartisan decisions by the IRC demonstrates that those districts (broadly, all of Upstate New York, about which the IRC had no substantial disagreements) should have been excluded from Mr. Trende's simulations. But even though the Southern Tier and the other upstate counties and cities were bipartisanly districted as "communities of interest," Mr. Trende made no effort to keep the Southern Tier, or other communities of interest, intact in his model. Indeed, Mr. Trende "didn't pay any attention to what any of those [IRC] commissioners had done in their proposals," had not read any of the testimony before the IRC, and did not know whether there was any testimony before the IRC about communities of interest.

Instead, he told Supreme Court that such communities are too difficult to code, even though he also acknowledged that in a redistricting exercise he undertook for Virginia, he and his co-researcher accounted for communities of interest. Mr. Trende did not do any sort of proxy analysis as he did for race, and because neither he nor anyone else ever looked at the 10,000 maps his simulation drew, he has no idea what his algorithm did to the Southern Tier or any other upstate areas. But Dr. Imai's own data provides some insight.
Mr. Trende used Dr. Imai's model and data. The record includes three sample maps from a set of 5,000 simulations for New York prepared by Dr. Imai himself. Two of the sample maps from Dr. Imai's simulations broke up the North Country. All three of the sample maps broke up the Southern Tier. None of Dr. Imai's sample maps maintained Democratic-leaning districts around all of Albany, Syracuse, Rochester, and Buffalo. Those samples strongly suggest that Mr. Trende's conclusions about intentional gerrymandering depend on comparison to maps that would have broken up congressional districts arrived{**38 NY3d at 537} at by bipartisan consensus. Of course, had Mr. Trende looked at his own maps, or even turned them over for respondents to examine, we would be able to know how many of his "less gerrymandered" simulations were incompatible with districting actually arrived at bipartisanly, with regard for the Constitution's directions.[FN2] Instead, it is clear that, just as with the racial and language protections in the Constitution, Mr. Trende's exclusion of communities of interest has made his analysis legally irrelevant: at most, it answers what an unbiased mapmaker would do if that mapmaker was told to disregard protection of racial minorities, language minorities and communities of interest.

One final example from Dr. Imai's work illustrates the unsoundness of Mr. Trende's conclusions. His conclusions are based on comparing the algorithm-drawn simulated districts, which purportedly are "less gerrymandered," against the legislature's redistricting plan. Because neither we nor Mr. Trende knows what his[*19]"less gerrymandered" maps look like, we cannot know whether they are sensible maps that should be included in such a comparison. But because Dr. Imai, using the same data and same model, displayed some sample maps, we can observe the kind of maps Mr. Trende has relied on for his conclusions. Sample plan 1 from Dr. Imai's simulation placed Schuyler County and Franklin County into the same congressional district. Schuyler County is near Upstate New York's southern border with Pennsylvania, and Franklin County is one of the northernmost counties in New York, on the border with Canada—that is, those two counties are on opposite {**38 NY3d at 538}sides of Upstate New York. Their county seats are 262 miles away via highway (Google, Google Maps Driving Directions from Watkins Glen, New York to Malone, New York, https://perma.cc/L3KH-DN5B [last accessed Apr. 26, 2022]). In essence, what Mr. Trende is showing is that the partisan imbalance of some congressional districts could be reduced by radically rejiggering them in a way that no human mapmaker (or resident of either of those counties) would think remotely sensible. Interesting though it may be, it is legally irrelevant.
Apart from the omitted constitutional requirements, the creation of districts requires balancing among the different constitutional requirements. Some are relatively inflexible—such as districts of equal population (see Baker v Carr, 369 US 186 [1962]), compliance with the VRA or, for senatorial districts, the "block-on-border" rule; others, such as compactness or protection of communities of interest, allow for an exercise of judgment in how to balance them. Mr. Trende made no explicit decision in how to balance the factors he did include, was uninformative about what balance was implied, and did not vary the relative weights of his parameters to determine the robustness of his conclusions. For instance, Mr. Trende included a parameter for the compactness of districts, which the Constitution instructs should be considered. When asked how he valued compactness, he testified to selecting a value of "1" in Dr. Imai's model because he knew that "the other choices don't work well." He agreed that the compactness parameter could be set at less than 1, or more than 1, but provided no explanation for what the settings meant, how much priority a change in setting gave to compactness versus any other factor, or even what was meant by other values not working well—which may simply mean that when he tested for robustness of the parameter, he found that changing the relative weight given to compactness resulted in statistics that did not support his conclusions or that the model ceased to function, neither of which should give us confidence sufficient to hold the redistricting unconstitutional.

Similarly, Mr. Trende said that Dr. Imai's model allowed an "on" or "off" switch on whether to split counties. He put that switch "on," even though New York map drawers must balance county preservation with other considerations—effectively meaning he gave county integrity a superpriority over other constitutional factors. Nothing in the Constitution requires the legislature to prefer county integrity over any other factor, or {**38 NY3d at 539} even to give the same priority to county integrity for every county. Rather, the Constitution gives the legislature flexibility in weighting many of the required considerations differently in different circumstances, but Mr. Trende implicitly assigned fixed and universal relative weights to every one of those that he included. Faced with the potential for differently weighting parameters, responsible modelers alter the parameters within reasonable bounds to see whether the alterations make a difference. When the difference is not great, models are robust; when they are great, models are lacking in probative value (see e.g. Amariah Becker et al., Computational Redistricting and the Voting Rights Act, 20 Election LJ 407, 430 and n 31 [2021]). When nobody tests for robustness, invalidating districts as unconstitutional beyond a reasonable doubt is sheer guesswork.
Respondents pointed out the many deficiencies in Mr. Trende's model. In addition to the examples explained in detail above, Mr. Trende repeatedly and improperly answered in a way that attempted to shift the burden of proof from petitioners onto respondents. For instance, in response to respondents' assertion that his failure to consider all the relevant constitutional considerations undermined the validity of his methodology, Mr. Trende asserted that "[e]very one of Respondents' experts is more than capable of either re-running the relevant simulation algorithm that I employed or executing a competing algorithm" and "[i]f there are indeed important communities of interest to be protected, however, any of Respondents' experts could program a simulation that respected those communities of interest and potentially harm Petitioners' case." On cross-examination, he reiterated that "if there is something that [the respondents'] experts believe . . . is missing that makes a difference—they think makes a difference, they can do it."

[*20]

The lower courts erroneously accorded to Mr. Trende's burden shifting, which itself is a legal error requiring reversal (Matter of Harkenrider v Hochul, 204 AD3d 1366, 1378 [4th Dept 2022, Whalen, P.J., and Winslow, J., dissenting]). [FN3] Proof beyond a reasonable doubt is an exacting standard: a party bearing that {**38 NY3d at 540} burden must remove all reasonable doubt, which is not met by saying that the opponent has the ability to disprove an assertion. Faulting the respondents for the petitioners' failure to account for constitutionally required redistricting criteria improperly reverses the burden of proof; it is the petitioners' burden to prove unconstitutional partisan intent beyond a reasonable doubt.

In short, the factors set out in the Constitution must be considered during redistricting with flexibility in the relative weighting on a case-by-case basis. Maintaining the Southern Tier as a community of interest may be powerfully important; maintaining the Upper West Side as one may not be. Mr. Trende acknowledged that his algorithm cannot undertake that balancing, and to his credit explained that "the more that you adequately control all of the variables that the actual mapmakers actually used, the more you can infer intent, and the less you adequately control for those variables, the less you can infer intent" to gerrymander. Because Mr. Trende's analysis omitted constitutionally required factors and fixed implicit weights for others without allowing for flexibility, all his analysis demonstrates, at best, is that
if our Constitution read very differently, he could find an intent to gerrymander. That conclusion is orthogonal to the issue here.\[FN4\]

II.

Apart from Mr. Trende's opinion, the Appellate Division plurality concluded that the "'application of simple common sense' from the enacted map itself and its likely effects on particular districts" supports petitioners' argument that the legislative districts were intentionally created to disfavor a party or candidate or render certain districts less competitive (204 AD3d at 1374 [citation omitted]). There are three significant problems with that conclusion. First, as noted above, for the great majority of congressional (and senatorial) districts,\{**38 NY3d at 541\} the Republican and Democratic factions of the IRC substantially agreed as to the district boundaries, and the legislative plan does not deviate materially in the case of those districts. Of course, that does not resolve the question for districts on which the IRC factions disagreed or for which the legislature's plan was materially different, but it should remove most districts from the dispute.

Second, the Appellate Division relied on the following observation: "under the 2012 congressional map there were 19 elected democrats and 8 elected republicans and under the 2022 congressional map there were 22 democrat-majority and 4 republican-majority districts" (204 AD3d at 1371). The majority acknowledged that, standing alone or even in conjunction with the lack of Republican input into, or vote for, the 2022 map, the evidence would not be strong enough to surmount the high standard for invalidating the 2022 redistricting as unconstitutional. However, the mere change in the number of majority Democratic and Republican districts says nothing about why those changes occurred or about intent. The inference that the change is nefarious ignores important undisputed data.

[*21]*

The 2012 districts are obsolete and not a relevant source of comparison. Population and registration shifts demonstrate that New York's voting populace has changed in the Democrats' favor. In the past 10 years, Democratic voter registration has outstripped Republican voter registration 10-to-1: Democratic voter registration increased by more than one million people statewide between April 2012 and February 2021, whereas Republican voter registration increased by less than 100,000 people during the same period. Similarly,
over the decade, Democrat-leaning counties have increased in population, whereas Republican-leaning counties have decreased in population. It is unsurprising that such drastic shifts would occur in just a 10-year time horizon; that's why the Constitution requires decennial redistricting (NY Const, art III, § 4 [a]).

The characterization of the outgoing 2012 map as having 19 Democrat-leaning and eight Republican-leaning districts—in comparison to the four Republican-leaning districts in the 2022 map—is misleading because it disregards the changes of the last decade. To start, it is undisputed that one Republican seat under the 2012 map, former District 22, was eliminated due to substantial population shifts and New York's loss of a congressional seat. But more importantly, it is undisputed that, based on the 2020 census data, the 2012 map would also produce only four Republican-leaning districts.{{*38 NY3d at 542}}

Third, and most importantly, it is undisputed that the 2022 legislative redistricting was slightly more favorable for Republicans than the array of simulated "unbiased" maps produced by Mr. Trende's simulation. The Appellate Division contended that, by "boldly asserting" that the Democratically created 2022 plan tended to favor Republicans more than Mr. Trende's supposedly neutral maps, "respondents have created a further inference that they acted with a partisan purpose favoring democrats" (204 AD3d at 1374). That claim confuses intent with effect. I return to Staten Island to illustrate the point.

Staten Island has historically been treated as a community of interest and not split into different congressional districts. If Staten Island is to be kept that way (wholly within District 11), it needs to include voters from somewhere else because Staten Island does not have enough people to make up a full congressional district. Because of contiguity requirements, that must be Brooklyn. The 2012 map of District 11 included all of Bay Ridge (which is just north of the Verrazano Bridge) and Bath Beach, a few blocks of Bensonhurst, and Gravesend (all south of the bridge). The legislature's 2022 redistricting keeps Bay Ridge to the north (itself a community of interest) with Staten Island, but instead of then going south, it drops out Bath Beach, the bit of Bensonhurst and Gravesend, and goes north and incorporates Sunset Park and a small bit of Park Slope.

Among the thousands of comments sent to the IRC after it publicly released its draft report for comments, looking just at the Richmond and Kings County submissions (https://nyirc.gov/storage/archive/Kings_Richmond_Redacted.pdf), numerous letters asked
the IRC to keep various groups together. Among those is a letter from OCA-NY (formerly known as the Organization for Chinese Americans), a "non-profit, non-partisan organization dedicated to protecting the rights of Asian Americans in New York City." That letter urged the IRC that, with regard to District 11, which contained Staten Island, "Bensonhurst and Bath Beach should NOT be with Staten Island. . . . Staten Island does not share a similar concentration of Asians, nor the culture of Asian businesses as Bath Beach/Bensonhurst, nor do residents in Bath Beach/Bensonhurst travel on a regular basis to Staten Island and vice versa." Justin Wood, a Staten Islander, asked the IRC to "counter decades of artificial gerrymandering" by "extend[ing] NY11 northward into Bay {**38 NY3d at 543}Ridge and Sunset Park to unify linguistic and ethnic communities with shared interests." Karen Zhou, the past president of Homecrest Community Services, wrote the IRC noting that "Sunset Park, Bensonhurst, Homecrest, Sheepshead Bay, Dyker Heights, Bath Beach and Gravesend. . . . have] an interconnection bounded by common culture, language and socioeconomic factors," further requesting that Bensonhurst and Homecrest be "together in one Congressional district . . . [to] ensur[e] communities of interest are not ignored or neglected."

District 11 has been made less Republican by paying attention to unifying Asian American communities (which relates to the racial, language and community of interest requirements in the Constitution), for which the comments to the IRC were uniformly supportive. Because of contiguity requirements, there was nowhere to go but further north. The Appellate Division's observation that the reduction in Republican-leaning districts (or in the strength of the Republican lean) demonstrates an intent to gerrymander rather than an attempt to pay attention to the [*22]Constitution is unsupportable. Data tells you effect only. But the record before the IRC shows that various members of the Asian American community—and one Staten Islander—urged the IRC to go north instead of south specifically to serve the ends of the VRA and the constitutional provision requiring weight be given to communities of interest. The algorithmic comparators on which the lower courts relied, by omitting considerations required by the Constitution, gave zero weight to those considerations, effectively saying that the Asian American community does not matter. That, in turn, leads to an unfounded inference that the 2022 redistricting was intended to disadvantage Republicans, when, in the case of Staten Island, it was intended to protect Asian American voting rights and community interests, as the Constitution requires.

III.
The remaining evidence on which petitioners rely to demonstrate that the 2022 redistricting was done with intent to disfavor Republicans or make certain districts less competitive relates to procedural issues concerning the 2021 legislation, a failed 2021 constitutional amendment, and the creation of the 2022 districts in a three-day period after the IRC failed to deliver a revised report. Unlike the prior two factors, these are not legally irrelevant. As the Appellate Division concluded, however, as to petitioners' arguments on the process pursued to enact the 2022 map and its projected loss of Republican seats: without more and even with every reasonable inference taken in petitioner's favor, they do not meet the standard to declare the 2022 redistricting plan unconstitutional (204 AD3d at 1369-1370).

First, petitioners claimed that Democrats unilaterally drafted the 2022 redistricting map without any input or involvement from Republicans. The Appellate Division plurality further pointed to the "largely one-party process used to enact the 2022 congressional map" as partial support for its conclusion that petitioners met their burden of proving an inferred intent to favor the Democratic party (id. at 1371). That the process was dominated by one party, however, is a result of the current political reality of the legislature. Put another way, the legislature reflects the current choice of the people as to who will best represent their interests. Indeed, even had the IRC not shirked its duty, the Democratic supermajority in both houses could have rejected all IRC plans and then, consistent with the Constitution, adopted a plan without any Republican support. That result would be "partisan" in a sense, but not in the sense that would be necessary to show an intent to violate the Constitution. That the vote was along party lines could just as well suggest that the Republicans wanted to prevent a redistricting map that corrected past gerrymandering favoring Republicans (or an electoral shift that diminished their chances) as it could that Democrats sought to exclude Republicans for their party's benefit.

Next, petitioners contend that the (Democratic controlled) legislature, in June 2021, passed legislation providing for the possibility that the IRC might not vote on any redistricting plans, which the Governor signed in November 2021, and that the statute provides evidence of partisan intent to gerrymander because it provides that the legislature will conduct the redistricting in that eventuality. As with the above claim, the statute's adoption is not particularly probative as to intent. It is equally possible that the legislature, seeing the possibility of electoral chaos in the event that the IRC failed to act as required,
clarified that the outcome would be the same as if the IRC produced plans that the legislature rejected. The fact that the statute was passed without Republican support might suggest a future intent by Democrats to gerrymander. It might suggest an intent by Republicans to oppose any measures that would correct existing imbalances. Or it might suggest that legislators simply sought to provide for something not contemplated by the Constitution.

Finally, petitioners point to a failed attempt by Democrats to further amend the Constitution as supporting an inference that the Democrats intended to favor a political party through the 2022 map. In November 2021, the legislature proposed a constitutional amendment to the voters. Under that proposed constitutional amendment—if the IRC failed to vote on any redistricting plan or plans by the date required—the Commission would submit to the legislature all plans in its possession, completed and in draft form, and the data upon which those plans were based (2021 NY Senate Bill S515, § 4 [proposing amendment adding NY Const, art III, § 5-b (g-1)]). If the IRC so failed in voting and had to submit its plans to the legislature, that failure would require the legislature to create its own redistricting plan, to be enacted by the Governor (id. § 3 [proposing amendment to NY Const, art III, § 4 (b)]). The proposed constitutional amendment also included other changes, including increasing the number of state senators (id. § 1 [proposing amendment to NY Const, art III, § 2]), establishing a timeline for 2022 redistricting (id. § 3 [proposing amendment to NY Const, art III, § 4 (b)]), and requiring that incarcerated people be re-numerated to their last place of residence for the purpose of drawing redistricting lines (id. [proposing amendment to NY Const, art III, § 4 (c) (6)]). On one hand, the petitioners argue that the voters' rejection of the amendment shows that the voters would also have disapproved of the statute, and that both the failed amendment and statute were part of a plan by Democrats to bypass the IRC. On the other hand, as with the statute, it is perfectly feasible that Democrats worried that the IRC process would break down and wanted to clarify what should occur in that instance for the sake of election efficiency and integrity.

Taking all of this together, and taking every inference in favor of petitioners, one could colorably believe that the legislature was attempting to position itself to be able to draw legislative districts unfettered by the IRC if the IRC deadlocked. As the Appellate Division concluded, however, that evidence, standing alone, does not prove intent to gerrymander beyond a reasonable doubt (204 AD3d at 1369-1370).
IV.

I agree with the principles underlying the majority's opinion. Election districts should not be created for the purpose of disadvantaging political opponents. Nor should they be created to disadvantage racial or ethnic minorities, or constructed in ways that minimize the responsiveness of elected officials to their constituents by, for example, splitting cities or communities of interest apart. I also do not rule out that, with a sound analysis, these plaintiffs or others could prove that the 2022 legislative plan violated the Constitution, at least in some districts. My disagreements are threefold:

• I read the constitutional provision as Judge Rivera does—leaving the redistricting authority ultimately in the hands of the legislature;

• I am convinced these petitioners have not adduced legally sufficient evidence to demonstrate gerrymandering; and

• given my first two disagreements, I believe the majority's remedy inappropriately strips from the legislature the right clearly provided in article III, § 5: "In any judicial proceeding relating to redistricting . . . [i]n the event that a court finds such a violation, the legislature shall have a full and reasonable opportunity to correct the law's legal infirmities." This case is such a proceeding. As the majority says, "[t]he Constitution is the voice of the people speaking in their sovereign capacity, and it must be heeded" (majority op at 524, quoting Matter of New York El. R.R. Co., 70 NY 327, 342 [1877]). Why, then, does the majority not heed the Constitution's command that the legislature must be given a "full and fair opportunity" to address the legal infirmities identified in this judicial proceeding?

Rivera, J. (dissenting). I would reverse the Appellate Division judgment because petitioners failed to establish that the legislature violated the state's redistricting procedures or constitutional mandates. The legislature acted within its authority by adopting the redistricting legislation challenged here after the Independent Redistricting Commission (IRC) chose not to submit a redistricting plan by the second constitutional deadline. Thus, there is no procedural error rendering the redistricting legislation void ab initio. Petitioners' claim of{**38 NY3d at 547} a substantive violation based on gerrymandering is also without merit as their evidence fell far short of proving that the legislature's congressional map was unconstitutional beyond a reasonable doubt.

I.
In interpreting a constitutional provision, the primary role of this Court is to give effect to its unambiguous text and the intent of the people in adopting the provision (see White v Cuomo, 38 NY3d 209, 216-217 [2022]). This appeal requires that we interpret article III, §§ 4 and 5 of the New York Constitution. Under section 4, the IRC shall prepare decennially a redistricting plan to establish state assembly and senate and federal congressional districts and submit such a plan and implementing legislation to the legislature for its consideration, without amendment (see NY Const, art III, § 4 [b]). If the legislature fails to approve the proposed legislation, the IRC shall prepare and submit a second redistricting plan and necessary implementing legislation for consideration again without amendment (see id.). If the legislature fails to approve the second plan, the legislature shall approve its own implementing legislation (see id.). Section 4 (e) acknowledges that the redistricting procedure may not be followed where "a court is required to order the adoption of, or changes to, a redistricting plan as a remedy for a violation of law." Section 5 further provides that upon a judicial finding that a redistricting law violates article III, such law shall be "invalid in whole or in part," and that "the legislature shall have a full and reasonable opportunity to correct the law's legal infirmities." Here, the IRC initially submitted two redistricting plans by the first deadline. The legislature failed to approve either. When the IRC chose not to make another submission by the second deadline, the legislature drafted and approved redistricting implementing legislation which the Governor signed.[FN1]

(**38 NY3d at 548**) Petitioners, residents of several New York districts, claim that the legislature avoided the exclusive redistricting process set forth in sections 4 and 5 by enacting redistricting legislation in the absence of an IRC submission by the second deadline, because a second IRC submission is a constitutional requirement that triggers the legislature's authority to act. Petitioners further claim that the redistricting legislation is the product of intentional gerrymandering by the Democratic members of the State Legislature, in violation of section 4 (c) (5) of article III of the Constitution. As I discuss, petitioners are wrong as a matter of law on their procedural challenge and have failed to prove their gerrymandering allegation.

II.

There is no procedural error of constitutional magnitude warranting invalidation of the legislature's redistricting implementing legislation. That conclusion is supported by either of two analytic paths.
A.

By one view, the process followed by the legislature here does not violate the text or purpose of article III because the IRC in fact submitted two plans, albeit all at once, in furtherance of the purpose of section 4, and, in any case, the legislature is not bound to approve an IRC plan as drafted.\[^{[FN2]}\] Under that view, the legislature acted appropriately on the unique facts of this case. First, the Constitution does not mandate legislative adoption of any IRC-proposed implementing legislation; the legislature may opt to reject the IRC submissions and proceed to draft implementing legislation, which would then be submitted to the Governor for action \((see\:\:NY\:\:Const,\:\:art\:\:III,\:\:§\:\:4\:\:[b])\).\[^{[FN3]}\] That is exactly what happened here. Second, the Constitution requires that in the event that more than one draft plan receives an equal number of IRC member votes for approval,\[^{[**38\:NY3d\:at\:549]}\] above the votes garnered for any other plan, the IRC must submit all of those plans to the legislature in accordance with section 4 (b) of article III of the Constitution \((see\:\:id.\:\:§\:\:5-b\:\:[g])\). Thus, if the IRC fails to garner a majority vote, the IRC is empowered to submit more than one redistricting plan and implementing legislation for the legislature's consideration. That is also what happened here. Third, nothing in the Constitution expressly prohibits the legislature from acting if the IRC chooses not to submit yet another plan after the legislature has considered and failed to approve all the plans with the highest number of IRC votes. The Constitution is simply silent on how to address the IRC's choice to forgo submission of a redistricting plan and implementing legislation before the second deadline. Nor does the constitutional framework command that the legislature remain idle in the face of an IRC decision not to submit a plan despite section 4 (b)'s mandatory language setting forth deadlines for submission. The Constitution requires the legislature approve redistricting legislation, upon consideration of one IRC plan and, if necessary, a second plan. The legislature did exactly that, reviewing two IRC plans and determining not to approve either, but instead adopting legislation which it maintains wholly comports with the Constitution.\[^{[FN4]}\] The majority's decision leaves the legislature hostage to the IRC, and thus [*23]incentivizes political gamesmanship by the IRC members—the exact scenario the majority claims it avoids by interpreting the second IRC submission as a mandatory predicate to legislative action \((see\:\:majority\:\:op\:\:at\:\:515)\).

The majority claims that upholding the legislative action here would undermine the redistricting process adopted by the 2014 constitutional amendment and thwart the purpose of
the amendment (see id. at 512). That is only true if we ignore the salutary aspects of the entire redistricting process and how it informs the legislature's decisions. Under the Constitution, the IRC is tasked with drafting proposed districts that are contiguous, compact, and equipopulous, while considering the maintenance {**38 NY3d at 550} of cores of existing districts and political subdivisions, and avoiding line-drawing that denies or abridges the rights of communities of interest, including racial and minority language groups, or the formation of districts that favor or disfavor political candidates or parties (see NY Const, art III, § 4 [c]). The goal of fair, non-gerrymandered line drawing is furthered, in part, by a robust public hearing and comment process that allows the IRC to consider diverse viewpoints when preparing its redistricting plan (see id.). In turn, the legislature benefits from this same process when it considers the IRC's draft plan. Here, in accordance with the Constitution, the legislature considered both of the plans submitted by the IRC, fully aware of the public process that preceded the approval of both plans by a concededly split IRC membership. Unfortunately, like the IRC, the legislature could not agree on only one of those plans. When the IRC chose not to make a submission by the second deadline—of a plan that would be subject to legislative amendment, unlike the two plans submitted by the first deadline—nothing in the Constitution prohibited the legislature from drafting and approving redistricting legislation that it determined was in compliance with the constitutional mandates set forth in article III.

The majority also concludes that the legislature may only "amend[ ]" redistricting plans submitted by the IRC (see majority op at 510, quoting NY Const, art III, § 4 [b]). The extent of the legislature's authority to redraw the IRC's proposed maps, however, is not before us since that did not occur here. Moreover, the majority's interpretation ignores that legislative plans may include "any amendments" that are "deem[ed] necessary" (NY Const, art III, § 4 [b] [emphasis added]), giving the legislature significant discretion to reject the IRC's proposals. Likewise, the two percent rule—which the majority seems to interpret as a constitutional requirement (see majority op at 516 n 11)—is also not properly before us, and in any case, that statutory rule applies only when the IRC submits a plan by the second deadline, which concededly it did not do. In sum, the majority is incorrect that the legislature's authority to approve redistricting legislation is subject to the two percent rule after it decides not to approve the first IRC plan as drafted because that legislative authority can only be triggered after the IRC submits a plan pursuant to the second deadline.
Even assuming the majority is correct that the Constitution provides the legislature with express and exclusive choices—{*38 NY3d at 551*} either approve, as drafted, the IRC implementing legislation submitted by the first or the second constitutional deadlines, or don't approve either and amend and approve bicameral the second submission which is then presented to the governor for action—the majority correctly concedes that the legislature is not required to adopt, without change, the IRC recommendations (*see* majority op at 510). Instead, the legislature must exercise its constitutional duty to ensure that New York's district lines comply with the constitutional factors set forth in article III and do not otherwise violate federal or state law (*see* NY Const, art III, § 4 [c]; Voting Rights Act of 1965, 52 USC § 10101 *et seq.*, as added by Pub L 89-110, 79 US Stat 437). As this Court has made clear, redistricting is a complex and intricate task, involving a "balancing" of "myriad requirements imposed by both the State and the Federal Constitution," which is ultimately "entrusted to the legislature" (*Matter of Wolpoff v Cuomo*, 80 NY2d 70, 79 [1992]; *see* Matter of Schneider v Rockefeller, 31 NY2d 420, 431 [1972] ["The gerrymander(ing) is . . . rather deep in the 'political thicket'."]). Thus, and contrary to the majority's conclusion (*see* majority op at 514-515), the legislature was not required to ignore its constitutional duty because the IRC "abandon[ed] its constitutional mandate" (*id.* at 517). And, despite the majority rhetoric about redistricting reform—that the IRC process was designed to "incentivize the legislature to encourage and support fair bipartisan participation and compromise throughout the redistricting process" (*id.* at 515)—it is the majority's interpretation of the Constitution that effectively places the redistricting process at the mercy of the IRC, which cannot be what the people of the State of New York intended when they approved the amendment and even though the Constitution does not mandate legislative approval of any IRC plan. Indeed, recognition that the legislature retains the ultimate authority to enact a redistricting plan does not, as the majority posits, "render the 2014 amendments . . . functionally meaningless" (*id.* at 508-509); it merely confirms that the legislature must step in when the IRC fails in its task.

B.

[*24*] Even if the plain text of the Constitution did not support the legislative action taken here, there is an alternative analytic basis for rejecting the petitioners' procedural argument. The Constitution is silent as to how to respond when the IRC does{*38 NY3d at 552*} not submit a plan in accordance with article III, as in this case where the IRC chooses not to make a second deadline submission. Notably, petitioners did not sue the IRC to secure compliance
with what they and the majority maintain is the "exclusive method of redistricting" (majority op at 515). Nor have petitioners requested the courts to adopt either of the IRC plans even though petitioners, like the majority, claim that the IRC's submissions are a constitutional predicate to legislative action (see id. at 515-516).

However, the legislature anticipated just such a failure in the IRC process by passage of an amendment to the Redistricting Reform Act of 2012 (L 2012, ch 17), which provides that "if the commission does not vote on any redistricting plan or plans, for any reason, by the date required for submission of such plan and the commission submitted to the legislature . . . all plans in its possession, both completed and in draft form, and the data upon which such plans are based, each house shall introduce such implementing legislation with any amendments each house deems necessary" (see Redistricting Reform Act § 4 [c], as amended by L 2021, ch 633, § 1). [FN5]

That statute, having been properly enacted, controls and provided the legislature with the authority to act as it did here. [FN6]

III.

Turning to petitioners' second claim, that the legislative plan is an unlawful gerrymander, we review this challenge, like other constitutional attacks on redistricting plans, de novo and not, as the majority suggests, under a deferential standard of {**38 NY3d at 553} review (see Matter of Wolpoff, 80 NY2d at 78 ["(W)e examine the balance struck by the (l)elegislature in its effort to harmonize competing Federal and State requirements"]; Matter of Schneider, 31 NY2d at 427 ["Our duty is . . . to determine whether the legislative plan substantially complies with the Federal and State Constitutions"]). Thus, petitioners are held to the highest burden in our law—one generally enshrined in criminal law—proof beyond a reasonable doubt:

"A strong presumption of constitutionality attaches to the redistricting plan and we will upset the balance struck by the Legislature and declare the plan unconstitutional 'only when it can be shown beyond reasonable doubt that it conflicts with the fundamental law, and that until every reasonable mode of reconciliation of the statute with the Constitution has been resorted to, and reconciliation has been found impossible'" (Matter of Wolpoff, 80 NY2d at 78, quoting Matter of Fay, 291 NY 198, 207 [1943]; accord Cohen v Cuomo, 19 NY3d 196, 201-202 [2012]).
Upon review of the record before us, I conclude that petitioners failed to meet their heavy burden. As three Justices concluded below, and as Judge Wilson explains, other than the petitioners' expert analysis alleging gerrymandering, the petitioners' other evidence cannot satisfy their burden of proof (see 204 AD3d 1366, 1371 [4th Dept 2022 plurality]; Wilson, J., dissenting op at 543-545).[FN7] I have already discussed why [*25] there was no constitutional procedural violation, but even if there had been, the legislature's approval of a redistricting plan in the absence of a second IRC submission does not establish intentional gerrymandering. This case does not rest on "the credibility issue routinely seen in battle-of-the-experts cases," but rather turns on petitioners' expert evidence and its "probative {{38 NY3d at 554}} force . . . regardless of respondents' opposition" (204 AD3d at 1378 [Whalen, P.J., and Winslow, J., dissenting in part]). For reasons discussed at length in Judge Wilson's thorough and compelling analysis of petitioners' evidence and gerrymandering claim, which I fully join, petitioners failed to carry their burden. In sum, petitioners relied on an expert who failed to account for several constitutional requirements and who used an untested, unverified algorithm (see Wilson, J., dissenting op at 529-530 cf. People v Wakefield, 38 NY3d 367, 394-403 [2022, Rivera, J., concurring in result]). No district line drawer could do so and still comply with the Constitution.

I dissent.


Order modified, with costs to petitioners, in accordance with the opinion herein and, as so modified, affirmed.

Footnotes

Footnote 1: A legislative advisory task force on apportionment—created by statute and comprising lawmakers and staff selected by legislative leaders—conducted studies and proffered recommendations and proposed maps for the legislature's consideration (see Legislative Law § 83-m; L 1978, ch 45, § 1).
Footnote 2: Many other states have also turned to independent redistricting commissions to curtail partisan gerrymandering (see e.g. Ariz Const, art IV, part 2, § 1; Cal Const, art XXI, § 2; Colo Const, art V, §§ 44-48.4; Conn Const, art III, § 6; Haw Const, art IV, § 2; Idaho Const, art III, § 2; Me Const, art IV, part 3, § 1-A; Mich Const, art IV, § 6; Mont Const, art V, § 14; NJ Const, art II, sec 2, §§ 1-9; Ohio Const, arts XI, XIX; Va Const, art II, § 6-A; Wash Const, art II, § 43). In upholding a state constitutional delegation of redistricting authority to an IRC, the United States Supreme Court has recognized that IRCs "generally draw their maps in a timely fashion and create districts both more competitive and more likely to survive legal challenge" and "have succeeded to a great degree [in limiting the conflict of interest implicit in legislative control over redistricting]" (Arizona State Legislature v Arizona Independent Redistricting Comm'n, 576 US 787, 798, 821 [2015] [internal quotation marks and citation omitted]).

Footnote 3: As one house of the legislature explained during this litigation, in their view "there [was no] reason for the Democratic super-majorities in both houses of the [l]egislature to seek 'input or involvement' from the Republican minorities" regarding the development of these legislative maps, characterizing such communications as inviting "time-wasting political theater" (reply brief for respondent-appellant Senate Majority Leader and President Pro Tempore of the Senate Andrea Stewart-Cousins at 13 in Matter of Harkenrider v Hochul, 204 AD3d 1366 [4th Dept 2022]).

Footnote 4: Notwithstanding respondent Governor's contentions to the contrary, any petition challenging redistricting legislation must be served upon the Attorney General, President of the Senate, Speaker of the Assembly and the Governor, who are proper parties to this proceeding (see Uncons Laws § 4221).

Footnote 5: Supreme Court also analyzed whether the state senate map was an unconstitutional partisan gerrymander after granting petitioners' request to amend the petition to challenge the senate map but concluded petitioners did not meet their burden of proof on such claim. Petitioners have not sought review of that determination.

Footnote 6: Supreme Court, as permitted by the stay, has procured the services of a neutral redistricting expert "to serve as special master to prepare and draw a new neutral, non-partisan congessional map" and has established a schedule by which the parties and other interested persons may submit commentary and proposed redistricting plans for consideration prior to a planned hearing. Petitioners and several interested parties have already proffered submissions to that court.

Footnote 7: Indeed, the description on the 2014 ballot informed voters considering whether to support the constitutional amendments that "the legislature may only amend the redistricting plan . . . if the commission's plan is rejected twice by the legislature."

Footnote 8: Judge Rivera's contention that the IRC process was not violated because two sets of maps were simultaneously submitted by the IRC in the first round—one by the Democratic
delegation and one by the Republican delegation—is remarkable. Under her view, this was the functional equivalent of the successive presentations required by the Constitution. Aside from being directly contrary to the text of the Constitution, the intent of the people who adopted the 2014 reforms, and the relevant legislative history, such contention has not been advanced by any party before this Court, a reflection of its total lack of merit.

**Footnote 9:** In a reply brief submitted in the Appellate Division, one of the state respondents candidly acknowledged that the constitutional process was not followed here, asserting that "[e]veryone agrees" that the Constitution requires two rounds of IRC recommendations "and that the [l]egislature vote up or down on each Commission proposal without amendment before exercising its authority to make any amendments"; and that "nobody suggests that 'the process' is optional" (reply brief for respondent-appellant Senate Majority Leader and President Pro Tempore of the Senate Andrea Stewart-Cousins at 2-3 in Matter of Harkenrider v Hochul, 204 AD3d 1366 [4th Dept 2022]). Despite acknowledging the constitutional violation, however, they essentially view it as irrelevant because the legislature could ultimately have adopted its own maps through the amendment process following a properly completed IRC procedure. This view ignores the fact that procedural requirements matter and are imposed precisely because, as here, they safeguard substantive rights.

**Footnote 10:** The state respondents and Judge Rivera assert that giving force to the constitutional language risks gamesmanship by minority members of the IRC, claiming such members could potentially derail the redistricting process by refusing to participate. In giving effect to the constitutional reforms endorsed by the people of this state, our decision does not leave the legislature hostage to that body as Judge Rivera contends. Legislative leaders appoint a majority of the IRC members and, in the event those members fail either to appear at IRC meetings or to otherwise perform their constitutional duties, judicial intervention in the form of a mandamus proceeding, political pressure, more meaningful attempts at compromise, and possibly even replacement of members who fail to faithfully perform their duties, are among the many courses of action available to ensure the IRC process is completed as constitutionally intended. The IRC may not be a panacea, but to accept the crabbed description of that body proffered by the state respondents and Judge Rivera would be to render the body nothing more than "window dressing" masquerading as meaningful reform.

**Footnote 11:** In 2022—the very first time that the legislature had occasion to implement the IRC procedure and the two percent rule (L 2012, ch 17, § 3)—that provision was disregarded. The legislature wholly superseded the two percent rule by prefacing the 2022 redistricting legislation with language indicating that such districts were enacted as provided therein "notwithstanding any other provision of law to the contrary" and providing that the new legislation "shall supersede any inconsistent provision of law including but not limited to" the two percent rule (L 2022, chs 13, 14, 15, 16). Despite this attempted end run, however, the 2012 redistricting reform legislation provides relevant evidence of the drafters' intent.

**Footnote 12:** While we agree with Judge Troutman that this Court should not issue advisory
opinions, her suggestion that no actual case or controversy is presented by the state respondents' appeal—here as of right on the substantial constitutional question of whether the Appellate Division erred in invalidating the congressional map on the ground of partisan gerrymandering—is quite extraordinary. Even if the state respondents were not otherwise entitled to review of the declaration that the apportionment legislation was infected by such invidious intent, there are substantial arguments before this Court concerning the proper remedy in the event of a constitutional violation—arguments that turn, in part, on whether the violation involved procedural or substantive constitutional provisions. The question of whether the congressional map amounts to a partisan gerrymander is also relevant to the issue of whether the primary election should be permitted to proceed on the maps drawn by the legislature, despite the determination of procedural unconstitutionality. Moreover, given our conclusion that new maps must be drawn in light of the procedural violation—a conclusion with which Judge Troutman agrees—resolution of the issue is critical to provide necessary guidance to inform the development of a new congressional map on remittal.

**Footnote 13:** The 2014 constitutional amendments also forbid racial gerrymandering, in a provision that similarly prohibits an invidious intent or motive, requiring that district lines "shall not be drawn to have the purpose of, nor shall they result in, the denial or abridgement of" the voting rights of racial or minority language groups (NY Const, art III, § 4 [c] [1]). Other requirements added that year directed certain results, namely, that redistricting, to the extent possible, maintain cores of existing districts, preexisting political subdivisions—such as counties, cities, and towns—and communities of interest (see NY Const, art III, § 4 [c] [5]). These requirements supplement the long-standing constitutional constraints on redistricting embodied in the State Constitution requiring, to the extent practical, that districts "contain as nearly as may be an equal number of inhabitants," "consist of contiguous territory," and be "as compact in form as practicable" (NY Const, art III, § 4 [c] [2]-[4]), and those required by federal law—such as conformity with the "one person, one vote" principle (Abrams v Johnson, 521 US 74, 98 [1997]; see Wesberry v Sanders, 376 US 1, 8 [1964]) and with the federal Voting Rights Act (see generally 52 USC § 10301).

**Footnote 14:** Although purporting to treat the question as an issue of law, Judge Wilson impermissibly performs a weight of the evidence analysis, largely parroting the points in the state respondents' briefs. Tellingly, however, Judge Wilson repeatedly acknowledges that an inference of intent could rationally be drawn from proof in the record. Determining whether to draw such an inference when multiple inferences are possible is a quintessential function of a finder of fact and, here, the courts below—which, unlike this Court, possessed fact-finding authority—credited Trende's testimony. Contrary to Judge Wilson's contention, the burden of proof was not impermissibly shifted to the state respondents. As noted, respondents did not seek exclusion of Trende's testimony on the basis that his methodology or the computer algorithm on which he relied—drafted by a recognized expert and, according to Trende, a "state-of-the-art" program repeatedly accepted by other courts—was insufficiently reliable. Although Trende did observe that the state respondents completely failed to refute any of his simulations with simulations of their own, he also responded substantively to the criticisms of his methodology. Trende explained that his map ensemble "perform[ed] comparably to the
enacted plan in terms of compactness," "minority-majority districts," and county lines. He ran additional simulations, freezing municipalities kept intact by the enacted plan, freezing district cores, freezing every "ability-to-elect district," and even conceding the split in southeast Brooklyn to respondents. Trende testified that even when the simulations were run in a manner "incredibly generous" to the state respondents by "ced[ing] to [respondents] . . . a third of the districts drawn in New York," the simulations produced "the same basic output," showing the same cracking and packing patterns in the enacted maps. As even a short rendition of just some of the proof presented by petitioners demonstrates, Judge Wilson refuses to apply the proper standard of review, which—even in cases where the legal standard is proof beyond a reasonable doubt—requires that the evidence be viewed in the light most favorable to petitioners, the prevailing party at trial.

**Footnote 15:** Inasmuch as petitioners neither sought invalidation of the 2022 state assembly redistricting legislation in their pleadings nor challenge in this Court the Appellate Division's vacatur of the relief granted by Supreme Court with respect to that map, we may not invalidate the assembly map despite its procedural infirmity.

**Footnote 16:** The state respondents' reliance on the federal Purcell principle is misplaced (see Purcell v Gonzalez, 549 US 1 [2006]). The Purcell doctrine cautions federal courts against interfering with state election laws when an election is imminent (see Republican National Committee v Democratic National Committee, 589 US —, —, 140 S Ct 1205, 1207 [2020]) and does not limit state judicial authority where, as here, a state court must intervene to remedy violations of the State Constitution. Indeed, most recently the principle was cited to justify the United States Supreme Court's decision not to disturb a state court order requiring alteration of North Carolina's existing congressional maps for the upcoming 2022 primary (Moore v Harper, 595 US —, —, 142 S Ct 1089, 1089 [2022, Kavanaugh, J., concurring in denial of application for stay]).

**Footnote 17:** A number of other state courts have been called upon to intervene in redistricting just this year (see League of Women Voters of Ohio v Ohio Redistricting Commn., — Ohio St 3d —, — NE3d —, 2022-Ohio-789 [2022]; Harper v Hall, 380 NC 317, 323, 868 SE2d 499, 510, 2022-NCSC-17, ¶ 6 [2022]; Johnson v Wisconsin Elections Commn., 401 Wis 2d 198, 210, 972 NW2d 559, 565, 2022 WI 19, ¶ 3[2022]; Carter v Chapman, 270 A3d 444, 450 [Pa 2022]).

**Footnote 18:** Delaying a remedy until the next election would substantially undermine the people's efforts to temper partisan gerrymandering. Here, the legislature enacted maps within one week of the IRC's abdication—which itself came more than a month before the Constitution's outer end date for the IRC process—and petitioners commenced this proceeding on the same day. If there is insufficient time to order a remedy for the 2022 primary election under these circumstances, it is unlikely there would ever be sufficient time to challenge a redistricting plan and obtain relief before an upcoming primary election. Such a conclusion would be contrary to the Constitution, which contemplates that the IRC process may not be completed until February 28th (to be followed by legislative action) but
nevertheless expressly authorizes expedited judicial review and modification or adoption of redistricting plans by the courts. Delaying a remedy in this election cycle—permitting an election to go forward on unconstitutional maps—would set a troubling precedent for future cases raising similar partisan gerrymandering claims, as well as other types of challenges, such as racial gerrymandering claims.

Footnote 19: To the extent the 2022 redistricting legislation, which we invalidate here, purported to render any court order "tentative" for a period of 30 days (L 2022, ch 13, § 3 [i]) such a limitation on judicial authority appears inconsistent with (among other things) the constitutional provision authorizing judicial review without limitation and requiring "disposition" of the claim by Supreme Court within 60 days. The Constitution does not contemplate an advisory order. In any event, here, due 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.

Footnote 20: While accusing this Court of "step[ping] out of its judicial role" (Troutman, J., dissenting op at 524-525), Judge Troutman crafts a remedy that is neither consistent with the constitutional text nor requested by any of the parties to this proceeding. She proposes that the legislature should be directed to adopt one of the two plans submitted by the IRC and already rejected by the legislature (although she does not specify which one). Judge Troutman's position is incongruous; she agrees that the legislature lacked authority to enact redistricting legislation absent a second submission from the IRC but, paradoxically, she suggests that we should now order the legislature to enact redistricting legislation despite their inability to cure the procedural violation. Moreover, although Judge Troutman posits that the people would not approve of a court-ordered redistricting map that is, in fact, exactly what the people have approved in the State Constitution as a remedy by declaring that the IRC "process . . . shall govern . . . 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" (NY Const, art III, § 4 [e]). Just as puzzling, Judge Wilson begins his dissent with a nonsensical advisory opinion, indicating that although he concludes no violation of the constitution occurred, he nonetheless agrees with Judge Troutman's proposed remedy—a solution to a problem that, in his view, does not exist.

Footnote *: The majority seems unwilling to grasp this concept (majority op at 523-524 n 20).


Footnote 2: Mr. Trende's decision not to examine his own maps and not to permit anyone else to see them poses a separate reliability issue. Dr. Imai's algorithm generates huge numbers of redundant maps, which should be weeded out before analysis is conducted. Mr. Trende himself did so when working on a redistricting map for Maryland. There, he completed three sets of 250,000 simulations. He then eliminated the duplicates, which ranged from 220,000 to
160,000 for each of his sets—that is, 64% to 88% of the maps produced were duplicates that he discarded (Szeliga v Lamone, Md Cir Ct, Anne Arundel County, Mar. 25, 2022, Battaglia, J., Nos. C-02-CV-21-001816, C-02-CV-21-00173, slip op at 63, ¶¶ 99, 102-104). Furthermore, New York State is significantly larger than Maryland; whereas Maryland only has eight congressional districts, New York has 26 congressional districts. Mr. Trende acknowledged that the more precincts that are involved, the more complicated it becomes to accurately use redistricting simulations to draw conclusions. Yet, in spite of acknowledging that using simulations for New York would be more difficult than for Maryland, Mr. Trende inexplicably generated only 10,000 simulations for New York and subsequently failed to check even that small set for duplicates.

Footnote 3: For example, Supreme Court noted that Mr. Trende "d[id] not include every constitutional consideration" (76 Mise 3d 171, 190 [Sup Ct, Steuben County 2022])—which should render his evidence legally insufficient. Supreme Court explained away that deficiency by saying that "none of respondents' experts attempted to draw computer generated maps using all the constitutionally required considerations" (id.), a clear example of improper burden shifting.

Footnote 4: The error in the majority's sole, footnoted response, contending that I have performed a weight of the evidence analysis (majority op at 520-521 n 14), can be illustrated as follows: Mr. Trende uses a Ouija board to determine that the districts have been gerrymandered, and, when communicating with the spirits in the netherworld, directs them to the provisions in North Carolina's constitution instead of New York's. The lower courts rely on that evidence to hold that the New York Legislature has engaged in gerrymandering. According to the majority, the New York Court of Appeals could not conclude an error of law has been made. The majority is right about one thing: I disagree that my job is so limited.

Footnote 1: Contrary to the majority's view, the IRC was not required to submit a different set of second plans. Indeed, the lead Republican IRC Commissioner noted that the Republican members of the IRC had considered agreeing to submit the same plans during the second round, but he concluded that "he would prefer for the Legislature to begin its process then postpone it one week with presumably voting down maps that he claims have not changed" (Joshua Solomon, Independent Redistricting Commission Comes to a Likely Final Impasse, Times Union, Jan. 24, 2022, available at https://www.timesunion.com/state/article/Independent-Redistricting-Commission-comes-to-a-16800357.php).

Footnote 2: The majority incorrectly asserts that the legislature's alleged violation of the constitutional procedure is undisputed (see majority op at 501). In fact, respondents have maintained that the IRC, not the legislature, is at fault here.

Footnote 3: Several of the states cited by the majority (see majority op at 503 n 2) have adopted redistricting commissions which are not subject to legislative approval (see e.g. Cal Const, art XXI, § 2; Colo Const, art V, § 48; Mich Const, art 4, § 6; see generally Loyola Law
Footnote 4: The majority, in claiming that my view ignores the constitutional text and purpose (see majority op at 512 n 8), ignores that under the unique facts here, we must harmonize the constitutional process with the overriding intent of the amendment—to create a process for public, bipartisan input in redistricting to provide the legislature with background data and options for redistricting. The majority view rests on a distinction without a difference; had the IRC merely submitted the competing plans in succession, and if the legislature had not approved either, the majority would conclude, as I do, that there was no procedural error.

Footnote 5: The majority's discussion of the legislative history of the 2014 amendment is incomplete (see majority op at 513-515). Several legislators and commentators recognized, prior to adoption, that—contrary to the views of its sponsors—the amendment did not guarantee that the IRC would follow the constitutional process (see e.g. NY Senate Debate on Assembly Bill A2086, Jan. 23, 2013 at 252 [warning that an evenly-divided IRC might "foster gridlock"]).

Footnote 6: The statute's two percent rule would also control. If failure to comply with that rule were the sole alleged problem with the legislature's redistricting plan, the courts could mandate compliance as a targeted and narrow remedy rather than reject the entire redistricting plan as the majority does, thus creating confusion for candidates and their supporters, and necessitating the adoption of new deadlines (see majority op at 522-523; Troutman, J., dissenting op at 526).

Footnote 7: With respect to one of those alleged grounds, the majority is incorrect to the extent that it suggests that the legislature did not consider Republican views (see majority op at 505 n 3). As Judge Troutman and Judge Wilson explain in their dissents, the legislature enacted a plan that includes similar upstate boundaries as the two IRC plans actually submitted to the legislature (see Troutman, J., dissenting op at 525-526; Wilson, J., dissenting op at 535-536). As for the other ground—that the legislature's redistricting differs from the 2012 district lines—the purpose of redistricting is to address demographic changes and so it is no surprise that population shifts in New York State would result in a different redistricting map in accordance with constitutional requirements (see Wilson, J., dissenting op at 541).
Decided on December 12, 2023

No. 90

[*1] In the Matter of Anthony S. Hoffmann, et al., Respondents,

v


Misha Tseytlin, for Harkenrider appellants.

Timothy F. Hill, for Brady appellants.

Aria C. Branch, for Hoffman respondents.

Jessica Ring Amunson, for Jenkins respondents.

Andrea W. Trento, for amici curiae Kathy Hochul et al.

Lawyers Democracy Fund, League of Women Voters of New York State, Mark Favors et al., amici curiae.
WILSON, Chief Judge:

In 2014, the voters of New York amended our Constitution to provide that legislative districts be drawn by an Independent Redistricting Commission (IRC). The Constitution [*2] demands that process, not districts drawn by courts. Nevertheless, the IRC failed to discharge its constitutional duty. That dereliction is undisputed. The Appellate Division concluded that the IRC can be compelled to reconvene to fulfill that duty; we agree. There is no reason the Constitution should be disregarded.

I.

Every ten years, congressional, state senate, and state assembly districts are reapportioned based on the federal decennial census (see NY Const, art III, § 4 [a]). Historically, as is true for the vast majority of states, New York's redistricting process was controlled almost entirely by the legislature, [FN1] subject to certain limitations imposed by federal law (such as the Equal Protection Clause or the Voting Rights Act). Unfettered legislative redistricting led to decade after decade of stalemates, allegations of partisan gerrymandering, and judicially drafted plans. Thus, in 2014, New Yorkers voted to amend the Constitution to "significantly and permanently" reform the redistricting process (Governor's Approval Mem, Bill Jacket, L 2012, ch 17 at 5).

As we noted in Harkenrider, the surrounding context and history of the 2014 amendments illustrate that they were "carefully crafted to guarantee that redistricting maps have their origin in the collective and transparent work product of a bipartisan commission that is constitutionally required to pursue consensus to draw district lines" (Matter of Harkenrider v Hochul, 38 NY3d 494, 513-514 [2022] [emphasis added]). Prior to the amendments, exclusive legislative control often left opposing political parties—particularly with respect to the congressional maps—unable to reach consensus on district lines (see id. at 502). The process was "plagued with allegations of partisan gerrymandering" (id. at 503) and often resulted in "predictable" litigation in federal courts every ten years (Favors v Cuomo, 2012 WL 928223, *1 [EDNY 2012]; see also Rodriguez v Pataki, 2002 WL 1058054, *1 [SDNY 2002]; Puerto Rican Legal Defense & Educ. Fund, Inc. v Gantt, 796 F Supp 681, 684 [EDNY 1992]; Plateau v Anderson, 537 F Supp 257, 258 [SDNY 1982]).
Notably, in each decennial redistricting dating back to 1982, the legislature's redistricting quagmire resulted in eerily similar bouts of litigation [FN2]. As to each of those redistrictings, parties [*3] requested courts to step in and conduct the redistricting with the aid of special masters (in federal court) or special referees (in state court).

1982

In 1982, the State Legislative Task Force on Demographic Research and Reapportionment's (Task Force) deadlock led to the creation of three redistricting plans for senate and congressional districts in the following order: (1) plans wholly created by the legislature, which the Justice Department disapproved as violating the Voting Rights Act; (2) plans developed by a special master reporting to a federal court; and (3) plans drafted and ultimately enacted by the legislature but with the Justice Department "guiding its pen" (Roman Hedges & Carl P. Carlucci, Reapportionment Under the Voting Rights Act: The Case of New York, 1983 NYS Legislative Task Force on Demographic Research and Reapportionment at 14). The federal court intervened pursuant to a lawsuit in which all but one plaintiff requested the court to "order New York State to enact a constitutional plan of reapportionment" and failing that, requested that the district court "devise a reapportionment plan" (Flateau, 537 F Supp at 259). The remaining plaintiff requested that the court itself "immediately redistrict the State" (id.). Although the legislature's plan was ultimately enacted, thus began the ten-year cycle of the federal court enlisting the help of a special master to prepare a redistricting plan in the event the legislature failed to do so.

1992

Ten years later, in 1992, partisan politics once again deadlocked the Task Force (Gantt, 796 F Supp at 685; see also Diaz v Silver, 978 F Supp 96, 99 [EDNY 1997]). Parallel actions in state and federal court sought to compel the development of a lawful redistricting plan (Diaz, 978 F Supp at 99). In response, the federal court ordered a special master to develop a redistricting plan that would comply with federal law. The state court appointed a panel of three referees to develop a plan that would comply with federal and state law (id.). Each court adopted their respective experts' plans, at which point the federal plan would take effect unless the legislature adopted the state plan (id.). The legislature, "who until then had not been able to agree upon a plan which satisfied both sides of the political aisle, promptly embraced the state court's plan as [its] own and enacted it" (Gantt, 796 F Supp at 698). Even
though the United States Department of Justice had precleared that plan, three years later, a
group of Black and Hispanic voters sued to challenge the plan as unconstitutional. That suit
ultimately required the legislature to change the maps once again (*Diaz*, 978 F Supp at 96).

2002

In 2002, both the federal and state courts were once again asked to intervene to "ensure
that Congressional district lines [were] drawn in time for the fair and orderly conduct of the
primary and general elections to be held in 2002" (*Pataki*, 2002 WL 1058054, *1; see also
Rodriguez v Pataki*, 308 F Supp 2d 346, 355 [SDNY 2004] [the companion state court case
requested the court "set a reasonable deadline for state authorities to enact redistricting plans
and obtain (United States Department of Justice) pre-clearance thereof' and adopt and
promulgate new districts in the event of a failure by the Legislature to act in time for the 2002
elections"]). Once again, the federal court appointed a special master and the state court
appointed a special referee, with both courts adopting the plans proposed by their respective
experts (*Pataki*, 308 F Supp 2d at 357-358). As in 1992, the federal court noted its willingness
to defer to the State, offering that it would withdraw the federal plan if the legislature adopted
"appropriate and lawful modifications" (*Pataki*, 2002 WL 1058054, *8). Shortly thereafter,
the legislature adopted a congressional redistricting plan of its own, which was subsequently
precleared, and the federal court withdrew its plan (*Pataki*, 308 F Supp 2d at 358). Elections
were held using the legislature's plan, after which consolidated plaintiffs from the 2002 state
and federal companion cases filed suit substantively challenging the congressional map (id. at
359). [*4]In 2004, the federal court dismissed the plaintiffs' claims, and the U.S. Supreme
Court upheld that dismissal (id. at 460-461; Rodriguez v Pataki, 543 US 997 [2004]).

2012

That tortured history brings us to 2012—the redistricting cycle that immediately
preceded the 2014 constitutional amendments. In 2012, with less than 24 hours until the start
of the petitioning process for congressional primaries, the legislature failed to pass a
congressional plan (*Favors*, 2012 WL 928223, *1 ["In the past, judicial creation of a
congressional redistricting plan has spurred the New York legislature to produce its own plan
just in time to avoid implementation of the judicial plan. . . . This time is different")]. As a
result, the court delegated the task of creating a congressional redistricting plan to a federal
magistrate judge (*Favors v Cuomo*, 39 F Supp 3d 276, 285 [EDNY 2014]). With the help of
an "expert in election law and redistricting," the magistrate judge drafted a congressional redistricting plan, which the federal court ordered the legislature to implement (id.). The result was a judicially drafted congressional redistricting plan and assembly and senate maps enacted by the legislature that were widely criticized as being gerrymandered (see Harkenrider, 38 NY3d at 513; see also Thomas Kaplan, An Update on New York Redistricting, NY Times, March 9, 2012).

2014

The People of New York voted to amend New York's Constitution and create the IRC against that long history. Faced with decades of failed legislative redistricting and the concomitant court challenges leading to court-drawn districts or the threat of the same to compel legislative compliance, the legislature proposed the constitutional amendments creating the IRC process through concurrent resolutions adopted in 2012 and 2013. The adoption of those resolutions in successive years placed the question before the voters on the November 2014 ballot. The voters approved the reforms by a margin of nearly half a million votes.

The resulting constitutional amendments created the IRC—a bipartisan, ten-person commission mandated to reflect the "diversity of the state"—as a mechanism to provide an "historic level of independence and transparency while protecting minority voting rights and communities of interest" (Governor's Approval Mem, Bill Jacket, L 2012, ch 17 at 7; see NY Const, art III, §§ 5-b [a] [1]-[5], [b]-[c]).\[FN3\]

That was the promise of the 2014 constitutional amendments—a promise to "unequivocally" reform the "redistricting process permanently" by "provid[ing] transparency to a process cloaked in secrecy" and respite from "legal challenges to partisan gerrymandering" (Governor's Approval Mem, Bill Jacket, L 2012, ch 17 at 5; Assembly Mem in Support, 2012 NY Senate-Assembly Concurrent Resolution S6698, A9526 Sponsor Memo, S2107). It was a promise adopted by two consecutive legislatures and New York voters by a wide margin to both avoid legislative gerrymandering and judicial intervention in the redistricting process except to the minimum necessary (see Harkenrider, 38 NY3d at 513).

Thus, our Constitution now mandates that the IRC prepare and submit a redistricting plan, with appropriate implementing legislation, to the legislature for a vote without
amendment (see NY Const, art III, § 4 [b]). The plan and legislation must be submitted to the legislature "no later than January fifteenth in the year ending in two" (id.). If the legislature fails to approve that redistricting plan, or if the governor vetoes it and the legislature does not override the veto, the legislature or the governor must notify the IRC of the rejection (see id.). The IRC must then prepare a second redistricting plan with the necessary implementing legislation "[w]ithin fifteen days of such notification and in no case later than February twenty-eighth," and resubmit it to the [*5]legislature for a vote without amendment (id.). If the second redistricting plan fails to pass the legislature, or if it is subject to a veto, then the legislature may amend the maps drawn by the IRC (see id.). According to a statute enacted as a companion to the 2014 constitutional amendments, any legislative alteration of IRC-drawn districts cannot affect more than two percent of the population in any district (see L 2012, ch 17, § 3).

Unfortunately, the new constitutional process broke down the first time it became applicable. Following the 2020 census, the newly established IRC convened in 2021 and, as required, held public hearings throughout the state, receiving input from voters and stakeholders on the process (see NY Const, art III, § 4 [c]; Harkenrider, 38 NY3d at 504). Simultaneously, the legislature recognized that the Constitution did not explicitly state what would happen if the IRC failed to deliver maps and implementing legislation. To address that lack of clarity, the legislature placed an additional constitutional amendment on the 2021 ballot that would authorize the legislature to introduce its own redistricting legislation if the IRC failed to vote on any plan or implementing legislation by the deadline (2021 NY Senate-Assembly Concurrent Resolution S515, A1916). Voters rejected the proposed amendment by a margin of just over a quarter of a million votes. Upon the failure of the 2021 constitutional amendment, the legislature enacted a statute authorizing the legislature to create its own districts if the IRC failed to deliver maps and implementing legislation—the same remedy the voters had rejected (see L 2021, ch 633 [hereinafter the 2021 legislation]). The statute provided that if the IRC "does not vote on any redistricting plan or plans, for any reason, by the date required for the submission of the plan, [then] the [IRC] shall submit to the legislature all plans in its possession, both completed and in draft form, and the data upon which such plans are based" and "each house shall introduce such implementing legislation with any amendments each house deems necessary" (id. § 1).
The IRC submitted its first redistricting plan to the legislature on January 3, 2022, twelve days before its January 15, 2022 deadline (see Harkenrider, 38 NY3d at 504; NY Const, art III, § 4 [b]). Because the IRC had reached an impasse and was unable to reach a seven-person quorum as specified in the Constitution (see NY Const, art III, § 5-b [f]), the first submission consisted of two competing maps that had garnered equal support (see Harkenrider, 38 NY3d at 504; NY Const, art III, § 5-b [g]). On January 10, 2022, the legislature rejected both maps, triggering the IRC's constitutional obligation to prepare and submit a second redistricting plan within 15 days but in no case later than February 28, 2022 (see Harkenrider, 38 NY3d at 504; NY Const, art III, § 4 [b]). On January 24, 2022—one day before the 15-day deadline and well before the February 28 deadline—two different factions of the IRC publicly released dueling statements reflecting that the body was deadlocked, with one faction declaring that the IRC would not be submitting a second plan to the legislature (see Harkenrider, 38 NY3d at 504-505). Neither faction consisted of a seven-person quorum. Shortly thereafter, relying on the 2021 legislation, the legislature introduced and passed its own redistricting maps, which the Governor signed into law on February 3, 2022 (see 2022 NY Senate-Assembly Bill S8196; 2022 NY Senate-Assembly Bill S8172A, A9039A; 2022 NY Senate-Assembly Bill S8197, A9168; 2022 NY Senate-Assembly Bill S8185A, A9040A).

The Harkenrider litigation commenced immediately. The Harkenrider petitioners sued the state legislature, alleging that the February 3 maps were procedurally and substantively unconstitutional. The Harkenrider petitioners argued that the 2021 legislation authorizing the legislature to create its own maps in the event of the IRC's dereliction was unconstitutional, and that because the February 3 maps were enacted pursuant to that statute, they had to fall with it. Because the legislature could not "contravene the Constitution's exclusive process for redistricting in New York through legislative enactment," the Harkenrider petitioners argued that the 2022 congressional and state senate maps should be declared invalid; that the Court could not give the "Legislature another opportunity to draw curative districts"; and instead the "Court should draw its own maps for Congress and state Senate prior to the upcoming deadlines [*6] for candidates to gain access to the ballot, just as happened regarding the 2012 congressional map."

On April 27, 2022, we held that the 2021 legislation was "unconstitutional to the extent that it permit[ted] the legislature to avoid" compliance with the bipartisan IRC process, a "central requirement of the [redistricting] reform amendments" (Harkenrider, 38 NY3d at
517). We further held that "the legislature and the IRC deviated from the constitutionally mandated [redistricting] procedure"; a deviation which required invalidation of the congressional and state senate maps (id. at 509; 511). We concluded that "judicial oversight [wa]s required to facilitate the expeditious creation of constitutionally conforming maps for use in the 2022 election and to safeguard the constitutionally protected right of New Yorkers to a fair election" (id. at 502). We then remitted the matter to Supreme Court to adopt, with the assistance of a special master, constitutional maps "with all due haste" following any "submissions from the parties, the legislature, and any interested stakeholders who wish to be heard" (id. at 523, 524). Less than a month later, Supreme Court certified the maps prepared by a special master as "the official approved 2022 Congressional map and the 2022 State Senate map" (Harkenrider v Hochul, 2022 NY Slip Op 31471[U], *1, *3, *4 [Sup Ct, Steuben County 2022]).

Five weeks later, on June 28, 2022, petitioners—ten registered New York voters uninvolved in the Harkenrider litigation—commenced this CPLR article 78 proceeding seeking a writ of mandamus to compel the IRC "to 'prepare and submit to the legislature a second redistricting plan and the necessary implementing legislation for such plan' as is required by Article III, sections 4 and 5 (b) of the New York Constitution in order to ensure a lawful congressional plan is in place immediately following the 2022 elections and can be used for subsequent elections this decade." Relying on Harkenrider, petitioners argued that the IRC failed to comply with its constitutional duty to submit to the legislature a second redistricting plan. According to petitioners, the IRC continues to have that obligation, even though the 2022 congressional map was judicially adopted.

Three IRC members (hereinafter the Jenkins Respondents) answered, indicating that they did not oppose the specific mandamus relief sought by petitioners. Five other IRC members (hereinafter the Brady Appellants) moved under CPLR 3211 (a) (5) and (7) to dismiss the petition, asserting it failed to state a claim, mandamus to compel does not lie, and that the claim is barred by the statute of limitations. The Brady Appellants argued that February 28, 2022 was the last lawful date on which the IRC could have submitted to the legislature a second redistricting plan, thus petitioners sought to compel the IRC to perform an unconstitutional act. They further argued that a court-ordered redistricting plan was the exclusive remedy for a violation of the redistricting process and that, because the constitutionally prescribed remedial process had played out in Harkenrider, the resulting
maps could not be redrawn until after the 2030 census. Finally, the Brady Appellants argued that petitioners' mandamus claim accrued when the IRC announced its deadlock on January 24, 2022, which rendered this proceeding barred by the four-month limitations period contained in CPLR 217.

The Harkenrider intervenors—fourteen New York voters who had participated in the earlier Harkenrider litigation (hereinafter the Harkenrider Intervenors)—intervened in this proceeding and moved to dismiss the petition on three grounds. First, they argued that this proceeding constitutes an impermissible collateral attack on the Harkenrider judgment. Second, they argued that the mandamus relief requested by petitioners would violate the New York Constitution because once the IRC failed to discharge its obligations, the only constitutionally permissible remedy is the judicial creation of maps, which was fully accomplished by Supreme Court in May 2022. Third, they argued that this proceeding is untimely because it was not commenced between January 24, 2022—the date on which the IRC "declared its decision to violate its constitutional duties"—and February 28, 2022, when "the IRC's authority to submit [second proposed] maps expired."

Supreme Court granted the motions and dismissed the petition. The court held that petitioners' claim was timely because it accrued on May 20, 2022—when the 2022 congressional [*7]map was certified by Supreme Court—and thus was well within the four-month statute of limitations. However, the court dismissed the petition on the ground that the congressional map certified in May 2022 was to remain in full force and effect until the next redistricting cycle. Petitioners appealed.

With two Justices dissenting, the Appellate Division reversed Supreme Court's judgment on the law and granted the petition. The court held that this proceeding was commenced "well within" the four-month statute of limitations, reasoning that the mandamus claim accrued when the 2021 legislation was deemed unconstitutional by Supreme Court on March 31, 2022 (Matter of Hoffmann v New York State Ind. Redistricting Commn., 217 AD3d 53, 58 [3d Dept 2023]). The court then declined to infer, in "the complete absence of an explicit direction" in our opinion in Harkenrider, that the resulting court-drawn districts were intended to apply beyond the 2022 election (id. at 60). As a result, the court held that Harkenrider did not foreclose the requested mandamus relief and that petitioners had a clear legal right to the mandamus relief sought. The court therefore ordered the IRC to "commence its duties forthwith" (id. at 62).
The Brady Appellants and Harkenrider Intervenors appealed as of right (see CPLR 5601 [a]). They subsequently asserted that an automatic stay under CPLR 5519 (a) (1) was in place and the IRC was therefore precluded from working toward the submission of a second redistricting plan during the pendency of appeals. Petitioners moved for a determination that the automatic stay did not apply or, in the alternative, to vacate or modify the stay to permit "the IRC to meet and discuss the upcoming map-drawing process, draft maps, and take any other steps necessary to swiftly comply with the Appellate Division's order should this Court affirm." On September 19, 2023, we held that the Appellate Division's order was automatically stayed pursuant to CPLR 5519 (a) (1), denied the motion to vacate the stay, and clarified that the automatic stay of the Appellate Division's order did not "prohibit the IRC or its members from taking any actions" (Matter of Hoffmann v New York State Ind. Redistricting Commn., 40 NY3d 968 [2023]).

II.

A simple and straightforward proposition disposes of most of the issues the parties have raised. The plain text of the 2014 amendments to the Constitution places express limitations on court-drawn maps. Following the enactment of the 2014 amendments, New York courts no longer have the blanket authority to create decade-long redistricting plans. Instead, the Constitution now limits court-drawn redistricting to the minimum required to remedy a violation of law. Article III, section 4 (e), enacted as part of the 2014 constitutional amendments, reads:

"The process for redistricting congressional and state legislative districts established by this section and sections five and five-b of this article shall govern redistricting in this state 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. 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" (NY Const, art III, § 4 [e] [emphasis added]).

Thus, the 2014 constitutional amendments place an explicit limitation on court-created maps. Permitting a judicially created redistricting to last longer than "required" would read the words "to the extent that a court is required" out of the Constitution. Both the dissent and appellants would have us read the Constitution as if it said, instead, that the IRC process
shall govern except if a court orders the adoption of, or changes to, a redistricting plan." But that is not what the Constitution says.

The dissent contends that we have erred grammatically—that "'to the extent . . . required' does not modify the courts' power 'to order the adoption of, or changes to, a redistricting plan as a remedy for a violation of law'—it modifies the subject of the sentence, which is '[t]he process for redistricting . . . established by [§§ 4, 5, § 5-b] shall govern' " (dissenting op at 20). As a grammatical matter, the limiting language is annexed to the clause describing what the courts may do, not what the IRC must do. As a commonsense matter, language directed at the scope of a court-ordered remedy necessarily relates to the courts, not the IRC. What that passage, quoted in full in the text above, clearly states is that the IRC process for creating districts "shall govern redistricting in this state 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" (NY Const, art III, § 4 [e] [emphasis added]). The Constitution clearly establishes the IRC process as predominant over court-drawn districts.

"To the extent" and "required" are limiting words that cannot be disregarded. Those words permit court-drawn redistricting only "to the extent" it is "required" to remedy a violation of law. Otherwise, the Constitution requires the IRC map-drawing process. When applied to the maps made pursuant to Harkenrider, section 4 (e) authorized the Steuben County Supreme Court to fashion maps to the "extent" it was "required" to do so. Given the impending 2022 election cycle, Supreme Court was "required" to alter the IRC-based redistricting process for that imminent election cycle—and to that "extent" alone. Indeed, Supreme Court quite properly identified the maps pursuant to Harkenrider as the "official approved 2022 Congressional map" (Harkenrider, 2022 NY Slip Op 31471[U], *3, *4). The Appellate Division reached this same conclusion (see Hoffmann, 217 AD3d at 60). In short, section 4 (e) requires a nexus between the violation and the judicial remedy, and a court cannot adopt a remedy beyond what is necessary to cure the violation of law.

Appellants cannot explain why their interpretation does not render those words superfluous. They offer no alternative meaning for them, and none is apparent. We have long and repeatedly held that "in construing the language of the Constitution as in construing the language of a statute, the courts should look for the intention of the People and give to the language used its ordinary meaning" (Sherrill, 188 NY at 207). The "'starting point for
discerning legislative intent is the language of the statute itself" (Matter of Lynch v City of New York, 40 NY3d 7, 13 [2023], quoting Matter of DaimlerChrysler Corp. v Spitzer, 7 NY3d 653, 660 [2006]), such that the "literal language of a statute controls" (Lynch, 40 NY3d at 13, quoting Matter of Anonymous v Molik, 32 NY3d 30, 37 [2018]). All parts of the constitutional provision or statute "must be harmonized with each other as well as with the general intent of the whole statute, and effect and meaning must, if possible, be given to the entire statute and every part and word thereof" (People v Pabon, 28 NY3d 147, 152 [2016], quoting McKinney's Cons. Laws of N.Y., Book 1, Statutes § 98 [a]). Indeed, our well-settled doctrine requires us to give effect to each component of the provision or statute to avoid "a construction that treats a [*8]word or phrase as superfluous" (Columbia Mem. Hosp. v Hinds, 38 NY3d 253, 271 [2022], quoting Matter of Lemma v Nassau County Police Officer Indem. Bd., 31 NY3d 523, 528 [2018]).

Appellants' failure to offer any other meaning for the words "to the extent that a court is required" properly ends any analysis. Instead of offering any other possible meaning, both the dissent and appellants point to the next sentence of section 4 (e), which provides that reapportionment plans last for a decade (see dissenting op at 21). However one reads that sentence, it does not explain what meaning should be ascribed to the words "to the extent that a court is required." Furthermore, that second sentence of 4 (e) bolsters our plain reading of the prior sentence, rather than refutes it. The second sentence reads: "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" (NY Const, art III, § 4 [e] [emphasis added]). The clause beginning with "unless" specifies that plans modified pursuant to a court order—unlike plans created by the IRC process—might not last until the next federal decennial census [FN5]. Far from contradicting the plain reading of the first sentence that cabins a court's power to conduct redistricting, the second sentence is completely in harmony with the first. A reading that gives a consistent meaning to both must be accepted in preference to a reading that renders words superfluous. [FN6]

Appellants and our dissenting colleagues also contend that mid-decade redistricting is disfavored, observing that the 2014 amendments prohibit mid-decade redistricting because the state of Texas deemed as such under its constitution and Congress is considering, but has not acted on, legislation to that effect (dissenting op at 22-23). Putting aside that any such general
preference cannot supersede the language of the Constitution, section 5-b (a), which itself is
part of the 2014 constitutional amendments, expressly contemplates that a court may issue
orders directing an IRC to redo IRC-created or legislatively created districts mid-decade, even
though section 4 (e) specifies that such districts are expected to last for a decade.

Section 5-b (a) states, in part:

"On or before February first of each year ending with a zero and at any other time a
court orders that congressional or state legislative districts be amended,[FN7] an
independent redistricting commission [*9]shall be established to determine the
district lines for congressional and state legislative offices" (NY Const, art III, § 5-b
[a] [emphasis added]).

Thus, although not applicable to the judicially created districts involved on this appeal,
section 5-b (a) further refutes both the dissent's and appellants' argument that the Constitution
prohibits mid-decade redistricting.

Moreover, in the instant proceeding, petitioners are not requesting a court-ordered
amendment to any districts. Instead, they have asked the court to issue a writ of mandamus
compelling the IRC to deliver to the legislature a second set of maps and implementing
legislation. The legislature may adopt those maps, or it may modify them as provided for in
the Constitution (and as further constrained by the accompanying legislation). Either way,
maps drawn pursuant to our decision will not be maps "ordered" by a court— rather, they
will, one way or another, be adopted by the IRC and legislature.

Although the constitutional language is clear, the background against which the
constitutional provisions were implemented further supports the conclusion that the
Constitution limits court-drawn maps to the minimum time and scope required to cure a
violation of law. For more than half a century before the 2014 constitutional amendments,
every New York legislative redistricting was subject to court intervention, including the
imposition of a judicially created congressional plan in 2012. The People adopted the 2014
amendments creating the IRC against that background and did so because of the frustration
over both the legislature's inability to draw lawful districts and the continual requests for
districts to be created by the courts. In light of that history, it does not make sense to read the
constitutional amendments to require a court to create decade-long electoral districts if the
IRC or legislature fails to carry out its constitutional duties.
Court-drawn judicial districts are generally disfavored because redistricting is predominantly legislative. As the U.S. Supreme Court has explained, "our decisions have assumed that state legislatures are free to replace court-mandated remedial plans by enacting redistricting plans of their own. . . . Underlying this principle is the assumption that to prefer a court-drawn plan to a legislature's replacement would be contrary to the ordinary and proper orientation of the political process" (League of United Latin Am. Citizens v Perry, 548 US 399, 416 [2006]; see id. ["(D)rawing lines for congressional districts is one of the most significant acts a State can perform . . . (a)s the Constitution vests redistricting responsibilities foremost in the legislatures of the State and in Congress, a lawful, legislatively enacted plan should be preferable to one drawn by the courts"]); see also Perry v Perez, 565 US 388, 392 [2012] [emphasizing that "(r)edistricting is 'primarily the duty and responsibility of the State' " and consistently referring to courts required to take up the state legislature's task as creating, drafting, or devising an "interim map"]; Wise v Lipscomb, 437 US 535, 540 [1978] ["(I)t is . . . appropriate, whenever practicable, to afford a reasonable opportunity for the legislature to meet constitutional requirements by adopting a substitute measure rather than for the federal court to devise and order into effect its own plan"]; Reynolds v Sims, 377 US 533, 586 [1964] [redistricting is "primarily a matter for legislative consideration and determination"]) [FN8].

Given [*10]this strong and longstanding body of federal law, it makes complete sense that the 2014 constitutional amendments were drafted to prohibit court-ordered redistricting "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" (NY Const, art III, § 4 [e]). The 2014 constitutional reforms unambiguously promised New York's citizens an IRC redistricting process with minimal resort to court-drawn districts—only to the extent required to remedy a violation of law.

III.

Because we conclude that the Constitution limits the redistricting power of the courts—including our Court—to the creation of interim districts as the proper means to correct the extant constitutional failure, determining whether Harkenrider commanded the creation of a decade-long redistricting plan is wholly irrelevant and simply an academic exercise. Even if Harkenrider could be read to have required or allowed Supreme Court to create decade-long court-drawn districts, that reading would run afoul of the Constitution. In other words, if that is what Harkenrider intended, it lacked authority to do so because that remedy would have
been unnecessary to cure the constitutional violation. Thus, reading the *Harkenrider* tea leaves—which all parties have attempted to do, each claiming something in that writing supports one position or the contrary—is meaningless given our holding today.

In any event, *Harkenrider* is silent about the duration of the remedy. Although there are points that could be read to suggest that the remedy was limited to the 2022 election,\[\text{FN9}\] it is possible to read some of them as neutral or cutting the other way. Even the passage on which appellants most heavily rely—beginning with the observation that "[t]he procedural unconstitutionality of the congressional and senate maps is, at this juncture, incapable of a legislative cure"—suggests that the decision was limited to the exigency caused by the impending 2022 election, hence the inclusion of the words "at this juncture" (*Harkenrider*, 38 NY3d at 523). Although appellants contend that ordering the IRC to produce maps in *Harkenrider* would have been quicker than ordering judicially created districts, that contention misses two important points. First, Supreme Court accomplished the redistricting in two months. Second, no party in *Harkenrider* sought to compel the IRC to act, the IRC was not a [*11]*party to the proceeding, and ordering the IRC to deliver maps would still have left those maps subject to legislative or gubernatorial disapproval and further mapmaking by the legislature, with the historically attendant litigation to follow.

Regardless, because the 2014 constitutional amendments limited court-ordered districts to only what is required to remedy a violation of law, *Harkenrider* cannot be read to hold that courts may create decade-long redistrictings or that we ordered Supreme Court to do so. Accordingly, the existing judicially drawn congressional districts are limited to the 2022 election \[\text{FN10}\].

IV.

Petitioners' writ of mandamus proceeding is timely and not barred by laches. Petitioners filed a special article 78 proceeding in the form of a writ of mandamus to compel the IRC to submit a second set of congressional maps once the exigency of the 2022 elections had passed. Mandamus to compel lies where an administrative body has failed to perform a duty enjoined upon it by law, the performance of that duty is mandatory and ministerial rather than discretionary, and there is a legal right to the relief sought (see CPLR 7801 [1]; *New York Civ. Liberties Union v State of New York, 4 NY3d 175*, 184 [2005]; see also *Klostermann v Cuomo*, 61 NY2d 525, 540 [1984] [explaining that the "function of mandamus (is) to compel
acts that officials are duty-bound to perform")]. Under CPLR article 78, a writ of mandamus to compel governmental bodies or officers "must be commenced within four months . . . after the respondent's refusal, upon the demand of the petitioner or the person whom he represents, to perform its duty" (CPLR 217 [1]; *see Austin v Board of Higher Educ.*, 5 NY2d 430, 442 [1959] [where the relief sought is in the nature of a mandamus to compel, the "aggrievement does not arise from the final determination but from the refusal of the body or officer to act or perform a duty enjoined by law"]). It is therefore necessary to make a "demand and avail a refusal before bringing a proceeding in the nature of mandamus," wherein the statute of limitations does not run out until "four months after the refusal" (*id.; see Matter of Bottom v Goord*, 96 NY2d 870, 872 [2001]; *see also Donoghue v New York City Dept. of Educ.*, 80 AD3d 535, 536 [1st Dept 2011]).

In an appropriate case, the filing of a petition and the answer thereto is one way to establish a "demand" and a "refusal" for the purposes of a mandamus proceeding (*see Matter of Thomas v Stone*, 284 AD2d 627, 628 [3d Dept 2001]; *Matter of Speis v Penfield Cent. Schs.*, 114 AD3d 1181, 1182-1183 [4th Dept 2014]; *Matter of Meegan v Griffin*, 161 AD2d 1143, 1143 [4th Dept 1990], lv denied 76 NY2d 710 [1990], *rearg denied* 67 NY2d 1018 [1990]). Petitioners filed a complaint on June 28, 2022, whereupon the Brady Appellants moved under CPLR 3211 (a) (5) and (7) to dismiss, constituting a refusal. Thus, the petitioners demanded the IRC to act, and the IRC refused. Because the filing of the complaint and the IRC's subsequent refusal to act [*12] began the running of the period, this proceeding is decidedly within the four-month limitation period prescribed by CPLR 217 (1). [*FN11*]

Appellants, our dissenting colleagues, and the Appellate Division dissenting Justices do not dispute that the Constitution requires the IRC to conduct redistricting but contend that the time to compel the IRC to act has passed. The insuperable problem with their argument is that they have assumed that the court-ordered maps last for the decade. Because they do not, the time to move for a writ of mandamus to compel the IRC to complete its constitutional function as to the remaining elections in this decade has not yet passed. Indeed, it could not have commenced until we ordered Supreme Court to draw its own districts as a remedy. Put differently, because the Constitution requires the IRC to draw districts, if a court has drawn districts, the IRC's constitutional obligation may be enforced at any time unless barred by laches (which, for example, would bar a challenge made insufficiently ahead of the next election cycle to permit the IRC to perform its constitutional function). Effectively, the
untimeliness argument is nothing more than a way to undo the constitutional requirement that
the court-drawn maps be only what is necessary to cure the violation: by requiring any
challenge to be made only at the IRC's initial failure, appellants and our dissenting colleagues
would cause court-ordered districts to last a decade. Because the Constitution says otherwise,
mandamus to compel the IRC to complete its constitutional function now, is timely.

Nor is the petition barred by laches. When laches "is invoked in an article 78 proceeding
in the nature of mandamus, proof of unexcused delay without more may be enough" (Matter
of Sheerin v New York Fire Dept. Articles 1 and 1B Pension Funds, 46 NY2d 488, 495-496
[1979]). It is the unreasonable nature of a delay that might constitute laches in such
proceedings: "laches is designed to introduce flexibility into the process of determining when
rights have been asserted so unreasonably that a point at which they should be barred has
been reached" (id.). Citing various Appellate Division decisions arising in quite different
contexts but disregarding the import of our own decision in Sheerin, our dissenting colleagues
assert that the laches period can be no greater than the four-month limitations period in CPLR
217 (1) (dissenting op at 10). Here, however, laches has no application. Petitioners are
seeking to compel the IRC to send maps to the legislature, as required in the Constitution, to
replace the court-drawn maps that are limited to the 2022 elections. They have done so in a
more than timely fashion.

As we explained in Sheerin, laches in this context functions "as the counterpart of a
Statute of Limitations, to which it may be analogized but to whose provisions it owes no
necessary obeisance" (46 NY2d at 496 [emphasis added]). We pointedly rejected as "too
broad an assertion" the proposition that the point at which laches may attach cannot "cover a
period longer or shorter than that prescribed by any available Statute of Limitations" (id).
[FN12]

Petitioners filed this proceeding on June 28, 2022. The petition was filed two months and
one day after we decided Harkenrider, in which we held the 2021 gap-filling legislation
[*13]unconstitutional and that a court-ordered redistricting plan must be implemented to the
extent required to remedy the legislature's violation of law. Because the Constitution forbade
those court-drawn plans from lasting longer than necessary, our Harkenrider decision marks
the date on which petitioners' right to make the demand of IRC arose and when petitioners
knew or should have known of the facts that gave them a clear legal right to relief.
Moreover, as we observed in *Sheerin*, the question for the application of laches is not whether the delay exceeded four months, but whether the time at which the demand was made was reasonable in the circumstances. Here, petitioners are seeking to compel the IRC to act in the future, and the date on which they made a demand was early enough to allow for this proceeding to work its way through the courts with a determination made in time for the IRC to act in advance of the deadlines set forth in the Constitution ahead of the upcoming elections. Given these circumstances, making a demand on June 28, 2022 is hardly unreasonable. We therefore see no basis to impose a laches bar to prevent the citizens of New York from having districts drawn as the Constitution commands.

V.

Indisputably, the Constitution requires the IRC to deliver a second set of maps and implementing legislation to the legislature. The court-drawn maps directed by our *Harkenrider* decision may exist only to the extent required to remedy the violation of law at issue in that appeal. They are not now necessary to remedy the continuing violation of law asserted on this appeal, because the IRC has more than sufficient time to complete the constitutionally required process—time it did not have in late April 2022.

The *Harkenrider* litigation did not seek to remedy the violation caused by the IRC's failure to fulfill its constitutional obligation. Indeed, the obligation that now exists did not exist at that time due to the presence of the gap-filling legislation, which allowed for an alternative statutory path to redistricting in the event that the IRC deadlocked or otherwise failed to deliver maps. Instead, the *Harkenrider* petitioners attacked as unconstitutional the legislature's 2021 gap-filling legislation, and the redistricting created by the legislature under that statutory authorization on both procedural and substantive grounds. Even though the *Harkenrider* and *Hoffmann* proceedings share some common background, the two are legally different. As the Appellate Division observed, "*Harkenrider* addresses the IRC's inaction solely by way of factual background" (*Hoffmann*, 217 AD3d at 61). In that same vein, no party in *Harkenrider* sued the IRC to compel it to act consistently with its constitutional duties. Indeed, the IRC and its members were not a party to it (*see Harkenrider*, 38 NY3d at 552 [Rivera, J., dissenting] [petitioners "did not sue the IRC to secure compliance with what they and the (Court's) majority maintain(ed) is the 'exclusive method of redistricting' (quoting majority op)].)
Thus, our dissenting colleagues' complaints about the failure to adhere to *stare decisis* are meritless (dissenting op at 18, 20 n 3). *Harkenrider* is silent as to the duration of the maps; the decision does not discuss any interpretation of section 4 (e), and no party advanced any argument about its meaning. It is surely a novel proposition to urge that a court is "derelict" for failing to address an argument no one advanced (see id. at 19), or that we are "eager[] to relitigate" an issue that the dissent concedes no party in *Harkenrider* raised and as to which *Harkenrider* is silent (id. at 20 n 3). Rather, it is hornbook law that "[a] judicial opinion . . . must be read as applicable only to the facts involved, and is an authority only for what is actually decided" (*Rolfe v Hewitt*, 227 NY 486, 494 [1920]). Indeed, the doctrine of *stare decisis* presupposes the existence of binding precedent, yet issues that have never been addressed nor squarely decided certainly cannot bind future courts (see *Matter of Empire Ctr. for N.Y. State Policy v New York State Teachers' Retirement Sys.*, 23 NY3d 438, 446 [2014] ["Our decisions are not to be read as deciding questions that were not before us and that we did not consider"]).

It follows then that the Harkenrider Intervenors' collateral attack argument likewise fails. Because the instant proceeding revolves around a distinct and previously unraised issue—the [*14]*interpretation of section 4 (e)'s language limiting judicial redistricting "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"—none of the claims or issues raised in this mandamus proceeding is addressed (much less barred) by our prior decision [*FN13*]. The Harkenrider Intervenors' collateral attack argument thus fails because the judicial redistricting ordered by our *Harkenrider* decision cannot constitutionally last longer than necessary to remedy a violation of law. It therefore can have no preclusive effect on future legislative redistricting, except insofar as the redistricting plan we struck down as substantively unconstitutional may have some bearing in any evaluation of the substantive constitutionality of a future redistricting plan.

Accordingly, mandamus to compel lies. The People of New York are entitled to the process set out in the Constitution, for which they voted. That process may include a judicially directed creation of districts that is limited expressly to the "extent" that the court is "required" to do so (NY Const, art III, § 4 [e]), but not at the expense of the IRC process when time exists to follow that process. There is no good argument as to why New Yorkers must be prohibited from ordering the creation of legislative districts through the process the
Constitution requires, adopted by the direct vote of the People. Underlying all the dissent's rhetoric is a complaint that this Court is forcing the IRC and legislature to follow the Constitution.

Reduced to its essence, the dissent's and appellants' arguments are that we should not pursue the IRC process because it will never work: ordering the IRC to deliver the required maps and implementing legislation will produce gamesmanship, a never-ending cycle of litigation, and ensure that "politics triumphs over free and fair elections" (dissenting op at 27). But that is precisely what New York faced for decades before the 2014 constitutional amendments and it was the very reason the IRC process was adopted. To allow the IRC to defeat the Constitution encourages gamesmanship and defeats the popular will. Indeed, if we allow the IRC's lack of compliance to stand, we would incentivize the same conduct that deadlocked the IRC and led to court-ordered redistricting.

Compelling the IRC to commence its constitutional duty will not re-open the door to future mid-decade challenges. Instead, once the IRC has submitted a second set of lawful redistricting maps adopted by the legislature, those maps would remain in place through the end of the decade. That, in turn, would send a clear directive to the IRC in subsequent decades that it must comply with the Constitution. In any event, debates about gamesmanship are better addressed to the voters, who can repeal or modify the IRC process if it proves undesirable. Until such time, however, it is our obligation to enforce the constitutional process, not give up on it because of a judicial judgment that it was ill-advised.

We note the irony in the dissent's claim that, by compelling the IRC and legislature to comply with the Constitution, we are "restrict[ing] . . . judicial authority" (dissenting op at 25), or that because the courts may again have to hold the IRC to its constitutional obligations, we are diminishing the role of the judiciary (id. at 24). Instead, "the judicial department of the government is charged with the solemn duty of enforcing the Constitution . . . [and] the responsibility of correcting every possible abuse arising from the exercise by the other departments of their conceded authority" (McCray v United States, 195 US 27, 53-54 [1904]). We are holding the IRC and legislature to what the Constitution demands and will do so as often as necessary to secure compliance with its mandate. That said, we trust that the members of the [*15]IRC will act as the Constitution requires without further need for judicial intervention. After all, the IRC members, like us, may not ignore our respective constitutional duties.
VI.

Consistent with our opinion and the Appellate Division's direction, the IRC should comply with its constitutional mandate by submitting to the legislature, on the earliest possible date, but in no event later than February 28, 2024, a second congressional redistricting plan and implementing legislation [FN14]. Accordingly, the order of the Appellate Division should be affirmed, with costs.

CANNATARO, J. (dissenting):

Less than a decade ago, the People of this State amended the New York Constitution to mandate that partisanship be kept out of the decennial redistricting process (see NY Const, art III, § 4 [c] [5]). At their first opportunity, the Independent Redistricting Commission (IRC) and legislature failed to follow the constitutional process for enacting redistricting legislation and disobeyed the Constitution's anti-gerrymandering mandate, requiring this Court to act (see Matter of Harkenrider v Hochul, 38 NY3d 494, 501 [2022]). Redistricting plans were drafted by a neutral special master in accordance with our decision in Harkenrider, certified by Supreme Court, and then used in the 2022 election, producing a fair and competitive election consistent with the overarching goals of the 2014 constitutional reforms prohibiting gerrymandering.

Today, even though the constitutionality of the existing district lines has not been substantively challenged, the majority reverses course. Recasting the judiciary's long history of safeguarding New Yorkers' right to free and fair elections as the problem in need of correction—with political gerrymandering meriting barely any mention in the majority decision—the Court today strictly curtails the constitutional authority of the judiciary to remedy future legislative overreach, rewriting the Constitution in order to do so.

Under the plain language of the Constitution, the maps we ordered in Harkenrider must remain "in force until the effective date of a plan based upon the subsequent federal decennial census . . . unless modified pursuant to court order" to remedy a violation of law (NY Const, art III, § 4 [e]). Since the only violation of law alleged in this proceeding is the previous breakdown of the redistricting process this Court remedied in Harkenrider, there is no constitutional basis for this Court to order a new congressional map. The majority's holding to the contrary manufactures a new violation of law to justify overruling Harkenrider, rewards
petitioners for their inexcusable and strategic delay in commencing this proceeding, and elevates a failed [*16] process above the People's substantive rights to free and fair elections. The majority is able to reach this result "for one reason and one reason only: because the composition of this Court has changed" (Dobbs v Jackson Women's Health Org., 597 US 215, 364 [2022] [Breyer, Sotomayor, and Kagan, JJ., dissenting]). I dissent.

I. Adoption and Violation of the 2014 Constitutional Amendments

Partisan gerrymandering—the manipulation of district lines to favor a particular political party—is a practice that "debase[s] and dishonor[s] our democracy," "enable[s] politicians to entrench themselves in office as against voters' preferences," "promote[s] partisanship above respect for the popular will," and "encourage[s] a politics of polarization and dysfunction" (Rucho v Common Cause, 588 US ___, 139 S Ct 2484, 2509 [2019] [Kagan, J., dissenting]). As the majority recounts, redistricting in New York has been frustrated for decades by partisan gerrymandering and legislative stalemates. And history demonstrates that it was the judiciary that was called upon to guarantee fair elections to New Yorkers.

In 2014, following resolutions enacted by two successive legislatures and a ballot referendum approved by the People, amendments to the New York Constitution effected sweeping reform of the state's redistricting process by restraining the legislature's ability to enact gerrymandered maps, with the goal of ushering in a new era of bipartisanship. In 2019, however, Democrats captured a supermajority of both the state senate and the state assembly. In 2021, the new legislature sponsored a ballot initiative in which it proposed to amend the Constitution and grant itself the authority to draw maps if the IRC "for any reason" failed to carry out its constitutional duty to submit a redistricting plan to the legislature (2021 NY Senate-Assembly Concurrent Resolution S515, A1916). New York voters firmly rejected that proposal by a 54-45% margin, reaffirming their commitment to bipartisanship and their opposition to legislative circumvention of the constitutional map-drawing process. Undeterred, the legislature promptly passed a statute to achieve the same result (the 2021 legislation) (see L 2021, ch 633).

Following passage of the 2021 legislation, negotiations between the IRC members broke down. Split along party lines, the IRC was unable to garner sufficient votes to submit a single set of maps by the constitutional deadline for its first-round proposal. As a result of their
disagreements, the IRC submitted a dueling pair of redistricting plans to the legislature, one from each party delegation. [FN15]

On January 10, 2022, the legislature rejected this first round of IRC redistricting plans, thereby triggering the IRC's constitutional obligation to proffer a second round of maps "within fifteen days of such notification" (NY Const, art III, § 4 [b]). The Constitution therefore mandated that the IRC proffer a second redistricting plan by January 25, 2022. Fourteen days later, the IRC publicly announced a deadlock and, on January 25th, the IRC's deadline came and went without the submission of second-round maps to the legislature.


Harkenrider
The *Harkenrider* petitioners promptly commenced a proceeding to invalidate as unconstitutional the congressional and senate maps, alleging that the legislature lacked authority to enact the maps absent a second-round IRC submission. The petitioners also alleged that the maps were drawn with unconstitutional partisan intent.

The *Harkenrider* petitioners ultimately prevailed on their procedural claim, as well as on their substantive gerrymander challenge to the congressional map (38 NY3d 494 [2022]). This Court declared both the congressional and state senate maps void because "the IRC's fulfillment of its constitutional obligations" was a prerequisite to—and limitation on—the legislature's authority to draft redistricting plans (*id.* at 514). Although the 2021 legislation purported to authorize the legislature to adopt redistricting maps even if the IRC failed to submit plans, we concluded that such legislation was "unconstitutional to the extent that it permits the legislature to avoid a central requirement of the reform amendments" (*id.* at 517). This Court also upheld the factual findings of the courts below that the congressional map was drawn with an unconstitutional partisan intent to discourage competition and favor Democrats. The Court remedied these violations by "endors[ing] the procedure directed by Supreme Court to 'order the adoption of . . . a redistricting plan' (NY Const, art III, § 4 [e]) with the assistance of a neutral expert, designated a special master, following submissions from the parties, the legislature, and any interested stakeholders who wish to be heard" (38 NY3d at 523). In doing so, we upheld the fundamental role of the courts—a role required by the Constitution—in protecting the right of the People of this State to free and fair elections untainted by partisan gerrymandering.

On May 20, 2022, the new congressional and state senate maps were promulgated by Supreme Court and, following minor revisions, that court certified the new maps on June 2, 2022.

The Instant Litigation

After the *Harkenrider* litigation had fully concluded, and five months after the IRC's January 25th deadline to submit a second-round redistricting plan to the legislature had passed, petitioners commenced this proceeding purportedly to enforce the bipartisan IRC process. Their amended petition sought a "writ of mandamus to compel" the IRC and its commissioners "to fulfill their constitutional duty . . . by submitting a second round of proposed congressional redistricting plans for consideration by the [l]egislature."
The members of the IRC aligned with the legislature's supermajority declined to oppose the petition, but the remaining IRC Commissioners moved to dismiss the proceeding as untimely and for failing to state a cognizable claim for relief under either the Constitution or this Court's decision in *Harkenrider*. Having successfully intervened, the *Harkenrider* petitioners also moved to dismiss the petition as untimely and on the basis that, in *Harkenrider*, this Court had already remedied the constitutional defect identified by petitioners by directing the enactment of new, nonpartisan maps. Supreme Court granted respondents' motions to dismiss, agreeing that the Constitution required the *Harkenrider* redistricting maps to remain in place until the next census.

On appeal, a divided Appellate Division reversed, granted the petition, and "direct[ed] the IRC to commence its duties forthwith" (217 AD3d 53, 62 [3d Dept 2023]). According to the [*18]Appellate Division, petitioners' claim against the IRC was timely because it "accrued" on March 31, 2022, the date on which the *Harkenrider* Supreme Court ruled that the 2021 legislation purporting to allow the legislature to proceed absent a second IRC submission was unconstitutional (217 AD3d at 58). On the merits, the Appellate Division concluded that *Harkenrider* "exclusively addressed the Legislature's constitutional violations and, thus, did not remedy the IRC's failure to perform [its nondiscretionary constitutional] duty" (*id.*). The Appellate Division also reasoned that the Constitution authorized judicial intervention in redistricting only "to the extent . . . required" to remedy a violation of law and, in *Harkenrider*, "the Court was not 'required' to divert the constitutional process beyond the then-imminent issue of the 2022 elections" (217 AD3d at 60 [emphasis omitted]). Thus, in the Appellate Division's view, the congressional map adopted pursuant to *Harkenrider* was "merely an interim map for the purpose of the 2022 elections" and the IRC could be compelled to produce a second congressional map for the legislature's consideration (217 AD3d at 58).

Two Justices dissented. Initially, the dissenters would have rejected the petition as time-barred because petitioners unreasonably failed to demand the IRC perform its legal duty until five months after the IRC failed to act. Alternatively, the dissenters would have affirmed Supreme Court's denial of the petition because "the failure of the IRC to act . . . was . . . part and parcel" of our holding in *Harkenrider* that the originally enacted maps violated the Constitution's procedural requirements (217 AD3d at 68 [Pritzker, J. dissenting]). Further, this Court's remedy had already "repaired the procedural and substantive infirmities in a manner
directly set forth in the NY Constitution" (id. at 68-69). Since a constitutionally-enacted "congressional map has been established and remains in place" for the duration specified in the Constitution—namely, until the next federal census—the dissenters concluded that petitioners lacked any clear legal right to relief (id. at 70).

Respondents appealed as of right on double dissent grounds (see CPLR 5601 [a]). For the reasons detailed below, I would reverse and dismiss the proceeding.

II.

Petitioners seek to compel the IRC to fulfill its constitutional duty "by submitting a second round of proposed congressional districting plans for consideration by the [l]egislature" (Amended Petition at 5 [¶ 14], 20 [Prayer for Relief]). As is proper, I will begin with the timeliness of this claim for relief, which the majority chooses to ignore for the first 24 pages of its opinion.

It is well-settled that a proceeding in the nature of mandamus to compel "must be commenced within four months . . . after the respondent's refusal, upon the demand of the petitioner . . . to perform its duty" (CPLR 217 [1]; see Matter of Waterside Assoc. v New York State Dept. of Envtl. Conservation, 72 NY2d 1009, 1010 [1988]; Matter of De Milio v Borghard, 55 NY2d 216, 220 [1982]; Austin v Board of Higher Educ. of City of N.Y., 5 NY2d 430, 442 [1959]). As we have cautioned, however: "This does not mean that the aggrieved party can, by delay in making [a] demand, extend indefinitely the period during which [they are] required to take action. If [they do] not proceed promptly with [the] demand [they] may be charged with laches" (Austin, 5 NY2d at 442, citing 22 Carmody-Wait, New York Practice, §§ 289, 297, pp. 379, 388-390; see also Matter of Sheerin v New York Fire Dept. Articles 1 and 1B Pension Funds, 46 NY2d 488, 496 [1979]; Matter of Devens v Gokey, 12 AD2d 135, 137 [4th Dept 1961], aff'd 10 NY2d 898 [1961]).

To avoid application of laches in this context, a "demand must be made within a reasonable time after the right to make [it] occurs" (Matter of Devens, 12 AD2d at 136) or, at the latest, "after the petitioner knows or should know of the facts which give [them] a clear right to relief" (Matter of Granto v City of Niagara Falls, 148 AD3d 1694, 1695 [4th Dept 2017] [internal quotation marks omitted]; Matter of Barresi v County of Suffolk, 72 AD3d 1076, 1076 [2d Dept 2010], lv denied 15 NY3d 705 [2010]; 24A Carmody-Wait 2d §
145:880). In furtherance of the policies underlying CPLR 217 (1), four months has been deemed the longest possible period in which service of a demand can be considered reasonable (see Matter of [*19]Norton v City of Hornell, 115 AD3d 1232, 1233 [4th Dept 2014], lv denied 23 NY3d 907 [2014]; Matter of Zupa v Zoning Bd. of Appeals of Town of Southold, 64 AD3d 723, 725 [2d Dept 2009]; Matter of Blue v Commissioner of Social Servs, 306 AD2d 527, 528 [2d Dept 2003]; Matter of Thomas v Stone, 284 AD2d 627, 628 [3d Dept 2001], lv dismissed 96 NY2d 935 [2001], lv denied 97 NY2d 608 [2002], cert denied 536 US 960 [2002]; Matter of Densmore v Altmar-Parish-Williamstown Cent. School Dist., 265 AD2d 838, 839 [4th Dept 1999], lv denied 94 NY2d 758 [2000]; Devens, 12 AD2d at 137; Matter of Amsterdam City Hosp. v Hoffman, 278 AD 292, 297 [3d Dept 1951]). Unexcused delay of more than four months requires dismissal of the proceeding, even in the absence of any prejudice (see Matter of Sheerin, 46 NY2d at 495-496; Devens, 12 AD2d at 137).

Straightforward application of these well-settled principles can lead to only one conclusion: petitioners' claim was filed far too late. Petitioners seek enforcement of the IRC's duty to submit second-round maps to the legislature, but they did not demand that the IRC fulfill its constitutional duty when the commission announced on January 24th that it was deadlocked and therefore would not comply. Nor did petitioners make any demand when the IRC's constitutional deadline for the submission of second-round maps came and went on January 25th. Petitioners remained silent as the legislature introduced its own redistricting legislation on February 1st, removing the process entirely from the IRC and signaling that the legislature would proceed with redistricting despite the IRC's abdication of its constitutional duty. Petitioners also sat idle when the infirm redistricting legislation was delivered to the Governor and signed into law on February 3rd.

Petitioners' inaction continued throughout the entire Harkenrider litigation. Significantly, at oral argument before this Court on April 26, 2022, both the Harkenrider petitioners (intervenors here) and the state respondents acknowledged that mandamus relief "could have" been sought against the IRC at an earlier point, evidencing that the availability of such relief was always well understood (oral argument tr at 33, 46). Indeed, counsel for the Speaker of the Assembly stated that "there could have been a lawsuit brought by petitioners against the . . . members of the commission but the . . . time passed" (id. at 46 [emphasis added]).

Even after our decision in Harkenrider, most petitioners remained idle with respect to mandamus relief or chose to pursue alternative relief. Most notably, lead petitioner Hoffmann
sought an order in the United States District Court for the Southern District of New York requiring that the gerrymandered maps enacted by the legislature be used in the impending 2022 congressional elections (Doc. No. 1, complaint at 3, 13, in De Gaudemar v Kosinski, No.1:22-cv-3534 [SD NY May 2, 2022]). The District Court harshly rejected that request to "hav[e] the New York primaries conducted on district lines that the State says are unconstitutional," referring to it as an attempt to "impinge[]" on "[f]ree, open, rational elections" (Doc. No. 92-2, transcript at 15, 40, in De Gaudemar, supra). Only after these efforts failed, the special master maps were certified, and several more weeks had passed did petitioners finally seek mandamus relief against the IRC.

There is no excuse for this extravagant delay. Even assuming petitioners' claim would have been deemed premature on January 24th—the day the IRC announced its stalemate—they had a clear right to mandamus relief against the IRC on January 25th, when the 15-day constitutional deadline elapsed without any second-round submission by the IRC. Further, it is unfathomable that petitioners can argue that even after the Governor signed the legislature's maps into law on February 3rd, it remained unclear whether the IRC would act to deliver a second set of maps. Because these events were unequivocal, petitioners' commencement of this proceeding on June 28th was "well beyond four months after they knew or should have known of the facts that provided them a clear right to relief" (see Matter of Granto, 148 AD3d at 1696). Plainly, by then the ship had sailed.

Petitioners agree that this proceeding is governed by a four-month time limit, but argue that such period should be measured from March 31, 2022, the date the Harkenrider trial court [*20]declared the 2021 legislation unconstitutional. However, the 2021 legislation neither relieved the IRC of its mandatory constitutional duty to submit second-round maps nor concealed petitioners' clear right to mandamus relief arising from the breach of that duty on January 25th. The 2021 legislation provided merely that "[i]f the commission does not vote on any redistricting plan or plans, for any reason, by the date required for submission of such plan," the legislature could enact its own redistricting plan (L 2021 ch 633 § 1 [emphasis added]). Nothing in that language purports to modify the IRC's underlying constitutional duty to submit maps to the legislature, which is the very action petitioners now seek to compel. Moreover, it is a bedrock legal principle that statutes are subordinate to the Constitution and are void in the event of any conflict. Thus, even if the legislature had intended to relieve the IRC of its mandatory constitutional obligation, the only way to do so was to amend the
Constitution. The legislature clearly understood this: it initially submitted the 2021 legislation to the People in the form of a ballot initiative for a proposed constitutional amendment. In rejecting that proposal, the People signaled their strong preference for the constitutionally mandated process, which—as I will explain—leaves remediation of any IRC breakdown primarily to the courts. The legislature's response was to ignore the voters' will and circumvent the Constitution by enacting the same provisions as an ordinary statute. That unsubtle effort to subvert the IRC's role was legally ineffective for the reasons stated above.

Petitioners nonetheless argue that the 2021 legislation effectively delayed accrual of their claim against the IRC because the legislature's enactment of maps significantly ameliorated any injury arising from the IRC's abdication of its constitutional duty. In addition to confusing the accrual date for mandamus to compel with that applicable to mandamus to review, this argument willfully ignores that the 2021 legislation inflicted the same injury petitioners claim to have suffered in this proceeding: removal of the IRC from the map-drawing process. Unsurprisingly, then, the record does not support a conclusion that petitioners actually suffered from any confusion regarding their right to relief during the brief period in which the 2021 legislation was effective. If anything, the record suggests that Hoffmann and the other petitioners commenced this action as a fallback only after it became clear that they would not get the gerrymandered maps they desired: the true injury they seek to cure here.

Nor does petitioners' alternative argument that their claim accrued on February 28th fare any better. The February 28th cut-off date operates to shorten, not lengthen, the 15-day period that may be available to the IRC following the legislature's rejection of its first-round submission. The Constitution directs that, "[w]ithin [15] days" of the legislature's notification of its rejection of the first round of redistricting maps "and in no case later than February 28th, the [IRC] shall prepare and submit to the legislature a second redistricting plan" (NY Const, art III, § 4 [b]). The purpose of the February 28th outer deadline is to ensure that the legislature has sufficient time to act on a second-round submission before candidates must begin to canvass signatures from their districts and other election preparations must begin. By comparison, the Constitution affords the IRC more flexibility with respect to the deadline for its first-round submission, directing the IRC to submit its initial redistricting plan "on or before January first or as soon as practicable thereafter but no later than January [15th]" (NY Const, art III, § 4 [b] [emphasis added]), language notably lacking from the provision setting forth the IRC's deadline for its second-round maps. By January 25th—not February 28th—
petitioners were fully apprised of the facts necessary to make their demand that the IRC fulfill its constitutional duty.

Recognizing that petitioners' timeliness arguments cannot carry the day, the majority devises a novel theory not advanced by any party to this litigation. The majority declares that "the IRC's constitutional obligation may be enforced at any time," so long as the demand is made and refused "[s]ufficiently ahead of the next election cycle to permit the IRC to perform its constitutional function" (majority op at 26 [emphasis added]). In other words, the majority decrees that the normal timeliness rules governing mandamus proceedings simply do not apply to this case. Even where the IRC has unequivocally violated its constitutional duties, and all applicable deadlines set forth in the Constitution have passed, the majority encourages a [*21]petitioner to sit on their rights for months, while other parties timely commence and prevail in litigation over the same facts, candidates and voters wait in limbo regarding district lines, and new maps are painstakingly developed and put in place.

This holding makes no sense. It is based on a conclusion that the IRC's duties are automatically revived any time a court orders the adoption of judicial maps, and therefore, what is being remedied here is not the violation of the January 25th IRC deadline, but some nebulous new duty that first sprung into being after Harkenrider. Even ignoring the lack of support for any such theory in either the Constitution or the pleadings, the majority's reasoning logically should require it to order that the entire IRC process now begin anew—a two-year process that would not afford petitioners the immediate relief they seek. Yet, the majority tellingly orders only that the IRC submit a second redistricting plan, demonstrating that it is, in fact, simply ordering a different remedy for the same violation of law that was already remedied by this Court in Harkenrider.[FN16]

Because this proceeding was commenced long after petitioners should have known of their right to relief, seemingly for strategic reasons, "the solution is not to apply a different legal standard . . ., but to reject the petition for mandamus to compel" (see Matter of Krug v City of Buffalo, 34 NY3d 1094, 1099 [2019] [Wilson, J. dissenting]). Dismissal on laches and timeliness grounds would strongly discourage partisan actors from engineering future breakdowns of the IRC. Had petitioners acted reasonably following the IRC's violation of its duties on January 25th, they could have immediately sought and obtained an emergency order in the nature of mandamus compelling the IRC to submit a second redistricting plan in
accordance with the timetable set forth in the Constitution while still giving the IRC and legislature each several weeks to act. The sad irony the majority refuses to recognize is that if petitioners had simply acted reasonably and in good faith following the IRC's breach of duty, the relief we ordered in *Harkenrider* may never have been necessary, and we might not be here today. Enforcing our ordinary timeliness principles is not "a way to undo the constitutional requirement that the court-drawn maps be only what is necessary to cure the violation" (majority op at 26). It is a way to ensure that the courts are never "required" to order such maps in the first place. If the majority truly sees the remedy we ordered in *Harkenrider* as an evil to be avoided (see Part III, *infra*), it should encourage prompt action upon the breakdown of the IRC process, not sanction the unreasonable delay that occurred here.

[*22]III.

Even if we were to put aside, as the majority does, what is a legally insurmountable timeliness hurdle, this Court has already remedied the IRC's failure to fulfill its constitutional duty. A petitioner seeking mandamus to compel "must have a clear legal right to the relief demanded and there must exist a corresponding nondiscretionary duty on the part of the administrative agency to grant that relief" (*Matter of Scherbyn v Wayne-Finger Lakes Bd. of Coop. Educ. Servs.*, 77 NY2d 753, 757 [1991]). "The duty must be positive, not discretionary, and the right to its performance must be so clear as not to admit of reasonable doubt or controversy" (*Matter of Burr v Voorhis*, 229 NY 382, 387 [1920]). Applying these well-settled principles to the instant case, mandamus is available to petitioners only if they have demonstrated that the IRC has an "exist[ing]," "clear," and "nondiscretionary" duty to submit a second-round redistricting plan to the legislature, even after our decision in *Harkenrider* and the promulgation of the remedial maps by Supreme Court in accordance with that decision (not to mention long after the passage of the constitutional deadlines).

Petitioners do not, and cannot, make any such showing. Petitioners are not entitled to mandamus relief because the IRC's failure to fulfill its constitutional duty was remedied by this Court in *Harkenrider*. Once remedied, the IRC's duty dissipated, leaving no performance to compel by mandamus. Absent any substantive challenge to the current redistricting plan in effect, the decennial redistricting process has concluded. Petitioners therefore have no right—let alone any clear legal right—to compel the IRC to submit a congressional redistricting plan to the legislature.
*Harkenrider* clearly addressed and remedied the breakdown of the constitutional map-drawing process, including the IRC's failure to submit second-round maps within the constitutionally required timeframe. We held that "the IRC and the legislature failed to follow the procedure commanded by the State Constitution," and we characterized the "primary questions before us" as "whether this failure to follow the prescribed constitutional procedure warrants invalidation of the legislature's congressional and state senate maps" (38 NY3d at 501-502 [emphasis added]). The *Harkenrider* petitioners "alleged that the process by which the 2022 maps were enacted was constitutionally defective because the IRC failed to submit a second redistricting plan as required under the 2014 constitutional amendments" (*id.* at 505 [emphasis added]), and we agreed that, "in light of the lack of compliance by the IRC and the legislature with the procedures set forth in the Constitution, the legislature's enactment of the 2022 redistricting maps contravened the Constitution" (*id.* at 508-509 [emphasis added]).

In claiming otherwise, the majority erroneously treats the lack of an order against the IRC requiring specific performance of its constitutional duty as a failure to remedy the breakdown of the constitutional process. But that is not how stare decisis or the judicial remediation of injury works. In ordering new maps to be drafted by a neutral expert following a period of input from the public, interested stakeholders, and the legislature, under the supervision of a Supreme Court Justice, we indisputably provided a legal substitute (i.e. a remedy) for the IRC's failure to submit bipartisan maps. That remedy was fully supported by the Constitution, specifically our duty to engage in "expedited judicial review of redistricting challenges" and "order the adoption of . . . a redistricting plan' in the absence of a constitutionally-viable legislative plan" so as "to guarantee the [P]eople's right to a free and fair election" (*Harkenrider*, 38 NY3d at 521-522, quoting NY Const, art III, § 4 [e]).

Nor can *Harkenrider* reasonably be understood to have ordered the adoption of "interim" maps for use solely in the 2022 elections. This Court's opinion necessarily referenced the impending 2022 election at various intervals. However, such references served only to clarify that the remedy would not be postponed until after the 2022 elections, as requested by the state respondents. Had this Court intended to limit its remedy to a single election cycle and contemplated the need for further redistricting thereafter, our failure to expressly so direct would be inexplicable and derelict, needlessly leaving New York in election limbo (*compare Honig v Board of Supervisors of Rensselaer County*, 24 NY2d 861, 862 [1969] [directing that a [*23]* reapportionment plan for election of county board of supervisors proceed on maps as
an "interim measure" and that the County Court of Supervisors "proceed as promptly as circumstances permit to promulgate a plan of reapportionment (for use in future elections) meeting constitutional standards").

Unwilling to accept our reasoning in *Harkenrider* or accept the remedy this Court put in place, the majority discards both. It proclaims the holding in *Harkenrider* "wholly irrelevant" (majority op at 22) because, in its view, the judiciary is constitutionally prohibited from ever ordering the adoption of maps for more than a single election (*id.* at 14-15)[FN17]. Its sole support for this startling conclusion is the first sentence of article III, section 4 (e), which provides as follows:

"The process for redistricting congressional and state legislative districts established by this section and sections five and five-b of this article shall govern redistricting in this state 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" (NY Const, art III, § 4 [e]).

According to the majority, the four words "to the extent . . . required" effected a sea change in the courts' ability to adjudicate and remedy constitutional violations of the redistricting process. As the majority reads the language, a court may now order the adoption of, or changes to, a redistricting plan only to the extent *and for the minimum period of time required* to remedy a violation of law (see majority op at 14-19).

An obvious problem with the majority's reading is that it rewrites the constitutional text. As a grammatical matter, the phrase "to the extent . . . required" does not modify the courts' power "to order the adoption of, or changes to, a redistricting plan as a remedy for a violation of law"—it modifies the subject of the sentence, which is "[t]he process for redistricting . . . established by [§§ 4, 5, & 5-b] shall govern" (NY Const, art III, § 4 [e]). Thus, contrary to the majority's conclusion, the clause does not limit the circumstances under which a court can order the adoption of a redistricting plan to remedy a constitutional violation. Instead, the sentence clarifies that the IRC and legislature must comply with the deadlines, voting requirements, and other procedural rules set forth in the referenced constitutional provisions. If they fail to do so, the clause reaffirms—in the context of the new system adopted by the People—the courts' traditional power to remedy violations of law.
The "to the extent . . . required" clause does not speak to the duration of the remedy. Indeed, the only language in the Constitution explicitly referencing the duration of maps immediately follows and directs—without exception for maps adopted by a court—that "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" (NY Const, art III, § 4 [e]). Contrary to the majority's suggestion, the phrase "unless modified pursuant to court order" does not exclude new, remediated maps from the ten-year rule. Rather, the Constitution clearly commands that once a constitutional redistricting plan is put into effect—either by the legislature or, when necessary, by the courts—such plan governs until the next census absent further court-ordered modifications to remedy additional violations of law. Rearranging key phrases and changing what they modify may superficially work to achieve the majority's ends, but it cannot [*24]override the meaning of the words in their proper order, or read out provisions of the Constitution.

In Harkenrider, this Court determined that it was required to order the adoption of maps as a constitutional remedy for a variety of reasons, including but not limited to: the inability to maintain the 2012 maps following the 2020 census (38 NY3d at 504); the procedural unconstitutionality of the legislature's congressional and state senate maps, which rendered them invalid in their entirety (id. at 514-522); the substantive unconstitutionality of the legislature's congressional map (id. at 519-520); the fact that "[t]he deadline in the Constitution for the IRC to submit a second set of maps ha[d] long since passed" (id. at 523); the exigencies created by the impending 2022 elections (id. at 507); and the preserved arguments of the parties who timely sought relief from the courts. Those maps, created by order of this Court, are now constitutionally required to remain in force until the next census (see NY Const, art III, § 4 [e]).

The restrictions our Constitution places on mid-decade legislative redistricting are consistent with traditional practice and make particular sense considering the goal of the 2014 amendments—unmentioned by the majority—to avoid partisan gerrymandering (see NY Const, art III, § 4 [c] [5] ["Districts shall not be drawn to discourage competition or for the purpose of favoring or disfavoring incumbents or other particular candidates or political parties")]. Mid-decade legislative redistricting is notorious for being conducted "with the sole purpose of achieving a [partisan] majority" (League of United Latin Am. Citizens v Perry, 548 US 399, 417 [2006] [observing the legislature appeared to redistrict solely to achieve a
republican congressional majority]) or "to benefit the political party that most recently received unified control of the state government" (Patrick Marecki, *Mid-Decade Congressional Redistricting in a Red and Blue Nation, 57 Vand L Rev 1935, 1961 [2004]). A good example would be the 2003 redistricting in Texas, which resulted in that State's congressional delegation flipping from a 17-15 Democratic majority to a 21-11 Republican majority (*see League of United Latin Am. Citizens, 548 US at 412-413*).

Indeed, in notable contrast to the potentially limitless reapportionment cycle sanctioned by the majority, legislation introduced in congress has attempted to preclude any "State which has been redistricted in the manner provided by law" from being "redistricted again until after the next apportionment of Representatives" unless a court finds that the existing map is, in some way, substantively flawed (HR 42, 118th Cong [2023]). The parallel language of article III, section 4 (e) of our Constitution demonstrates that similar restrictions already exist in New York—or did until today.

The majority nonetheless posits that the background against which the 2014 amendments were approved supports its conclusion that the Constitution requires all court-drawn maps to be interim in duration. It observes that for more than half a century before the 2014 constitutional amendments, every legislative redistricting in New York was subject to court intervention and many resulted in decade-long judicial maps. The majority concludes from this history that judicially created maps are part of the problem the People sought to correct in approving those amendments (*see* majority op at 8, 20-21).

Nothing in the legislative history of the 2014 amendments even remotely supports that conclusion (*see* Governor's Approval Mem, Bill Jacket, L 2012, ch 17 at 5-6 [far from complaining about judicial intervention in redistricting, expressing concern that the legislative redistricting process was "largely immune from legal challenges to partisan gerrymandering" (emphasis added)])]. If anything, the extensive history detailed by the majority establishes that it is only through judicial intervention—including, in many cases, the adoption of judicially-crafted decade-long maps—that fair elections were held in this State for much of the past century. The availability of decade-long judicial maps as a remedy also ensured that elections were only unsettled by litigation once per decade, rather than every other year. Insofar as the Constitution should be interpreted consistent with this historical context, it defies reason to suggest that the drafters of the 2014 amendments—while endeavoring to provide more substantial checks on legislative abuse—acted to diminish the judiciary's role and power as
critical backstop against those very abuses. Ultimately, the majority's false narrative
distracts from the critical aim of the 2014 amendments: free and fair elections through the
elimination of partisan gerrymandering, a goal furthered by our decision and remedy in
Harkenrider and substantially undermined by the majority's holding today.

The majority also ignores the practical consequences of its holding. It appears to believe
that once the IRC has submitted a second set of redistricting maps to the legislature, the
matter will be settled for the remainder of the decade. If, however, the process again breaks
down or results in another partisan gerrymander, the courts may again be required to
intervene, invalidate the legislature's map, and reimpose the special master's map for the 2024
elections. Under the majority's logic, mandamus relief against the IRC would again lie, with
the potential for the process to be repeated serially until 2032 and then every two years
thereafter.

Short of the complete elimination of judicial review, a legislature determined to enact
gerrymandered maps could not have asked for a more favorable ruling than they have
received. At the start of each decade, the majority members can enact egregious
gerrymanders, secure in the knowledge that if their plan is rejected by the courts, they will
have another opportunity to enact maps only slightly less infected with partisan intent—and
so on and so on—until the maps just barely pass constitutional muster. This is not what the
People voted for in 2014 and 2021. Rather, it is a perversion of the constitutional amendments
that increases the likelihood of partisan gamesmanship and future litigation.

Ultimately it is today's remedy, not Harkenrider's, that exceeds what is "required" to cure
a violation of law. In Harkenrider we were faced with a congressional map that was both
gerrymandered and enacted without constitutional authority, and we devised an appropriate
remedy that cured both the procedural and substantive unconstitutionality. Indeed, the special
master's congressional map currently in effect has not been substantively challenged in this or
any other proceeding. Under that map, "almost one in five seats are competitive, the highest
percentage in the country for a large state," whereas "[h]ad the map passed by the
Democratic-controlled legislature remained in place, no districts would have been
competitive" (Michael Li & Chris Leaverton, Gerrymandering Competitive Districts to Near
Extinction, Brennan Center for Justice, Aug. 11, 2022, https://www.brennancenter.org/our-
work/analysis-opinion/gerrymandering-competitive-districts-near-extinction). The maps put
in place after Harkenrider, especially the congressional map, defy the national trend of
increasingly partisan districts. Neither petitioners nor the majority have articulated any legitimate interest—let alone a violation of law—that requires such maps to be replaced at this stage.

[*26]IV.

The majority's self-imposed restriction on judicial authority to remedy illegal gerrymandering is especially concerning coming as it does on the heels of the United States Supreme Court's parallel abdication of that power. Although the Supreme Court has long had "a special responsibility to remedy violations of constitutional rights resulting from politicians' districting decisions," it has in more recent years begun to disavow federal judicial review of partisan gerrymandering claims (Rucho, 588 US at ___, 139 S Ct at 2523 [Kagan, J. dissenting]). Instead, the Supreme Court has held that it is up to the states to curtail partisan gerrymandering through "state statutes and state constitutions" (Rucho, 588 US at ___, 139 S Ct at 2507) and that, while redistricting may traditionally be a legislative function, state courts are the appropriate tribunals to hold state legislatures to compliance with state constitution redistricting requirements (see Moore v Harper, 600 US 1, 34 [2023]). Throughout the country, since Rucho, state courts have "become a primary firewall against gerrymandering as both Democrats and Republicans try to carve out maximum advantages in the maps they control" (Nick Corasaniti & Reid J. Epstein, As Both Parties Gerrymander Furiously, State Courts Block the Way, NY Times, Apr. 2, 2022).

Last year, for example, the Supreme Court of North Carolina upheld that Court's "solemn duty" to review the legislature's redistricting plans for constitutional conformity to protect "the constitutional rights of the people to vote on equal terms" by striking down egregious and intentional partisan gerrymanders by the Republican party, thereby ensuring that complaints of gerrymandering were not destined to "echo into a void" (Harper v Hall, 380 NC 317, 323, 868 SE2d 499, 510 [2022], quoting Rucho, 588 US at ___, 139 S Ct at 2507). Earlier this year, the same Court granted rehearing upon the legislature's request that the Court "revisit" its determination that "claims of partisan gerrymandering are justiciable under the state constitution" (Harper v Hall, 384 NC 292, 299, 886 SE2d 393, 399 [2023]). This time, the Court held "that partisan gerrymandering claims present a political question that is nonjusticiable under the North Carolina Constitution" (id. at 300, 886 SE2d at 401). As lamented by the dissent, "[n]othing ha[d] changed since" the Court's earlier decision: "[t]he
legal issues [were] the same; the evidence [was] the same; and the controlling law [was] the same" ([id. at 423, 886 SE2d at 476 [Earls, J. dissenting]).

So too here. Despite the majority's futile attempts to distinguish *Harkenrider*, nothing has changed since we decided that case just last year. Now, as then, the Constitution authorizes judicial intervention in the redistricting process only when circumstances require that the courts remedy a violation of law. Now, as then, we are asked to remedy a constitutional deficiency in the 2022 redistricting process that was attributable to the IRC's abdication of its constitutional duty. In *Harkenrider*, we ordered a remedy for the IRC and legislature's procedural violation that was constitutionally authorized. Now, as then, the Constitution mandates that the resulting constitutionally enacted and substantively unchallenged maps remain in force until the next federal census. This time, however, politics triumphs over free and fair elections.


Decided December 12, 2023

**Footnotes**

**Footnote 1:** The State Legislative Task Force on Demographic Research and Reapportionment was created in 1978 as an advisory task force composed of lawmakers and staff selected by legislative leaders to conduct studies and develop redistricting plans for the New York State Legislature (see Legislative Law § 83-m; L 1978, ch 45, § 1; see also *Rodriguez v Pataki*, 308 F Supp 2d 346, 354 [SDNY 2004]).

**Footnote 2:** Indeed, legal challenges to New York legislative apportionment and redistricting go farther back than 1982 (see *Matter of Sherrill v O'Brien*, 188 NY 185 [1907]; *Matter of Reynolds*, 202 NY 430 [1911]). In 1964, the Supreme Court of the United States held both houses of the New York legislature were malapportioned, violating the Fourteenth Amendment to the federal constitution (see *WMCA, Inc. v Lomenzo*, 377 US 633, 636-637 [1964]). Our Court in *Matter of Orans* effectively judicially modified the apportionment laws that violated federal standards (15 NY2d 339, 350-355 [1965]). The early 1970s were similarly riddled with litigation over New York's apportionment as violative of the Voting Rights Act (see *New York ex rel. New York County v United States*, 419 US 888 [1974]), which concluded with revisions to the redistricting plan that wound up litigated, once again, in the U.S. Supreme Court (see *United Jewish Organizations of Williamsburgh, Inc. v Carey,*
430 US 144, 155 [1977] [holding the New York Legislature seeking to comply with the Voting Rights Act did not violate the Fourteenth and Fifteenth Amendments by deliberately revising its reapportionment plan along racial lines]).

**Footnote 3:** The 2014 amendments also placed substantive requirements on the creation of districts including: the protection of racial and language minority voting rights; contiguity and compactness of districts; and a preference for the maintenance of existing districts, of pre-existing political subdivisions, and of communities of interest (see NY Const, art III, § 4 [c]).

**Footnote 4:** Our dissenting colleagues offer that the words "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" merely "clarifies that the IRC and legislature must comply with the deadlines, voting requirements, and other procedural rules set forth in the referenced constitutional provisions" and "reaffirms . . . the courts' traditional power to remedy violations of law" (dissenting op at 21). Of course, that reading renders the limiting clause as wholly superfluous. Under the dissent's reading, striking "to the extent that a court is required" would change neither the IRC's nor the legislature's duties, nor alter the courts' power of review. It is also a quite tortured reading to say that words limiting the power of courts are meant as a direction to the IRC and legislature.

**Footnote 5:** Additionally, based on the context and placement of section 4 (e), the "reapportionment plan" mentioned therein is the plan created by the IRC and, if necessary, the legislature, not court-drawn districts—the entirety of section 4, which concludes with section 4 (e), sets forth the IRC redistricting process in detail.

**Footnote 6:** Appellants, though not the dissent, also contend that "modified" in the second sentence of section 4 (e) means only "minor change" or "small change" or "somewhat different." From that, appellants posit that the exclusion beginning with "unless" in that sentence applies only to minor court-ordered changes, and not to the adoption of a complete set of maps created by court order. That argument is not tenable. Under section 4 (e) (and also as an indisputable proposition of law), modifications must be whatever "a court is required to order . . . as a remedy for a violation of law" (NY Const, art III, § 4 [e]). The law might require something drastic or minor, yet whatever is required is the "modification," whether minor or drastic.

**Footnote 7:** As with "modified," appellants would have us read "amended" as limited to small changes. But amendments can be large or small. In any redistricting, the party responsible for the redistricting starts with the preexisting districts and asks what needs to be changed, which fits neatly within the definition of "amended."

**Footnote 8:** We would not be the first state court to order recommencement of a nonjudicial redistricting process mid-decade following the judicial adoption of maps. As petitioners point out, other states' high courts have recognized in similar circumstances that when a redistricting body "fails to enact a new redistricting plan [within the timeframe provided by
the state constitution], it is neither deprived of its authority nor relieved of its obligation to redistrict" (In re Below, 855 A3d 459, 462 [NH 2004 per curiam]; see also Lamson v Secretary of Commonwealth, 341 Mass 264, 273 [Mass 1960] [although the failure of the redistricting body to act "thwarts the intention of the Constitution," an "even more serious nullification of constitutional purpose will result under a construction which would" prohibit a redistricting body from "return[ing] to reappraisal"]; Harris v Shanahan, 192 Kan 183, 213 [Kan 1963] ["(T)he duty to properly apportion legislative districts is a continuing one, imposed by constitutional mandate upon the legislature, notwithstanding the failure of any previous session to make such a lawful apportionment, and this duty may be performed prior to commencement of the next pending electoral process . . . "]).

Footnote 9: Harkenrider starts off with a declaration that judicial oversight was required to facilitate the "expeditious creation of the constitutionally conforming maps for use in the 2022 election" (38 NY3d at 502 [emphasis added]; see also id. at 521 [reiterating that the state was left "without constitutional district lines for use in the 2022 primary and general elections" (emphasis added)])). In addition, our Court highlighted the urgency and underlying exigency constraining our 2022 remedy because the maps were "incapable of legislative cure" at "this juncture" (id. at 523). In combination with the plain text of the Constitution, our time-specific language and emphasis on the exigency of the then-fast-approaching 2022 election cycle, one could read Harkenrider as ordering an interim set of maps. But again, that line of reasoning is hardly conclusive, especially given this Court's silence on that issue.

Footnote 10: Of course, if no one challenges the continued use of a judicially created redistricting, it will remain in place by default. But if, for example, a challenge is brought that does not leave enough time for the IRC to act, that challenge may be subject to a laches defense or a court may determine, as we did in Harkenrider, that the IRC or legislative processes may be too fraught with delay to prove feasible "at that juncture", and a further court-ordered remedy is required. Our holding today in no way "eliminat[es] . . . judicial review" (dissenting op at 24). Quite to the contrary, by granting a writ of mandamus to compel the IRC to fulfill its constitutional duty, we are asserting the power of the judiciary to ensure compliance with the will of the People of New York, as set forth in the constitutional provision they adopted—not "diminish[ing] the judiciary's role and power" (id.).

Footnote 11: Appellants repeatedly cite footnote 10 of Harkenrider as "confirm[ing] th[e] accrual date" for a mandamus action as January 25, 2022. Neither the footnote nor the text calling it make any mention of an accrual date or January 25. Instead, with no reference whatsoever to timeliness, the footnote lists a mandamus action among several methods that might be used to compel IRC members "either to appear at IRC meeting or to otherwise perform their constitutional duties" (38 NY3d at 515 n 10). That is precisely the relief sought and granted in this appeal.

Footnote 12: Sheerin states that the laches period may be "longer or shorter" than the statute of limitations (46 NY2d at 496 [emphasis added]), yet the dissent reads it as if "longer or" is missing from that opinion (see dissenting op at 16 n 2).
**Footnote 13:** For the same reason, and contrary to the Harkenrider Intervenors' argument, this proceeding was properly brought in Albany. The petition does not seek a modification of a prior court order of the Steuben County Supreme Court. Instead, it seeks to compel the IRC to deliver maps. New maps will supplant the judicially created maps not by judicial modification of Supreme Court's order, but rather by operation of the IRC and legislative process as provided for in the Constitution.

**Footnote 14:** This redistricting process must be based on the 2020 census data, which the IRC has already compiled, and there is no requirement that the IRC conduct any solicitation of public commentary beyond what it has done previously.

**Footnote 15:** The submission of multiple redistricting plans is constitutionally permitted if a single consensus map fails to garner sufficient votes (see NY Const, art III, § 5-b [g]).

**Footnote 16:** Contrary to the majority's contention, our decision in Sheerin in no way justifies today's ill-advised timeliness ruling. In holding that the laches doctrine "owes no necessary obeisance" to the statute of limitations in mandamus proceedings, the Court was rejecting an argument that "once the right [to mandamus] is established, laches is unavailable to restrict . . . the remedy to cover a period longer or shorter than that prescribed by any available Statute of Limitations" (46 NY2d at 496). Nothing in Sheerin authorizes this Court to effectively abolish the statute of limitations and laches principles applicable to mandamus proceedings in this context.

**Footnote 17:** The majority's eagerness to relitigate the Harkenrider remedy is not surprising given their disagreement in that case (see Harkenrider, 38 NY3d at 527 [Wilson, J., dissenting]; id. at 546 [Rivera, J., dissenting]; id. at 524 [Troutman, J., dissenting in part]). However, stare decisis does not permit the majority to overturn our precedent merely because they would "decide [the] case differently now than we did then" (Dobbs, 597 US at 388 [Breyer, Sotomayor, and Kagan, JJ., dissenting]).
AN ACT to amend the state law, in relation to establishing congressional districts; and to repeal article 7 of such law relating thereto

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Article 7 of the state law is REPEALED and a new article 7 is added to read as follows:

ARTICLE 7
CONGRESSIONAL DISTRICTS

§ 110. Present congressional districts.

§ 111. New congressional districts. Notwithstanding any other provision of law to the contrary, the congressional districts of this state from and after the effective date of this article, shall consist as follows:

1. Congressional District 1.
   Within Suffolk County
   All of East Hampton town

EXPLANATION--Matter in italics (underscored) is new; matter in brackets [---] is old law to be omitted.

LBD14543-04-4
All of Riverhead town
All of Shelter Island town
All of Shinnecock Reservation
All of Smithtown town
All of Southampton town
All of Southold town
Within Brookhaven town:
Tracts: 158001 158009 158011 158012 158013 158014 158015 158016
158017 158102 158103 158107 158108 158111 158112 158114 158116 158117
158118 158119 158120 158205 158206 158207 158208 158209 158304 158306
158309 158310 158315 158317 158319 158320 158322 158324 158325
158326 158327 158328 158329 158401 158402 158403 158407 158408 158409
158410 158411 158412 158413 158502 158505 158506 158509 158510 158511 158512
158513 158514 158604 158605 158606 158608 158609 158705 158708 158711
158713 158714 158715 159406 159410 159413 159414 159415 159602 159603
159604 159700
3000
Tract: 158707 Blocks: 1000-1028 1030
Tract: 158710 Blocks: 1000-1010 2000-2021 3000-3015 4000-4043
4000-4010 4013-4014
Tract: 159510 Blocks: 2000-2013 2044
Tract: 990100 Blocks: 0025-0026 0031 0038-0045 0049
Within Huntington town:
Tracts: 110402 110501 110502 110601 110602 110803 111202 111402 111503
111504 111506 111507 111508 111601 111602 111701 111703 111704 111801
111802 111803 111804 112001 112002 112102 112103 112104 112204 112211
112212 112213 112215 112216 112217 112218 112219 990100
Tract: 110401 Blocks: 1001-1009 2000
Tract: 111103 Blocks: 1000-1011
Tract: 111201 Blocks: 2000-2014 3000-3011
Tract: 111401 Blocks: 1002-1003 1007-1010
2. Congressional District 2.
Within Nassau County
With Oyster Bay town:
Tracts: 520700 520900 521000 521100 521200 521301 521302 521400 521500
521601 521602 521700 521801 521802 521902 522000 990302
4000-4010
Within Suffolk County
All of Babylon town
All of Islip town
All of Poospatuck Reservation
Within Brookhaven town:
Tracts: 158802 158803 158805 158806 158901 158902 159000 159103 159106
159107 159108 159109 159110 159111 159112 159201 159203 159204 159300
159407 159408 159411 159416 159509 159511 159512 159513 159514 159515
159516 159517 159518
Tract: 158707 Blocks: 1029 1031-1044
| Tract: 158709 Blocks: 1010 1012-1014 |
| Tract: 158710 Block: 4044 |
| Tract: 159510 Blocks: 1000-1084 2014-2043 2045-2055 |
| Tract: 990100 Blocks: 0027-0028 |
| 3. Congressional District 3. |
| Within Nassau County |
| All of Glen Cove city |
| All of North Hempstead town |
| Within Hempstead town: |
| Tracts: 408600 408700 408800 408900 409000 409200 409300 409400 |
| Tract: 407802 Block: 1000 |
| Within Oyster Bay town: |
| Tracts: 517400 517500 517600 517701 517705 517801 517802 517901 517902 |
| 518000 518100 518201 518203 518204 518300 518400 518501 518502 518600 |
| 518700 518800 518900 519000 519100 519200 519300 519400 519500 519601 |
| 519602 519702 519703 519704 519801 519802 519900 520001 520002 520100 |
| 520200 520300 520401 520501 520502 520600 981100 982100 990301 |
| Tract: 520800 Blocks: 1005-1006 |
| Within Queens County |
| Within Queens borough: |
| Tracts: 055400 055600 056000 056200 056400 056600 098100 098700 099100 |
| 099701 099703 099704 099705 099900 101700 102900 103300 103900 105900 |
| 108500 109300 109600 109900 111200 111300 113300 114100 114700 115100 130100 |
| 147900 148300 150701 150702 152901 152902 155101 155103 155104 156700 |
| 157101 157102 157901 157902 157903 161700 162100 |
| Tract: 049201 Blocks: 1004 2000 |
| Tract: 054200 Blocks: 1000-1005 4000 |
| Tract: 088903 Blocks: 1000-1002 1007-1010 |
| Tract: 104700 Blocks: 1000-1008 2000-2010 3000 3003-3004 5000-5003 |
| 5006-5007 5010-5011 |
| Tract: 112900 Blocks: 1000-1003 2000-2004 |
| Tract: 113900 Blocks: 1000-1010 2000-2010 3000-3007 |
| Tract: 115500 Blocks: 1000-1005 |
| Tract: 115700 Blocks: 1000-1003 1005-1007 |
| Tract: 117500 Blocks: 1000-1008 2000-2005 3000-3004 |
| Tract: 138502 Blocks: 1000-1003 1006-1015 1019-1021 1025 |
| Within Suffolk County |
| Within Huntington town: |
| Tracts: 110101 110103 110104 110200 110300 110901 110902 111001 111002 111102 |
| Tract: 110401 Blocks: 1000 1010-1024 2001-2012 |
| Tract: 110801 Blocks: 1014 |
| Tract: 111101 Blocks: 1000-1013 |
| Tract: 111103 Blocks: 2000-2019 |
5. Congressional District 5.

Within Queens County:

Tracts: 002400 002600 002800 003200 004001 004002 006201 008600

008800 009400 009600 009800 010000 010200 010400 010600 010800 011000
011200 011400 011600 011800 012000 012200 012400 012600 012800
013000 013200 013400 013600 013800 014000 014201 014202 014400
015000 015200 015400 015600 015801 015802 016000 016200 016400
017000

017200 017400 017600 017800 018000 018200 018400 018401 018402 018600 018800

019000 019200 019400 019600 019800 020000 020400 020600 020800 021200

021601 021602 021603 023800 024000 024600 025400 025402 025800 026000

026200 026400 026600 027000 027200 027400 027600 027800 028000 028200

028400 028801 028802 028803 029400 030600 032000 032800 033000 033401

033403 033404 033405 035200 035800 036600 036800 037600 038400 039400

039800 040000 040200 040400 041400 042400 042600 043200 043400 044000

044400 044601 044602 046000 046200 046400 046600 046800 047000 047200

047600 047801 047802 048000 048200 048400 049202 049600 050000 050201

050202 050400 050600 050800 051000 051200 051600 051800 052000 052200

052400 052600 052800 053000 053200 053401 053601 053800 054000 056800

058000 058200 059000 059200 059400 059600 059800 060000 060600 060800

061000 061200 061400 061601 061602 061800 062000 062200 062400 062600

063000 063200 063800 064101 064600 065000 065401 065402 065600 066000

066400 066402 066403 066404 068000 068200 069000 069400 071600 077300

077500 078800 079900 080200 081400 081800 083800 084000 084601 084602

086400 088400 089201 089202 091602 091603 091604 091800 092200 092800

093400 093402 093800 094201 094202 094203 095400 096400 097200 097202

097204 097205 097206 097207 099200 099801 099802 100801 100803 100804 101002

101003 101004 103201 103202 107201 107202 990100

Tract: 002000 Block: 1007
Tract: 002200 Blocks: 1000-1001 1004
Tract: 003000 Blocks: 1000-1001 1004-1005 1008
Tract: 005800 Blocks: 1000-1014 2000-2010 3000 3004-3013
5000-5005 6000-6004 7000-7009
Tract: 021400 Blocks: 1001 2000-2011 3000-3017
Tract: 022001 Blocks: 3006-3007 3011-3012
Tract: 022002 Blocks: 4003-4005
Tract: 023200 Blocks: 2002 3006-3007
Tract: 044800 Blocks: 1001-1006
Tract: 045200 Block: 1008
Tract: 045600 Blocks: 1000-1011 1012-1013 1015-1016
Tract: 045800 Blocks: 1000 1003-1004 1007-1010
Tract: 054200 Blocks: 1006-1009 2000-2010 3000-3009 4001-4008
Tract: 054800 Blocks: 1001 1004-1005
Tract: 055800 Block: 1005
Tract: 064102 Blocks: 1000-1007 1016-1018
Tract: 064500 Block: 2009
Tract: 064900 Blocks: 2013-2014
Tract: 076901 Blocks: 1004-1005
Tract: 076902 Blocks: 1005 1007-1008
Tract: 126700 Blocks: 1000-1002 1004 1008-1009
Tract: 127700 Blocks: 1000-1016 2000-2010 3000-3013 4000-4002
4004-4012
Tract: 128300 Block: 1019
Within Queens County
Within Queens Borough:
Tracts: 023000 024700 024900 025700 025900 026100 026300 026501
026502 026700 026901 026902 027100 027102 029300 041100 041300 041500
042700 043701 043702 043900 044301 044302 045400 045500 045700 045900
046100 046300 046700 046901 046902 047100 047300 047500 047900 048100
048300 048302 048500 048900 049301 049302 049500 049700 049900 050500
050700 051100 051300 051500 051700 052100 052500 053100 059900 060100
060300 060701 065703 065900 066100 066301 066302 066501 066701 066900
067100 067700 067900 068300 068700 069300 069500 069701 069702 070300
070700 070900 071100 071303 071304 071305 071306 071701 071702 071900
072100 072300 072900 073100 073700 073900 074100 074300 074500 074700
075701 075702 075703 077903 077904 077905 077906 077907 077908 079300
079701 079702 079900 080301 080302 080900 083700 084500 084901 084902
085300 085500 085700 085900 086100 086300 086500 086900 087100 088902
115900 116100 116301 116302 116700 118100 118500 118700 118900 119100
119300 119500 119900 120100 120300 120500 120701 120702 121100 121500
122300 122702 122703 122704 124100 124700 125700 126500 129102 129103
129104 133300 133900 134100 134701 134702 134703 136700 137700 138501 139900
140300 140901 140902 141700 142900 143500 144100 144700 145101 145102
145900 146300 146700 147100
Tract: 016900 Block: 4000
Tract: 021400 Block: 1000
4000-4002


Tract: 023600 Block: 1000

Tract:  024300  Blocks:  1000-1003  1005-1006 1014 3000-3004 3007-3011
4000-4013

Tract: 024500 Blocks: 1000 1003 3000-3006
Tract: 025301 Blocks: 2000 2005 4000 4002
Tract: 025302 Blocks: 1000 1007 1011 1013 1015
Tract: 028700 Blocks: 3002-3005

Tract: 029100 Blocks: 1000-1006 2001 3001-3005 4001-4006
Tract: 030906 Blocks: 1002-1006 2002-2003 3000-3003
Tract: 037501 Block: 1004
Tract: 038301 Blocks: 1000 1004 1006-1028
Tract: 038302 Blocks: 1005-1006 1010-1091
Tract: 040101 Block: 1002
Tract: 040301 Block: 2002
Tract: 040901 Block: 2002
Tract: 045200 Blocks: 1000-1007
Tract: 045400 Blocks: 2000-2004
Tract: 045600 Blocks: 1002-1011 1014
Tract: 045800 Blocks: 1001-1002 1005-1006
Tract: 046500 Block: 2006
Tract: 049201 Block: 1000
Tract: 05500 Blocks: 1002-1007 1010-1015
Tract: 059502 Blocks: 1000-1001 1006-1007
Tract: 065501 Block: 1000
Tract: 065702 Blocks: 1000-1005
Tract: 076902 Blocks: 1000-1004 1006
Tract: 088903 Blocks: 1003-1006 1011-1014 2000-2005 3000-3003
Tract: 104700 Blocks: 2011-2012 3001-3002 3005-3010 4000-4002
5004-5005 5008-5009 5012
Tract: 112300 Blocks: 2003-2004
Tract: 112900 Blocks: 1004-1010 2005-2013 3000-3009
Tract: 113900 Blocks: 3008-3009
Tract: 115700 Blocks: 1004 1008-1012 2000-2008 3000-3005
Tract: 117100 Blocks: 1002-1013 3003-3008 3010
Tract: 117500 Blocks: 3005-3008 4000-4009 5000-5005
Tract: 127700 Block: 4003
Tract: 128300 Blocks: 1000-1018
| Tract: 138502 Blocks: 1004-1005 1016-1018 1022-1024 1026-1027 |
| 7. Congressional District 7. |
| Within Kings County |
| Within Brooklyn Borough: |
| Tracts: 001501 002300 002901 003101 003102 018300 018501 018700 |
| 044902 045300 047700 048100 048500 048900 049100 049301 049302 049500 |
| Tract: 001100 Blocks: 1000-1003 1007-1010 |
| Tract: 001502 Blocks: 1000-1009 1013-1014 1017 |
| Tract: 002100 Blocks: 3016-3018 |
| Tract: 003300 Blocks: 1000 |
| Tract: 024100 Blocks: 1002-1005 |
| Tract: 114400 Blocks: 1000 1002 1006 |
| Tract: 119200 Blocks: 1000-1001 3000-3002 |
| Tract: 119600 Blocks: 1000-1002 1006 1009 2000 3000 4000 |
| Tract: 120803 Block: 1000 |
| Within Queens County |
| Within Queens Borough: |
| Tracts: 000101 000102 000103 000104 000200 000400 000600 000701 |
| 000702 000800 001000 001200 001400 001600 001800 001901 001902 001903 |
| 002500 003100 003301 003302 003400 003600 004200 004300 004401 004700 |
| 005000 005100 005200 005500 015700 015900 016100 016300 017101 017102 |
| 017901 017902 018101 018102 018300 018501 018502 018700 018900 019901 |
| 019902 019903 020500 021900 022900 023501 023502 023503 053501 053502 053901 |
| 053902 054500 054700 054900 055100 055300 055500 055700 055900 056100 |
| 056500 056700 057700 057900 058100 058300 058500 058700 058900 059100 |
| 059300 059501 061301 061302 062300 062500 062700 062900 063301 063302 |
| 063500 |
| Tract: 002000 Blocks: 1000-1006 1008 |
| Tract: 003000 Blocks: 1002-1003 1006-1007 |
| Tract: 003700 Blocks: 1003-1007 |
| Tract: 003800 Blocks: 2002-2004 |
| Tract: 003900 Blocks: 1002-1009 |
| Tract: 004500 Blocks: 1007 1010 2000 3000-3001 |
| Tract: 005300 Blocks: 3000-3001 4000-4003 |
| Tract: 005400 Blocks: 3000-3003 3007-3010 |
| Tract: 005800 Blocks: 3001-3003 4000-4005 |
| Tract: 006202 Blocks: 1000-1009 2004 |
| Tract: 008500 Blocks: 1002-1009 2000-2005 |
| Tract: 015100 Blocks: 1000-1001 |
Tract: 025100 Block: 1000
Tract: 025301 Blocks: 1000-1001 2001-2004 3000-3003 4001
Tract: 025500 Blocks: 1001-1006 1008-1010 1012 1014
Tract: 062100 Blocks: 1000 1003-1005 2000-2006 3000-3003
Tract: 064102 Blocks: 1008-1015
Tract: 065501 Block: 1001
Tract: 065702 Blocks: 1006-1007
Within Kings County
8. Congressional District 8.
Within Brooklyn Borough:
Within Brooklyn Borough:
Tracts:    018100  019700  019900  020100  022700 022900 023100 023300
024300 024500 024700 024900 025100 025300 025901  026100  026300  026500
026700  026900  027100  027300 027500 027700 027900 028100 028300 028700
028900 029100 029300 029500 029700 029900 030100  030300  030600  030800
032600 032800 033000 033200 033600 034000 034200 034800 035000 035200 035400
035601 035602 036001 036002 036200 036400 036501 036502 036600 036700
036900 037000 037100 037300 037401 037402 037500 037700 037900 038100
038200 038300 038500 038600 038700 038800 039000 039200 039800 056600
056800 057000 057200 057400 057600 057800 058000 058200 058400 058600
058800 059000 059200 059402 059403 059404 059600 059800 060000 060600
060800 061002 061003 061004 061200 061600 062000 062200 062600 062800
063200 063400 063800 065200 065400 065600 065800 066000 066200 066600
067000 067200 068000 068200 068600 068800 069000 069200 069600 069602
069800 070000 070201 070202 070203 070601 070602 089400 089600 089800
090200 090600 090800 091000 091200 091600 091800 092000 092200 092400
095000 095400 095600 095800 096400 096600 096800 097400 098200 098400
098600 098800 099000 099200 099400 099600 099800 100400 100600 100800
101000 101200 101400 101600 101800 102000 102200 102400 102600 102801
102802 103401 103402 105801 105804 107001 107002 107003 107800 109800
110400 111600 111000 111600 111800 112000 112200 112400 112600 112800
113000 113200 113400 115000 115200 115600 115800 116000 116200 116400
116600 119400 120801 120802 121000 121400 122000
Tract: 003300 Block: 1000
Tract: 017900 Blocks: 1000-1002 2000-3003
Tract: 019300 Blocks: 4000-4001
Tract: 030000 Block: 6000
Tract: 030500 Blocks: 1000-1003 1006-1007
Tract: 030700 Blocks: 1000 2000 3000 3012-3013
Tract: 031300 Blocks: 1000-1001 4000-4001
6000-6001
Tract: 031500 Blocks: 1000-1001
Tract: 036300 Blocks: 1000-1006 3000-3004
Tract: 039600 Blocks: 1002-1003 2002-2004
Tract: 040200 Blocks: 1000 4000-4008
Tract: 055800 Blocks: 1002 2003-2005
Tract: 056400 Blocks: 1000-1003
Tract: 064000 Blocks: 1000-1005 2003
Tract: 067600 Blocks: 1002-1003 2003
Tract: 072000 Blocks: 1007-1008
Tract: 089000 Blocks: 1001 6000-6001 6004
Tract: 089200 Block: 4005
Tract: 092800 Blocks: 3000-3001
Tract: 096000 Blocks: 1000-1003 1016-1019 1021-1022
Tract: 096200 Blocks: 1004-1008 1011-1012
Tract: 120000 Block: 2000
Tract: 120803 Blocks: 1001-1013
Tract: 990100 Blocks: 0001-0004
Within Kings County
Within Brooklyn Borough:
Tracts: 021300 021700 021900 022100 022800 024200 024400 024600
025400 030900 031100 031701 031702 031900 032100 032300 032500 032700
032900 033100 033300 033500 033701 033702 033900 034100 034300 034500
034700 034901 034902 035101 035102 035301 035302 035500 035701 035702
035900 041000 041200 041401 041402 041600 041800 042000 042200 042400
043200 043400 043600 043800 044000 044200 044400 044600 044800 045000
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047200 047400 047600 047800 048000 048200 048400 048600 048800 049000
049200 049400 050002 050402 050600 050801 050803 050804 051001 051002
051200 051400 051601 051602 051800 052000 052600 052800 053000 053200
053400 053800 054200 054400 054600 054800 055000 055200 055400 055600
056000 056200 056400 056400 056400 056400 056400 056400 056400 056400
072800 073000 073200 073400 073600 073800 074000 074200 074400 074600
074800 075000 075200 075400 075600 075800 076000 076200 076400 076600
076800 077000 077200 077400 077600 078000 078200 078400 078601 078602
078801 078802 079001 079002 079201 079202 079400 079601 079602 079801
079802 080000 080200 080400 080600 080800 081000 081400 081600 081800
082000 082200 082400 082600 082800 083000 083200 083400 083600 083800
084000 084600 084800 085000 085200 085400 085600 085800 086000 086200
086400 086600 086800 087000 087200 087401 087600 087800 088001 088002
088200 088400 088600 088800 093000 093200 093400 093600 093800 094401
094402 094600 152200
Tract: 017700 Block: 1000
Tract: 020300 Block: 1004
Tract: 020500 Blocks: 1000 2000 3000
Tract: 020700 Block: 1000
Tract: 022600 Block: 1006
Tract: 023200 Blocks: 1001-1002 5000-5001
Tract: 023400 Blocks: 1002 2002 3002
Tract: 023600 Blocks: 1000-1002
Tract: 023800 Blocks: 1000-1002 2001-2002
Tract: 025000 Blocks: 1000-1004
Tract: 025600 Block: 1005
Tract: 026100 Blocks: 1002 2002 3002
Tract: 030700 Blocks: 1001 3001-3011
Tract: 036100 Blocks: 1001 2001 2004 3000-3001
Tract: 039400 Blocks: 3000-3002
Tract: 040000 Blocks: 1000-1005 2000
Tract: 042800 Blocks: 1000-1002
Tract: 049600 Blocks: 1000-1004 2000 3000-3001
Tract: 049800 Blocks: 1000-1002
Tract: 064000 Blocks: 2000-2004
Tract: 067800 Blocks: 1000-1006
Tract: 08200 Blocks: 1000 1002 2000-2001 3000 4000-4001 5000-5002
Tract: 090000 Blocks: 1000-1003 2000-2005
Tract: 092800 Blocks: 1000-1003 1009-1010
Tract: 09600 Blocks: 1004-1015 1020

Tract: 001100 Blocks: 1004-1006 1011
Tract: 001300 Blocks: 1019 1021-1022
<table>
<thead>
<tr>
<th>Tract</th>
<th>Blocks</th>
</tr>
</thead>
<tbody>
<tr>
<td>001502</td>
<td>1010–1012 1015–1016 1018</td>
</tr>
<tr>
<td>002100</td>
<td>1000–1017 2000–2029 3000–3015</td>
</tr>
<tr>
<td>003000</td>
<td>1000–1005 2000</td>
</tr>
<tr>
<td>003300</td>
<td>2005–2007</td>
</tr>
<tr>
<td>003400</td>
<td>1000 1002–1005</td>
</tr>
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Within New York County

Within Manhattan Borough:

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11. Congressional District 11.

All of Richmond County

Within Kings County

Within Brooklyn Borough:

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13. Congressional District 13

Within Bronx County

Within Bronx Borough:

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024900 025100 025300 025500 025700 026100 026300 026500 026701 026702
026900 027300 027700 028700 028900 039901 040100 040302 040303 040304
040501 040502 040701 040702 040900 041100 041300 041500

Tract: 020501 Block: 4000

Tract: 021501 Blocks: 1000 2000 3000

Tract: 021502 Blocks: 1000-1002

Tract: 023704 Block: 2000

Tract: 023900 Blocks: 1000-1001 2000-2001 3001 4000 5000 6000-6002

Tract: 027900 Blocks: 1001-1004 2000-2001 3000-3001 4000-4001 5000 6000


Tract: 028500 Blocks: 4005 4008

Tract: 038301 Blocks: 2000 3000-3004

Within New York County

Within Manhattan Borough:

Tracts: 016400 016600 016800 017000 017200 017401 017402 017800
018000 018200 018400 018600 018800 018900 019000 019200 019300 019400
019600 019701 019702 019800 020000 020101 020102 020300 020600 020701
020800 020901 021000 021100 021200 021303 021400 021500 021600 021703
021800 021900 022000 022102 022200 022301 022302 022400 022500 022600
022700 022800 022900 023000 023100 023200 023300 023400 023501 023502
023600 023700 023900 024000 024100 024200 024301 024302 024500 024700
024900 025100 025300 025500 025700 025900 026100 026300 026500 026700
026900 027100 027300 027500 027700 027900 028100 028300 028500 028700
029100 029300 029500 029700 029900 030300 030700 030900 031100

Tract: 014300 Blocks: 1000 1004

Tract: 015602 Blocks: 1000-1001 1003

Tract: 016200 Blocks: 0001-0003 1000-1002 2000 3000-3001 4000-4001

5000-5006

Tract: 018700 Block: 5000

Tract: 019100 Blocks: 3000-3001 5000-5001

Tract: 019500 Blocks: 3000-3001 4000 5000-5001

Tract: 019900 Blocks: 1000 3000-3001 4000-4001 5000-5002 6000-6001


Within Bronx County

Within Bronx borough:

Tracts: 000100 000200 000400 001600 001902 001903 001904 002001 002002
002400 002500 002701 002702 002800 003100 003300 003500 003700 003800
004001 004200 004400 004600 004800 005001 005002 005200 005400 005600
006000 006200 006400 006800 007000 007200 007400 007600 007800 008300
008400 008600 008700 008900 009000 009200 009301 009302 009600
009800 011000 011502 011701 011702 011800 011900 012102 012701 013000
013200 013800 014400 015200 015800 015900 016000 016200 016400 016600
018400 019400 020000 020200 020400 020601 021001 021002 021200 021601

021602 021800 022200 024000 025600 026400 026601 026602 027401 027402
027600 028400 028600 030000 031000 050400 051601 051602 027600
028400 028600 030000 031000 050400 051601 051602 027401 027402
027600 028400 028600 030000 031000 050400 051601 051602
Tract: 019101 Blocks: 1001 1003-1008 1010-1014
Tract: 003900 Blocks: 1000-1001 4000 5000-5001
Tract: 004100 Blocks: 1000-1002 2002
6000
Tract: 012500 Blocks: 1002-1007
Tract: 012901 Blocks: 1000-1004
Tract: 013100 Blocks: 1002 4000-4001
Tract: 022000 Blocks: 1006-1007 1010-1012
Tract: 023600 Blocks: 2000-2005
Tract: 024400 Blocks: 1003 2000-2006
Tract: 030201 Blocks: 1006
Tract: 031600 Block: 2006
Tract: 035900 Blocks: 1007-1009 1014-1017
Tract: 036000 Blocks: 3003-3006
Tract: 045600 Blocks: 3000-3025
Tract: 046203 Blocks: 3003-3004
Tract: 046205 Block: 5010
Tract: 046209 Blocks: 1000 1013
Within Queens County
Within Queens borough:
Tracts: 005900 006100 006300 006500 006501 006502 006900 007100 007300 007500
007700 007900 008100 008300 008700 009100 009500 009700 009900 010100
010300 010500 010700 011100 011300 011500 011700 011900 012100 012301
012500 013500 013700 014100 014300 014500 014700 014900 015500 027301
027302 027500 027701 027702 027900 028100 028300 028500 029900 030903
030904 030905 031700 032700 032900 033100 033700 033900 034700 035100
035300 035700 036100 036300 036500 036700 037100 037300 037502 037700
037900 038100 039901 039902 040102 040302 040501 040502 040702 040902
090700 091900 092500 092900 093900 094700
Tract: 003700 Blocks: 1000-1002
Tract: 003900 Blocks: 1000-1001
Tract: 004500 Blocks: 1000-1006 1008-1009
Tract: 005700 Block: 1002
Tract: 008500 Blocks: 1000-1001
Tract: 015100 Blocks: 2000-2005
Tract: 029100 Blocks: 2000 3000 4000
Tract: 029500 Blocks: 1000-1001
Tract: 029700 Blocks: 1000-1015
Tract: 037501 Blocks: 1000-1003
Tract: 038301 Blocks: 0001-0002 1001-1003 1005
Tract: 038302 Blocks: 0001 1000-1004 1007-1009
Tract: 046500 Blocks: 1000-1009 2000-2005
Tract: 094500 Blocks: 0001-0004 1000-1019 1021-1030 2004-2030
Tract: 097300 Blocks: 0001-0002 1003-1004

15. Congressional District 15.
Within Bronx County
Within Bronx borough:
  Tracts: 002300 004300 005100 005902 006100 006301 006302 006500 006700
  006900 007100 007500 007700 013300 013500 014300 014500 014701
  014702 014900 015100 015300 015500 016300 016500 016700 016900 017100
  017300 017500 017700 017702 017901 017902 018101 018102 018301 018302
  018501 018502 018900 019300 019500 019700 019900 020100 020900 021100
  021301 021302 021700 021900 022101 022102 022300 022401 022403 022404
  022500 022701 022702 022703 022800 022901 022902 023000 023100 023200
  023301 023302 023501 023502 024100 024600 024800 025000 029301 029302
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  032800 033000 033201 033202 033400 033500 033601 033602 033700 033801
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  035800 036100 036300 036400 036501 036502 036700 036800 036901 036902
  037000 037100 037200 037300 037400 037504 037600 037800 037900 038000
  038100 038200 038304 038500 038700 038800 038900 039000 039100 039200
  039300 039400 039500 039600 039800 040400 040600 040800 041400 041800
  042000 042100 042200 042300 042400 042901 042902 043101 043102 043400
  043501 043502 043503 044901 044902 045100 045102 046208
  Tract: 001901 Blocks: 1000 1002 1009
  Tract: 007300 Blocks: 3000-3002
  Tract: 007900 Blocks: 1000-1001
  Tract: 012101 Block: 2003
  Tract: 012500 Blocks: 1000-1001 2000-2005
  Tract: 015700 Blocks: 4000-4003
  Tract: 016100 Blocks: 1001 1004-1009 4000-4001
  Tract: 021501 Blocks: 1001 3001
  Tract: 021502 Blocks: 2000-2001 3000-3002 4000 5000
  Tract: 022000 Blocks: 1000-1005 1008-1009
  Tract: 023600 Blocks: 1000-1002
  Tract: 023704 Blocks: 1000-1001 2001 3000-3001
  Tract: 023800 Blocks: 2000 2005
  Tract: 023900 Blocks: 3000 3002-3003
  Tract: 024400 Blocks: 1000-1002
  Tract: 025200 Blocks: 1000-1003
  Tract: 025400 Blocks: 1003-1004
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**Within Westchester County**

All of Eastchester town

All of Harrison town

All of Mamaroneck town

All of Mount Vernon city

All of New Rochelle city

All of Pelham town

All of Rye city

All of Rye town

All of Scarsdale town

All of White Plains city
All of Yonkers city
Within Greenburgh town:
Tracts: 010200 010300 010400 010500 010600 010701 010702 010801 010803
010804 010901 010902 010903 011000 011101 011102 011200 011300
3004-3007 4000-4002
Tract: 011500 Blocks: 1013-1017 1019-1020
17. Congressional District 17.
All of Putnam County
All of Rockland County
Within Dutchess County
All of East Fishkill town
All of Pawling town
Within Beekman town:
3002-3003 3008
Tract: 610000 Blocks: 1001-1006
Within Westchester County
All of Bedford town
All of Cortlandt town
All of Lewisboro town
All of Mount Kisco town
All of Mount Pleasant town
All of New Castle town
All of North Castle town
All of North Salem town
All of Ossining town
All of Peekskill city
All of Pound Ridge town
All of Somers town
All of Yorktown town
Within Greenburgh town:
Tract: 011401 Blocks: 1012 1019 2005-2012 3003 4003-4008
Tract: 011402 Block: 2005
Tract: 011500 Blocks: 1000-1012 1018 1021 2000-2008 3000-3016
4000-4006
All of Orange County
Within Dutchess County
All of Amenia town
All of Beacon city
All of Clinton town
All of Dover town
All of Fishkill town
All of Hyde Park town
All of LaGrange town
All of Milan town
All of North East town
All of Pine Plains town
All of Pleasant Valley town
All of Poughkeepsie city
All of Poughkeepsie town
All of Red Hook town
All of Rhinebeck town
All of Stanford town
All of Union Vale town
All of Wappinger town
All of Washington town
Within Beekman town:
Tracts: 020003 020004
Within Ulster County
All of Esopus town
All of Kingston city
All of Kingston town
All of Lloyd town
All of Marlborough town
All of New Paltz town
All of Plattekill town
All of Saugerties town
All of Ulster town
All of Woodstock town
Within Gardiner town:
All of Broome County
All of Chenango County
All of Columbia County
All of Delaware County
All of Greene County
All of Otsego County
All of Sullivan County
All of Tompkins County
Within Cortland County
All of Cincinnatus town
All of Freetown town
All of Harford town
All of Lapeer town
All of Marathon town
All of Solon town
All of Taylor town
All of Virgil town
All of Willet town
Within Rensselaer County
All of Berlin town
All of East Greenbush town
All of Grafton town
All of Nassau town
All of Petersburgh town
All of Poestenkill town
All of Sand Lake town
All of Schodack town
All of Stephentown town
Within Brunswick town:
Tract: 052002
Tract: 052003 Blocks: 1000-1004 1022-1027 3000-3001 3003-3005 3013-3014 4000-4024
Tract: 052004 Blocks: 1000-1006 1014-1015 2000-2021 3000-3026
4012-4020 5000-5019
Within Ulster County
All of Denning town
All of Hardenburgh town
All of Hurley town
All of Marbletown town
All of Olive town
All of Rochester town
All of Rosendale town
All of Shandaken town
All of Shawangunk town
All of Wawarsing town
Within Gardiner town:
Tract: 954200 Blocks: 3005 3007-3008 3015-3016 3018-3037 3041-3043
3045
All of Albany County
All of Schenectady County
Within Montgomery County
All of Amsterdam city
All of Amsterdam town
All of Florida town
Within Rensselaer County
All of Hoosick town
All of North Greenbush town
All of Pittstown town
All of Rensselaer city
All of Schaghticoke town
All of Troy city
Within Brunswick town:
Tract: 052004 Blocks: 1007-1013 4000-4011
Within Saratoga County
All of Ballston town
All of Charlton town
All of Clifton Park town
All of Galway town
All of Halfmoon town
All of Malta town
All of Mechanicville city
All of Milton town
All of Saratoga Springs city
All of Stillwater town
All of Waterford town
Within Wilton town:
Tract: 060704 Blocks: 1000-1020 2035-2037 2039-2040 2043-2067
3000-3020
Tract: 060706 Blocks: 1000-1031 2009-2013 3000-3016
All of Clinton County
All of Essex County
All of Franklin County
All of Fulton County
All of Hamilton County
All of Herkimer County
All of Lewis County
All of St. Lawrence County
All of Schoharie County
All of Warren County
All of Washington County
Within Jefferson County
All of Le Ray town
All of Philadelphia town
All of Wilna town
Within Antwerp town:
Tract: 980000
4033-4047 4050-4053 4056-4084 4087-4088 4093-4107
Within Montgomery County
All of Canajoharie town
All of Charleston town
All of Glen town
All of Minden town
All of Mohawk town
All of Palatine town
All of Root town
All of St. Johnsville town
Within Oneida County
All of Annsville town
All of Ava town
All of Boonville town
All of Camden town
All of Deerfield town
All of Florence town
All of Floyd town
All of Forestport town
All of Lee town
All of Marcy town
All of Remsen town
All of Rome city
All of Steuben town
All of Trenton town
All of Vienna town
All of Western town
Within Verona town:
Tract: 024700 Blocks: 1000-1160 2000-2024 2026-2028 3000-3012 3014
4000-4060 4062 4064-4066 4070 4073
Within Saratoga County
All of Corinth town
All of Day town
All of Edinburg town
All of Greenfield town
All of Hadley town
All of Moreau town
All of Northumberland town
All of Providence town
All of Saratoga town
Within Wilton town:
Tract: 060703
Tract: 060704 Blocks: 2000-2034 2038 2041-2042 2068
Tract: 060705 Blocks: 1000-1008 1021 3000-3007 3009-3022 3024-3025

22. Congressional District 22.
All of Madison County
All of Onondaga County
Within Cayuga County
All of Auburn city
All of Fleming town
All of Genoa town
All of Ledyard town
All of Locke town
All of Moravia town
All of Niles town
All of Owasco town
All of Scipio town
All of Sempronius town
All of Sennett town
All of Springport town
All of Summerhill town
All of Venice town
Within Cortland County
All of Cortland city
All of Cortlandville town
All of Cuyler town
All of Homer town
All of Preble town
All of Scott town
All of Truxton town
Within Oneida County
All of Augusta town
All of Bridgewater town
All of Kirkland town
All of Marshall town
All of New Hartford town
All of Paris town
All of Sangerfield town
All of Utica city
All of Vernon town
All of Westmoreland town
All of Whitestown town
Within Verona town:
Tract:  024700 Blocks:  2025  2029-2079  3013  3015-3031  4061  4063  4067-4069  4071-4072

23. Congressional District 23.
All of Allegany County
All of Cattaraugus County
All of Chautauqua County
All of Chemung County
All of Tioga County
Within Erie County
All of Lake Erie
All of Alden town
All of Aurora town
All of Boston town
All of Brant town
All of Cattaraugus Reservation
All of Clarence town
All of Colden town
All of Collins town
All of Concord town
All of Eden town
All of Elma town
All of Evans town
All of Hamburg town
All of Holland town
All of Lancaster town
All of Marilla town
All of Newstead town
All of North Collins town
All of Orchard Park town
All of Sardinia town
All of Tonawanda Reservation
All of Wales town
Within Niagra County
All of Pendleton town
Within Lockport town:
Tract: 023405
Tract: 023401 Blocks: 1000-1036 3004 3006-3041
Tract: 023402 Blocks: 2013 2022 2024-2041
Tract: 023404 Blocks: 1000-1015 2000-2023 3001-3007
Within Wheatfield town:
Tract: 022716 Blocks: 1000-1001 1003
Tract: 022717 Blocks: 1009-1011 3016-3019
Within Schuyler County
All of Catharine town
All of Cayuta town
All of Dix town
All of Montour town
All of Orange town
Within Steuben County
All of Addison town
All of Bath town
All of Bradford town
All of Cameron town
All of Campbell town
All of Canisteo town
All of Caton town
All of Corning city
All of Corning town
All of Erwin town
All of Fremont town
All of Greenwood town
All of Hartsville town
All of Hornby town
All of Hornell city
All of Hornellsville town
All of Howard town
All of Jasper town
All of Lindley town
All of Rathbone town
All of Thurston town
All of Troupsburg town
All of Tuscarora town
All of Urbana town
All of Wayne town
All of West Union town
All of Woodhull town
All of Genesee County
All of Livingston County
All of Orleans County
All of Oswego County
All of Seneca County
All of Wayne County
All of Wyoming County
All of Yates County
Within Cayuga County
All of Lake Ontario
All of Aurelius town
All of Brutus town
All of Cato town
All of Conquest town
All of Ira town
All of Mentz town
All of Montezuma town
All of Sterling town
All of Throop town
All of Victory town
Within Jefferson County
All of Lake Ontario
All of Adams town
All of Alexandria town
All of Brownville town
All of Cape Vincent town
All of Champion town
All of Clayton town
All of Ellisburg town
All of Henderson town
All of Hounsfield town
All of Lorraine town
All of Lyme town
All of Orleans town
All of Pamela town
All of Rodman town
All of Rutland town
All of Theresa town
All of Watertown city
All of Watertown town
All of Worth town
Within Antwerp town:

Within Niagara County
All of Lake Ontario
All of Cambria town
All of Hartland town
All of Lewiston town
All of Lockport city
All of Newfane town
All of Porter town
All of Royalton town
All of Somers town
All of Tonawanda Reservation
All of Tuscarora Reservation
All of Wilson town
Within Lockport town:
Tract: 023401 Blocks: 2000-2032 3000-3003 3005 4000-4036
Tract: 023404 Block: 3000
Within Ontario County
All of Bristol town
All of Canadice town
All of Canandaigua city
All of Canandaigua town
All of Farmington town
All of Geneva city
All of Geneva town
All of Gorham town
All of Hopewell town
All of Manchester town
All of Naples town
All of Phelps town
All of Richmond town
All of Seneca town
All of South Bristol town
All of West Bloomfield town
Within East Bloomfield town:
3000-3038
Within Schuyler County
All of Hector town
All of Reading town
All of Tyrone town
Within Steuben County
All of Avoca town
All of Cohocton town
All of Dansville town
All of Prattsburg town
All of Pulteney town
All of Wayland town
All of Wheeler town
All of Monroe County
Within Ontario County
All of Victor town
Within East Bloomfield town:
Within Erie County
All of Amherst town
All of Buffalo city
All of Cheektowaga town
All of Grand Island town
All of Lackawanna city
All of Tonawanda city
All of Tonawanda town
All of West Seneca town
Within Niagara County
All of Niagara town
All of Niagara Falls city
All of North Tonawanda city
Within Wheatfield town:
Tracts: 022713 022714 022715 022901
Tract: 022717 Blocks: 1000-1008 2000-2016 3000-3015

§ 112. Separability of congressional districts. Each congressional district created by this article shall be deemed a separate district for the purpose of apportionment of the entire state into congressional districts. If one or more congressional districts created by this article are judicially found not to be in compliance with the decisions and mandates of a court of competent jurisdiction, only the defective district or districts and those immediately adjacent or contiguous thereto shall be reapportioned. All other districts shall be deemed to be properly created.

§ 2. Construction. a. This act shall be liberally construed to effectuate the purposes thereof and to apportion and district this state in compliance with constitutional and statutory requirements and shall supersede any inconsistent provision of law including but not limited to section 3 of chapter 17 of the laws of 2012.
b. It is intended that this act and the congressional districts described herein completely encompass all the area of the state. It is also intended that such districts apportioned on the basis of 2020 population, contain the whole number of persons in this state. It is further intended that the apportionment and districting provided for in this act result in the creation of districts containing equal population as nearly as practicable. It is also intended that no district shall include any of the area included within the description of any other district.

§ 3. Saving clause. a. If the districts described in the act do not carry out the purposes thereof, because of unintentional omissions; duplications; overlapping areas; erroneous nomenclature; lack of adequate maps or descriptions of political subdivisions, wards, or other divisions thereof, or of their boundary lines; street closings, changes in names of streets, or other changes of public places; alteration of the boundary or courses of waters or waterways, filling in of lands underwater, accretion or other changes in shorelines or alteration of courses, rights of way, or lines of public utilities or other conditions, then the state board of elections, at the request of any person or candidate, aggrieved thereby, shall, by order, correct such omissions, overlappings, erroneous nomenclature, or other defects in the description of districts so as to accomplish the purposes and objectives of this act.
b. In promulgating such orders, the state board of elections, in addition to achieving equality in the population of districts and ensuring that all areas of the state are completely and accurately encompassed in such districts, shall be guided by the following standards:
(1) Gaps in the description of any district shall be completed in a manner which results in a total description of that district consonant with the description of adjacent districts and results in complete contiguity of districts.
(2) Areas of the state included within the descriptions of more than one district shall be allocated to the district having the lowest population.

(3) Areas of the state not included within the descriptions of any district shall be allocated to the adjacent district having the lowest population.

(4) If the area subject to corrected description or allocation as provided in paragraphs one, two or three of this subdivision, is of such size or contains such population that its inclusion as a unit in any district would result in substantial disparity in the size, shape or population of such district, then the state board of elections may allocate portions of such area to two or more districts.

(5) In any allocation of area or correction of a description made pursuant to this section, the state board of elections shall, consistent with the foregoing standards, preserve the contiguity and compactness of districts and avoid the unnecessary division of political subdivisions.

c. Copies of such orders shall be filed by the state board of elections in its own office and in the office of the affected boards of election. A copy of each such order shall also be filed by the state board with the legislative bill drafting commission to facilitate it in performing its functions under section 70-b of the public officers law. In addition, a copy of such order shall be served upon the person or candidate, if any, who instituted the application for such an order. The state board of elections may adopt reasonable rules regulating the procedure for applications for orders under this section in the manner of serving and filing any notice or copy of orders relating thereto.

d. Upon the filing of such an order, the description of any affected district shall be deemed to have been corrected in the manner provided in such order to the full extent as if such correction had been contained in the original description set forth in this act.

e. In furtherance of effectuating the provisions of subdivision d of this section, the legislative bill drafting commission, upon receipt from the state board of elections of an order promulgated pursuant to subdivision b of this section, and upon the approval of the temporary president of the senate and the speaker of the assembly, shall cause the description of a congressional district altered pursuant to any such order to be revised accordingly within its data base of the laws of the state of New York so that such altered district may be contained in a publication of the state law and be certified to as a correct transcript of the text of law relating thereto such district in the manner authorized by section 70-b of the public officers law.

f. If any part or provision of this act relating to any congressional district shall be adjudged invalid by a court of competent jurisdiction, such judgment shall: (1) be confined in its operation to the part or provision of this act or the district or districts described herein directly involved in the controversy in which such judgment shall have been rendered, and (2) not affect or impair the validity of the remaining parts, provisions or districts described in this act or elsewhere.

g. The congressional districts of this state, as existing immediately prior to the effective date of this act, shall continue to be the congressional districts of the state for the purpose of filling vacancies in the office of representative in congress at any special election held prior to the general election of the year 2024.

h. The congressional districts of this state, from and after the effective date of this act, shall be the congressional districts of the state for the purpose of designating and nominating candidates for
representatives in congress, and for electing district delegates and
alternate district delegates to national party conventions.

i. In order to provide for an orderly election of members of the
congress from the state of New York and in recognition of the constitu-
tional mandate that congressional districts shall be created by law
subject to judicial review under such reasonable regulations as the
legislature may prescribe, it is hereby determined and declared that no
order of the court invalidating this act or part thereof shall be
entered in a manner which will deprive the legislature of an opportunity
to discharge its constitutional mandate. In any proceeding for judicial
review of the provisions of this act, the determination of the court
shall be embodied in a tentative order which shall become final 30 days
after service of copies thereof upon the parties unless the court shall,
in the interval, on application of any party, resettle its order.

j. If any clause, sentence, paragraph, section or part of this act
shall be adjudged by any court of competent jurisdiction to be invalid,
such judgment shall not affect, impair or invalidate the remainder ther-
eof, but shall be confined in its operation to the clause, sentence,
paragraph, section or part thereof directly involved in the controversy
in which such judgment shall have been rendered.

§ 4. Separability. If any clause, sentence, paragraph, section or part
of this act shall be adjudged by any court of competent jurisdiction to
be invalid, such judgment shall not affect, impair or invalidate the
remainder thereof, but shall be confined in its operation to the clause,
sentence, paragraph, section or part thereof directly involved in the
controversy in which such judgment shall have been rendered.

§ 5. This act shall take effect immediately.
Further Reading


Additional Resources

New York Census and Redistricting Institute

The New York Census and Redistricting Institute serves as a non-partisan redistricting resource center on congressional, state, and local redistricting processes. It is the first institute of its kind for a New York City academic institution and provides unique and timely research opportunities for New York Law School students.


Redistricting & You: New York

Redistricting & You is a project of the Center for Urban Research (CUR) at The Graduate Center of the City University of New York (CUNY) intended to help members of the public, journalists, elected officials, and other redistricting stakeholders compare and analyze proposed district maps.
Redistricting Online

Redistrictingonline.org is a nonpartisan, multimedia, knowledge hub about redistricting, created in collaboration with the National Conference of State Legislatures and the New York Law School.

https://redistrictingonline.org/stateredistrictingalmanac/stateredistricting-info-new-york

https://redistrictingonline.org