Exhibit 1

census data; and (b) further order that the procedures set forth in Article III, §§ 4 and 5-b be followed with respect to the adoption of such amended state assembly map."

In support of this argument, cites numerous cases for the proposition that it is always preferable to allow the legislature, or in this case the IRC, a reasonable opportunity to adopt an appropriate redistricting map rather than resorting to a court-drawn map, *See*, *League of United Latin Am. Citizens v. Perry*, 548 U.S. 399, 416 (2006); *Wise v. Lipscomb*, 437 U.S. 535, 540 (1978); *In re Orans*, l5 N.Y.2d 339 (1965); *Wolpolf v. Cuomo*, 80 N.Y.2d70,79 (1992).

Respondents also note that the text of the Constitution of the State of New York in Article III, § 5 exhibits a strong preference, bordering on a requirement that a legislative fix be used here, stating "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."

Respondents further note that this case was remanded to this Court with specific instructions to redraw the map in accordance with art III, § 5–b of the Constitution, a section which specifically provides for the establishment of a redistricting commission "at any other time a court orders that…legislative districts be amended…" Further, the sole reason put forth in *Harkenrider* 2022 N.Y. Slip Op. 02833 at *10 for denying the legislature an opportunity to submit a legislative cure was that the deadline in the Constitution for the IRC to submit a second set of maps had passed and as such was incapable of legislative cure. Such reasoning is irrelevant to the instant action as here there is more than enough time for the IRC to produce an appropriate map and faithfully follow the constitutionally mandated procedure before the 2024 election cycle.

Petitioners submit a counter-memorandum of law, together with an affidavit by Dr. Jeanne Clelland, a Professor of Mathematics at University of Colorado Boulder and redistricting expert, and a copy of the Proposed Supplemental Letter-Brief of Amicus Curiae The League of Women Voters of New York State dated April 24, 2022, and filed with the Court of Appeals in *Harkenrider*. The court also received a letter-brief Amicus Curiae from Common Cause New York on September 15, 2022.

Petitioners submit Dr. Clelland's affidavit for the proposition that the 2022 assembly map was deliberately designed to maximize incumbency. While Dr. Clelland is no doubt a qualified expert on the subject, the submitted analysis refers to a map which has already been invalidated and as such is moot and irrelevant to the "proper means for redrawing the state assembly map."

Petitioners contend that at this juncture, this Court must adopt a court-drawn map as reconvening or restarting the IRC process is not an option and that the Court must appoint a Special Master as in *Harkenrider*. Specifically, Petitioners contend that "this Court could not direct the IRC to "amend" the original assembly map, because it no longer exists." This is undoubtedly true for the same reasons that Dr. Clelland's opinion is not relevant to this case. Second, Petitioners contend that "It is not possible for the IRC to comply at this point with the deadlines established in Sections 4(b) ('no later than January fifteenth in the year ending in two beginning in two thousand twenty-two'), 4(c) ('no later than September fifteenth of the year ending in one or as soon as practicable thereafter'), and 5-b(g) ('on or before January first in the year ending in two or as soon as practicable thereafter'). It also is not possible for the IRC to comply with various other constitutional requirements; for example, Section 4(b) requires that plans for both 'the assembly and the senate shall be contained in and voted upon by the legislature in a single bill.' Art. III, § 4(b)" Third, Petitioners argue that "allowing the IRC to fix a violation of law contradicts the plain

remedial scheme of Article III and renders that scheme meaningless" without presenting any supporting argument for that point before citing to Section 4(e), which specifically allows this Court to "order the adoption of, or changes to, a redistricting plan as a remedy for a violation of law."

Contrary to Petitioner's argument, such language and the guidance of the Appellate Division's opinion in *Nichols v. Hochul*, 106 A.D.3d 463, clearly allows, nay requires, this Court to modify the deadlines established in the Constitution in order to remedy a violation of law. Without such ability, the text of § 5–b allowing the establishment of a redistricting commission *at any other time a court orders* (emphasis added) would be rendered meaningless. As this Court was specifically instructed to consider that section, the appointment of a special master is clearly disfavored.

Subsequent to the submission of briefs in this action but prior to oral argument, the Hon. Peter A. Lynch, J.S.C. issued a Decision and Order in *Hoffman v. N.Y. State Independent Redistricting Commission*, Index No. 904972/2022 (Sup. Ct. Albany Cty. Sept. 12, 2022). In said decision, Justice Lynch denied and dismissed said CPLR Article 78 Petition which sought to limit the 2022 Congressional redistricting map approved in *Harkenrider* to the 2022 election and to further compel the IRC to submit a second redistricting plan corresponding to the 2020 federal census. Petitioners contend that said decision should control the result of the instant action. This Court disagrees with Petitioners. The *Hoffman* action implicates a different subsection of the New York State Constitution, which while related to the instant action, has no bearing on the result of same. As discussed in *Hoffman*, "As set forth above, on May 20, 2022, the Court certified the 2022 Congressional maps in accord with the Court of Appeals remittal and NY Const. Article III, Section 4 (e). The Constitution clearly states that the redistricting shall take place 'every ten years

commencing in two thousand twenty-one.' In this Court's view, the Congressional maps approved by the Court on May 20, 2022, corrected by Decision and Order dated June 2, 2022, are in full force and effect, until redistricting takes place again following the 2030 federal census. While the constitution does provide for judicial relief, the requested relief to restrict the 2022 maps to the 2022 election violates the constitutional mandate that an approved map be in effect until a subsequent map is adopted after the federal decennial census." Here, there is no approved map, therefore the section of Article III, § 4(e), which 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" is not relevant. The order of the First Department provides clear guidance illustrating the distinction between the case at bar and *Hoffman*.

Together with the Order in *Hoffman*, Petitioners advanced an argument that adherence to the IRC procedure would be futile as same was destined to fail based upon its evenly split bipartisan nature. Such an argument is clearly premature. While the IRC previously failed to submit a second set of maps as required by the Constitution, there is no basis to predetermine that they would fail again. Furthermore, since the IRC's first attempt at redistricting, the composition of the IRC has altered (two of the ten members have changed), two of the three maps that they were charged to create are no longer in issue and all of the IRC members are now subject to this Court's jurisdiction.

The court is well aware of the Court of Appeals ultimate findings in *Harkenrider* but will not ignore the vital foundational argument put forward in that action. "Through the 2014 amendments, the people of this state adopted substantial redistricting reform 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 required by the State respondents, a result that would "violat[e]…the plain intent of the Constitution and…disregard [the] spirit and the purpose" of the 2014 constitutional amendments (Cohen, J, 19 NY3d at 202 [internal quotation marks and citation omitted]).

At the same time in her dissent in *Harkenrider*, Judge Troutman stated

> Yet, the remedy ordered by the majority takes the ultimate decision-making authority out of the hands of the legislature 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 23); 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. (2022 N.Y. Slip Op. 02833 at *11).

This Court agrees wholeheartedly with the sentiment expressed by Judge Troutman while recognizing the difficult situation presented to the Court of Appeals in *Harkenrider*. While the adoption of a judicially-drawn map was previously necessary due to time constraints, the landscape has changed dramatically providing significantly more time to implement a new assembly map for the 2024 election cycle. Unfortunately, there was little choice but to appoint a special master to oversee the drafting of the United States congressional and state senate maps as per *Harkenrider* in order to assure timely and legally valid 2022 elections. However, this Court has been presented

a unique opportunity to essentially allow the envisioned constitutional process a second chance to succeed. There is sufficient time to follow, as closely as possible, the constitutionally mandated procedure approved by the people of the State of New York. Given the amount of time before the next round of New York State assembly designating petitions are due in 2024, there is no valid reason to resort to the utterly anti-democratic emergency response necessarily resorted to in *Harkenrider*.

The court is cognizant that per the constitution the IRC was charged with utilizing the 2020 census results, conducting statewide hearings and presenting maps for United States congress, state senate and state assembly to the legislature on or before January 15, 2022. Respondents recommend that the court direct the IRC to complete their duties on or before February 28, 2023, which on its face is an inadequate timeline to perform their functions. At the same time, if this court allows the IRC until January, 2024 to complete their task, there is a significant risk that this Court will be called upon to intercede, creating a quagmire on the eve of yet another election cycle.

The IRC is already established, has the past experience of coordinating and conducting statewide hearings and now only has a responsibility to present an assembly map. At the same time, the court would be naïve to ignore the possibility of further litigation. Even if the IRC, legislature and Governor perform their constitutional obligations, the resultant map is still subject to challenge. Therefore this Court will direct the IRC to present their first assembly map to the legislature on or before April 28, 2023 and will base all other constitutionally relevant dates on same.

To be clear, this Court is loath to usurp the authority of the people and democratic process intended by the constitution and legislature. There is no doubt that the redistricting process did not work as intended. The IRC and legislature had a clear, if flawed, process to implement maps and

failed that task, leaving it to the courts and a special master to draw a valid map for the Congressional and state senate elections. However, circumstances have granted all a rare opportunity for a second bite of the apple. It is my sincere hope that the IRC and legislature, forearmed with the knowledge of the *Harkenrider* decision and knowing the sole remaining task before the parties is creating an assembly map, will be up to the challenge. However, all should take heed - if the parties again fail to perform their constitutionally mandated duties, this Court will have little choice but to intervene and take over that responsibility.

As such it is hereby

ORDERED that the New York State Independent Redistricting Commission and David Imamura, Dr. John Flateau, Yovan Samuel Collado, Ivelisse Cuevas-Molina, Elaine Frazier, Ross Brady, John Conway III, Lisa Harris, Charles Nesbitt, and Willis H. Steven shall be added to the caption of this action as party Respondents; and it is further

ORDERED that the caption be amended to reflect the addition and that all future papers filed with the court bear the amended caption; and it is further

ORDERED that counsel for the moving party shall serve a copy of this order with notice of entry upon the Clerk of the Court (60 Centre Street, Room 141B) and the Clerk of the General Clerk's Office (60 Centre Street, Room 119), who are directed to mark the court's records to reflect the change in the caption herein; and it is further

ORDERED that such service upon the Clerk of the Court and the Clerk of the General Clerk's Office shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases (access*ible at the "E-Filing" page on the court's website at the address www.nycourts.gov/supctmanh)]; and it is further

ORDERED that the New York State Independent Redistricting Commission shall initiate the constitutional process for amending the assembly district map based on the 2020 census data by formulating a proposed assembly map; and it is further

ORDERED that the New York State Independent Redistricting Commission shall prepare the redistricting plan to establish assembly districts, and shall submit to the legislature such plan and the implementing legislation therefor on or before April 28, 2023; and it is further

ORDERED that 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 state assembly 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 December 2, 2022, 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; and it is further

ORDERED that on April 14, 2023, or as soon as practicable thereafter, but no later than April 28, 2023, the independent redistricting commission shall submit to the Legislature that assembly redistricting plan and implementing legislation therefor that garnered the highest number

of votes in support of its approval by the IRC 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 IRC shall submit all plans that obtained such number of votes; and it is further

ORDERED that the redistricting plan(s) for the assembly shall be contained in and voted upon by the legislature in a single bill. 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; and it is further

ORDERED that 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 June 16, 2023, 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; and it is further

ORDERED that 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; and it is further

ORDERED that all votes be conducted pursuant to the procedure established in The New York State Constitution Article III, § 4(b); and it is further

ORDERED that this Court shall retain jurisdiction over this action and any challenges to the procedures of the legislature, the procedures of the independent redistricting commission and/or the resulting assembly map.

9/29/2022
DATE

LAURENCE L. LOVE, J.S.C.

CHECK ONE:	☐	CASE DISPOSED		☒	NON-FINAL DISPOSITION		
	☐	GRANTED	☐ DENIED	☐	GRANTED IN PART	☒	OTHER
APPLICATION:	☐	SETTLE ORDER		☐	SUBMIT ORDER		
CHECK IF APPROPRIATE:	☐	INCLUDES TRANSFER/REASSIGN		☐	FIDUCIARY APPOINTMENT	☐	REFERENCE