

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF STEUBEN

-----X

TIM HARKENRIDER, GUY C. BROUGHT,  
LAWRENCE CANNING, PATRICIA CLARINO,  
GEORGE DOOHER, JR., STEPHEN EVANS, LINDA  
FANTON, JERRY FISHMAN, JAY FRANTZ,  
LAWRENCE GARVEY, ALAN NEPHEW, SUSAN  
ROWLEY, JOSEPHINE THOMAS, AND MARIANNE  
VIOLANTE,

Index No. E2022-0116CV

Petitioners,

-against-

GOVERNOR KATHY HOCHUL, LIEUTENANT  
GOVERNOR AND PRESIDENT OF THE SENATE  
BRIAN A. BENJAMIN, SENATE MAJORITY LEADER  
AND PRESIDENT PRO TEMPORE OF THE SENATE  
ANDREA STEWART-COUSINS, SPEAKER OF THE  
ASSEMBLY CARL HEASTIE, NEW YORK STATE  
BOARD OF ELECTIONS, AND THE NEW YORK  
STATE LEGISLATIVE TASK FORCE ON  
DEMOGRAPHIC RESEARCH AND  
REAPPORTIONMENT,

Respondents.

-----X

**AFFIDAVIT OF TODD A. BREITBART**

STATE OF NEW YORK )  
 ) ss:  
COUNTY OF NEW YORK )

Todd Breitbart, being sworn, deposes and says that:

1. I am over 18 years of age and am not a party to this case.
2. I swear under penalty of perjury to the faithfulness of the opinions expressed in

this affidavit, and, to the best of my knowledge, to the truth and accuracy of the factual  
statements made herein.

### BACKGROUND AND QUALIFICATIONS

3. I directed the staff work on redistricting for successive Minority (Democratic) Leaders of the New York State Senate as Senior Research Analyst from 1980 through my retirement at the end of 2005. I have extensive experience drafting redistricting proposals, and evaluating the proposals of others, according to the provisions of article III, section 4 of the New York State Constitution and supervening federal requirements, including Fourteenth Amendment population equality standards and the Voting Rights Act of 1965. In connection with my work, I marshalled the evidence for plaintiffs challenging the Senate districts enacted in 1992 (*Dixon v. Cuomo*, consolidated on appeal with *Wolpoff v. Cuomo*, 80 N.Y.2d 70 (1992)), and 2002 (*Rodriguez v. Pataki*, 308 F. Supp. 2d 346 (2004)). I submitted an affidavit as an expert witness for the Plaintiffs in *Rodriguez v. Pataki* (2004), and as such I was deposed by counsel for the Defendants.

4. In 2007, I was the principal consultant to the Committee on Election Law of the Bar Association of the City of New York in the development of the Association's report on reform of the New York State redistricting process, *A Proposed New York State Constitutional Amendment to Emancipate Redistricting from Partisan Gerrymanders: Partisanship Channeled for Fair Line-Drawing*, and I was the principal drafter of the text of the report. I am the co-author of the chapter on redistricting (Chap. 4) in P. Galie, C. Bopst, and G. Benjamin, eds., *New York's Broken Constitution* (State University of NY Press, 2016).

5. I was consulted by the Senate staff attorney who drafted Sec. 83-m, Par. 13 of the Legislative Law and the related provisions of the Correction Law and Municipal Home Rule Law, which provide for reallocation of prison populations for state legislative redistricting. I consulted with the attorneys on the staff of the New York State Solicitor General who drafted

New York State's amicus brief in *Evenwel v. Abbott*, 136 S. Ct. 1120 (2016), supporting the principle that legislative redistricting may be based on total population, not just citizen voting-age population. I provided the attorneys with an introductory briefing on redistricting procedures and the use of census geography and data in redistricting. I submitted an affidavit as a witness for New York State in *State of New York, et al., v. United States Department of Commerce*, 315 F. Supp. 3d 766 (S.D.N.Y. 2018), the lawsuit that prevented the addition of a citizenship question to the 2020 census.

6. Participating in the 2011-12 redistricting process, no longer as a legislative staff member, but independently as a concerned citizen, I testified four times before the New York State Legislative Task Force on Reapportionment (LATFOR) and submitted voluminous written testimony on several aspects of the process, including the determination of the number of Senate districts. I developed and submitted for LATFOR's consideration a comprehensive and extensively documented proposal for a 62-seat Senate. I was the principal witness for the plaintiffs challenging the Senate redistricting plan in subsequent litigation, *Cohen v. Cuomo*, 19 N.Y.3d 196 (2012), in which I was also a petitioner. I submitted extensive testimony regarding Senate redistricting in *Favors v. Cuomo*, 39 F. Supp. 3d 276 (2014), and crafted a redistricting plan for a 63-seat Senate in connection with that litigation.

#### **SCOPE OF ENGAGEMENT**

7. I have been retained by Cuti Hecker Wang LLP, counsel for Respondent Senate Majority Leader and President Pro Tempore of the Senate Andrea Stewart-Cousins, and asked to opine on the redistricting plan for the New York State Senate and the conclusions drawn in the report submitted by Claude LaVigna.

8. My analysis of the enacted plan and the assertions in Mr. LaVigna's report is based on the relevant provisions of the New York State Constitution and a comparison of the enacted plan with the Senate districts enacted in 1992, 2002, and 2012, for which data is available on the LATFOR website. In connection with this report, I reviewed the chapter of which I was co-author in Peter J. Galie, et. al., eds., *New York's Broken Constitution* (SUNY Press, 2016) and written materials that I submitted to the Court in *Favors v. Cuomo*.

9. Attached as Exhibits A-C to this Affidavit are maps for districts referenced herein.

10. I am being compensated at a rate of \$300.00 per hour. My compensation does not depend in any way on the outcome of the case or on the opinions or testimony that I provide.

#### **SUMMARY OF EXPERT OPINIONS**

11. It is my opinion that the 2022 enacted Senate plan adheres to constitutional redistricting criteria. It appears, in particular, that the Legislature prioritized drawing districts with equal population, and achieved that goal by providing for a maximum total deviation of only 1.62%. The enacted plan ensures, to the extent practicable, equal population between districts and regions. The plan also features compact districts that unite communities of interest and, where practicable, respect the boundaries of political subdivisions.

12. Mr. LaVigna repeatedly states in his report that the Senate districts cannot be explained by anything other than partisan motive. These assertions often disregard entirely the objective characteristics of districts and their reflection of constitutional criteria. Mr. LaVigna also appears to start from the deeply problematic premise that any changes from the 2012 map that improve Democratic performance must be viewed as suspect and partisan-motivated. In fact, the 2012 plan was an extreme, pro-Republican partisan gerrymander. Districts that account

for population changes since 2010, adhere to constitutional requirements, and address the extreme regional malapportionment in the 2012 plan will inevitably be more favorable to Democrats because the 2012 map was so biased in favor of Republicans. That does not mean that adherence to constitutional principles can be dismissed as showing improper partisan intent.

### **Recent History of Senate Redistricting in New York State**

#### ***The Rules for Senate Redistricting Prior to 2014***

13. Prior to the 2014 constitutional amendments, legislative redistricting in New York was governed by rules contained in the New York State Constitution, the Voting Rights Act, and federal judicial decisions interpreting the Fourteenth Amendment to the federal Constitution.

14. A fundamental limitation on redistricting discretion is the equal population requirement. In *Reynolds v. Sims*, 377 U.S. 533 (1964), the United States Supreme Court held that “the Equal Protection Clause requires that a State make an honest and good faith effort to construct districts, in both houses of its legislature, as nearly of equal population as is practicable.” *Id.* at 577.

15. Although *Reynolds* initially observed that “it is a practical impossibility to arrange legislative districts so that each one has an identical number of residents, or citizens, or voters” and that “mathematical exactness or precision” therefore “is hardly a workable constitutional requirement,” *id.*, the Court subsequently articulated two different population equality rules for congressional apportionment plans versus state legislative apportionment plans. With respect to congressional reapportionment plans, strict population equality is required, but with respect to state legislative apportionment plans, the Supreme Court has held that “some deviations from population equality may be necessary to permit the States to pursue other legitimate objectives such as “maintain[ing] the integrity of various political subdivisions” and “provid [ing] for

compact districts of contiguous territory.” *Brown v. Thomson*, 462 U.S. 835, 842 (1983) (quoting *Reynolds*, 377 U.S. at 577)). The Court held in *Brown* that “as a general matter,” a state legislative apportionment plan “with a maximum population deviation under 10% falls within this category of minor deviations,” and that a total population deviation of 10% or higher “creates a prima facie case of discrimination.” *Id.* at 842–43.

16. Beyond these federal constitutional requirements, since 1894 the New York State Constitution has contained additional equal population requirements for Senate redistricting.

17. First, the New York Constitution requires that Senate districts “shall contain as nearly as may be an equal number of inhabitants . . . as practicable.” Before *WMCA, Inc. v. Lomenzo*, 337 U.S. 633 (1964), applied *Reynolds* to the New York State Legislature, this population equality provision was effectively negated by other provisions of the New York Constitution. But the population equality rule remains in the New York Constitution after the 2014 amendment as Art. III, sec. 4(c)(2).

18. Second, the New York Constitution contains restrictions known as the “town-on-border” and “block-on-border” rules. These rules provide as follows:

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 district 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.

19. In addition to population equality guidelines, the New York Constitution has required since 1894 that Senate districts “shall at all times consist of contiguous territory” and that “districts be in as compact form as practicable.”

20. The New York Constitution contains a specific formula for calculating the size of the Senate. The Senate started with 50 Senators in 1894, and has grown periodically since then pursuant to this formula. Although the formula is objective on its face, as explained below, it has been manipulated over time to help facilitate partisan gerrymanders.

21. Even before partisan gerrymandering was explicitly prohibited in the 2014 amendments, the rules in the Constitution were intended to constrain legislative discretion and produce fair maps. But that is not what happened over many decades.

### *Senate Redistricting in 2002 and 2012*

22. In 2002, and again in 2012, the Senate Republicans achieved an extreme partisan gerrymander through at least three methods. First, the Senate Republicans manipulated the constitutional formula for determining the size of the Senate, determining first what total number of districts would best serve their partisan designs, then producing a constitutional interpretation that happened to require exactly that number of districts. Second, the Senate Republicans maximized the total population deviation between districts and also manipulated population deviations to achieve regional imbalances within their plans. Third, the Senate Republicans manipulated and contorted specific district lines to advance their partisan goals.

23. Extensive analysis and documentation of the Senate Republican's practice of manipulating the size of the Senate can be found in the documents I submitted to LATFOR during the 2012 redistricting process. These documents can be found here: <https://tinyurl.com/3z4evt4y>. The relevant materials are the 18th through the 48th pages of this PDF document. (Several documents are reproduced within this page range, each with their own internal pagination.)

24. In 2002, the Senate Majority increased the size of the Senate to 62 seats from 61. The question of what the size of the Senate should be turned on how the Senate Republicans could reduce the populations of the upstate districts (thereby increasing the voting power of upstate voters and diluting the votes of downstate voters) to the point where total deviations were optimized but did not exceed the 10% threshold established, as noted above, in *Brown v. Thomson*. The Senate Republicans concluded that 62 seats was the optimal size, and then publicly adopted a *post hoc* explanation, couched in legal terms, for the political decision that had already been made more than seven months earlier.

25. In 2012, in contrast to 2002, the Republican Senate Majority determined that by maximally underpopulating most of the upstate districts, it could now add a 63rd district in the upstate region, where the Republicans expected to win, without crossing the 10% total deviation threshold. The Senate Majority therefore could all but assure its continued control of that house of the Legislature.

26. A 62-district Senate would not have served the Senate Majority's partisan design in 2012. If a total of 28 districts were to be created in the region north of New York City as part of a 62-seat plan – as the Senate Majority required to assure itself of its continued control of that body under the voting patterns at the time – then the number of New York City districts would have to be reduced to 25, from the 26 in the 62-district plan. The 25 New York City districts would then have had an average deviation from the statewide mean of +6.00%, and the 28 districts to the north would have had an average deviation of -5.65%. Allowing for the inevitable creation of some upstate districts that deviate from the ideal population by more than the regional average, the total deviation of such a 62-district plan would have been more than 12%, and the plan would have presumptively run afoul of the equipopulousness requirements of the Fourteenth



Amendment. The *only* way to both create the additional upstate district and the total deviation below 10% was to increase the Senate to 63 districts, while maximally underpopulating most of the upstate districts.

27. Again in 2012, as in 2002, the Senate Republican’s attorney belatedly produced a memorandum purporting to explain the Senate Majority’s baldly political decision. This memorandum was the subject of much discussion in *Cohen v. Cuomo*, 19 N.Y.3d 196 (2012), litigation challenging the increase in the Senate size.

28. The Republican Senate Majority’s decision to increase the size of the Senate was directly connected to its manipulation of population deviations to advance a partisan agenda.

29. The 62-district 2002 Senate plan had a “total deviation” (the range between the most and least populous districts) equal to 9.78% of the mean district population, a number that barely avoided the presumptively-unconstitutional 10% threshold.

30. The “total deviation” in the 2012 Senate plan was 8.8%. Although this number was slightly lower than the total population deviation in 2002, the manipulation of district populations across regions was even more pronounced and discriminatory.

31. The chapter on redistricting that I co-authored in Peter J. Galie, *et al*, eds., *New York’s Broken Constitution* (SUNY Press, 2016), describes the regional malapportionment in the 2012 Senate redistricting plan. As stated in footnote 23 of the chapter:

The nine Long Island senate districts [in the enacted 2012 plan] ha[d] the aggregate population for 9.23 districts of the ideal population; the 26 districts wholly or partly within New York City – including two Bronx/Westchester districts that respectively ha[d] 94.4% and 80.5% of their populations within New York City – ha[d] the aggregate population for 26.93 districts of the ideal population; and the 28 districts to the north ha[d] the aggregate population for only 26.84 districts of the ideal population.

32. The practical effect of this regional malapportionment was that the geographic area north of New York City and Westchester had an entire Senate district more than its population should have allowed for (numerically, it had even more than an entire extra district). By contrast, New York City had nearly an entire Senate district less than it should have been allocated. This malapportionment could not be explained by anything other than partisan motive. To maintain a legislative majority in a state in which Democrats enjoyed a nearly two-to-one voter enrollment advantage statewide, the Republicans resorted to extreme measures.

33. As explained below in the context of specific districts, the Senate Republicans in 2012 also advanced their partisan agenda by drawing gerrymandered districts within each region. These tactics included dividing cities unnecessarily (including multiple cities in Westchester County, and Rochester, Schenectady, Troy, Saratoga Springs, and Auburn in upstate New York), dividing communities with significant minority populations, and manipulating district boundaries to achieve maximum partisan gain.

34. One area, in particular, that was subject to longstanding abuse by the Republican Senate Majority was splitting minority communities on Long Island to ensure that districts remained safely non-Hispanic white, thereby increasing Republican voting strength. In the 2012 plan, the two Long Island districts with the lowest non-Hispanic white percentage of the voting-age population (VAP) were Senate District 6 (62.54%) and Senate District 7 (64.31%). The district with the largest Hispanic VAP percentage was Senate District 3, in Suffolk County, with a VAP that was 23.91% Hispanic and 64.33% non-Hispanic white. These numbers reflect intentional efforts to dilute minority voting strength. The voting-age population (VAP) figures given here and below are for census figures adjusted in accordance with Legislative Law Sec. 83-m, Par. 13, which requires that, in the redistricting database, prisoners in state and federal

custody be subtracted from their place of incarceration and reallocated, insofar as possible, to their prior home addresses.

35. These partisan tactics worked for most of the decade after the 2010 Census, thanks in part to a group of Senators who were elected as Democrats but caucused with the Republicans. Things changed, however, in 2018, when the Democrats won a majority of seats and assumed leadership of the Senate. By 2020, Democrats achieved a super-majority in the Senate. Democrats currently hold 43 of the 63 seats in the Senate under the 2012 plan.

***Legal Reforms and Population Shifts Prior to the 2022 Redistricting***

36. The 2014 amendments to the New York Constitution preserved the existing redistricting criteria for the Senate, while also adding new requirements.

37. Article III, section 4 of the Constitution now prohibits district lines that “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.” The paragraph further provides that “[d]istricts 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.”

38. Article III, section 4(c)(5) requires 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.”

39. Article III, section 4(c)(5) also requires that the Legislature consider “the maintenance of cores of existing districts”; “pre-existing political subdivisions, including counties, cities, and towns”; and “communities of interest.”

40. These new requirements explicitly prohibit political gerrymanders, and also outlaw some of the tools that the Senate Republicans previously used to seek partisan advantage, including diluting minority voting strength and gratuitously splitting cities and other political subdivisions.

41. A notable feature of the New York Constitution is that it identifies a number of redistricting criteria – racial and language minority fairness, population equality, compactness, avoiding county splits, uniting communities of interest – but does not rank or prioritize these criteria. Historically, the New York courts have afforded the Legislature broad discretion regarding how these criteria should be balanced.

42. With respect to the Senate, however, there are specific rules that are mandatory and must take precedence over others. These include requirements that districts be contiguous, that towns not be divided unless their populations are so large that they could not be kept whole in a single district (which is only true on Long Island), and that the populations of adjoining districts be fully equalized in compliance with the town-on-border and block-on-border rules. With respect to the latter rule, the block-on-border requirement often mandates that districts that share population within a city, or that have a city on their common border, have populations that are exactly (or nearly exactly) equal.

43. In the decade between the 2010 decennial Census and the 2020 decennial Census, New York experienced significant changes in population. Statewide, the population increased from 19,378,102 residents to 20,201,249 residents over the course of the decade.

44. The adjusted total State population for the 2022 Senate redistricting is 20,193,858. That is the total population reported in the Census, minus the number of prisoners who could not

be reallocated to a prior home address in New York State pursuant to to Legislative Law Sec. 83-m, Par. 13.

45. New York's population increase was not distributed evenly throughout the State. To the contrary, the combined population of New York City, Nassau County, Suffolk County, and Westchester County, as adjusted to reallocate prison populations, increased by 764,568 from 2010 to 2020, from 11,980,198 to 12,744,766. At the same time, the 44 counties in New York State with a population of less than 200,000, all of which are located upstate, lost of a total of 71,294 persons since the 2010 Census.

46. In 2012, the mean size of a Senate district, when adjusted to reflect changes required to account for prisoner population, was 307,356. In the enacted plan, the mean size of a Senate district, with the same adjustment, is 320,537.

47. As explained above, the 2012 Senate plan apportioned more than entire extra district to the upstate region, at the expense of New York City and its surrounding counties. In 2022, the Legislature not only faced the legacy of this severe and partisan malapportionment, but also a further shift of population away from upstate toward the downstate region. To achieve greater population equality and address the 2012 malapportionment, which had only gotten worse over the ensuing decade, the Legislature was required in this redistricting cycle to shift two entire districts from upstate to New York City.

48. It is impossible to evaluate the changes made to Senate districts in the enacted plan without considering this recent history of Senate redistricting, population shifts in New York State over the past decade, and the new constitutional requirements. Yet, that is what Mr. LaVigna does in his report, which helps to explain why his conclusions and observations are deeply flawed and misleading.

49. The 2012 Senate plan was an extreme pro-Republican partisan gerrymander. Despite that, Democrats have been able to elect a better-than-two-thirds majority of the 2012 districts. It was inevitable heading into this redistricting cycle that the Democrats would be in an even stronger partisan position if an enacted plan conformed to the requirements of the New York Constitution and federal law: minimal population deviation, fair regional apportionment, reducing division of counties and cities, refraining from manipulation of the Senate-size formula, drawing compact districts where possible, and providing fair representation of minority groups.

50. The LaVigna report attributes any improvement in likely Democratic performance in the enacted plan to partisan intent. But among other problems, his analysis rests on the flawed assumption that the extreme Republican gerrymander from 2012 is a lawful and objectively desirable baseline from which any deviation must be viewed as suspicious and politically motivated. In fact, the 2012 plan systematically violated multiple constitutional requirements at the time it was enacted. Those violations are even more pronounced today given population shifts and the amended New York Constitution.

***Overall Observations Regarding the 2022 Enacted Senate Plan***

51. There is no evidence that the Legislature engaged in any manipulation of the Senate-size formula during the 2022 redistricting. The proposed constitutional amendment that was placed on the ballot in 2021 would have fixed the number of Senate districts at the current 63. It is significant that the Democratic majority in the Legislature endorsed that proposal before the block-level counts from the 2020 Census became available. That means that the Legislature proposed to fix the number of districts at 63 before it had the data with which it could have determined whether that or some other number would best serve its redistricting designs. Although the proposed amendment was not approved, the size of the Senate has not been at issue

at any time during the 2022 redistricting process. This is a significant departure from what happened during previous redistricting rounds.

52. The total population deviation in the enacted 2022 Senate plan – 5,179 persons – is equal to 1.62% of the mean district population of 320,537.

53. The most populous district, Senate District 48, has a population of 324,786, 1.33% above the statewide mean, and the least populous district, Senate District 55, has a population of 319,607, 0.29% below the statewide mean. The most and least populous districts are now located upstate, where these small population deviations help to limit the division of counties. This is a notable departure from what was done in 2012. The 37 districts comprising Long Island, New York City, the City of Mount Vernon, and the Town of Pelham have an average population of 319,696, which is 841 persons, or 0.26%, below the statewide mean. This is very different than the 2012 plan, in which all of the New York City districts had populations 3.83% (Queens County) or 3.47% (the rest of New York City) above the mean.

54. The total population deviation in the enacted plan is significantly better than the total population deviation in either of the plans proposed by the Independent Redistricting Commission. Plan A, which was proposed by the Commission Democrats, has a total population deviation of 2.5%. Plan B, which was proposed by the Commission Republicans, has a total population deviation of 4.6%. This total deviation is nearly three times as large as that reflected in the enacted Senate plan.

55. The consequence of the low population deviations in the enacted plan is that the 2022 Senate plan apportions to every region of the State, however defined, a share of the Senate districts equal to its share of the total state population. New York City, including the two districts connecting the City of Mount Vernon and the Town of Pelham to the Bronx, is

apportioned two districts more than in the 2012 plan, and the upstate region two districts fewer. A shift of one district represents the correction of the malapportionment in the 2012 plan, and the shift of the second district results from the change in the distribution of the State's population between the censuses of 2010 and 2020.

56. If the Legislature, in designing the 2022 plan, had followed the partisan practice of the Senate Republican majority in 2012, enacting a regional malapportionment of approximately one whole district for partisan advantage, there would have been a reapportionment of three districts, not just two, from upstate to New York City.

57. As explained below, the enacted plan also avoids the intentional dilution of minority voting power and gratuitous splitting of communities of interest that were hallmarks of the 2012 plan.

### ***Long Island***

58. Mr. Lavigna states that, "The new Senate Districts on Long Island have no coherent explanation except for seeking partisan and incumbent-protection advantage." LaVigna Report at 7. This conclusory statement is plainly untrue upon examination of the Long Island districts.

59. Current Senate District 1 had a population of 341,101, based on the adjustment of the 2020 census, and had to lose 21,404 persons. Senate District 1 remains a compact district, encompassing the five undivided East End towns and a large part of Brookhaven, which because of its large population had to be split across more than one district. Brookhaven has an adjusted total population of 486,381. Senate District 1 preserves the core of the prior district while shedding excess population.



60. Senate District 2, as drawn in 2012, included two large pieces of the Town of Huntington, one in the northern part of the town and one in the southern part, bounded by extremely convoluted borders, as well as the Town of Smithtown and part of the Town of Brookhaven. Since the 2022 plan keeps Huntington intact within a single district, in accordance with sound constitutional principles as explained below, Senate District 2 was redrawn to retain the undivided Town of Smithtown and extend further into the Town of Brookhaven. This reconfiguration may frustrate the partisan purposes that were served in 2012 by dividing Huntington into three oddly shaped pieces in violation of the Constitution, but that does not mean that it can be explained only as a partisan design to “pack” Republican voters.

61. Mr. LaVigna similarly criticizes Senate Districts 3 and 4 as a purported effort to “pack” Republicans into Senate District 4 by removing certain populations from Senate District 3. *Id.* His criticism is likewise unsound when considered in the context of the 2012 plan’s Republican gerrymander.

62. In the 2012 plan, the Long Island district with the largest Hispanic VAP percentage was Senate District 3, with a VAP that was 23.91% Hispanic and 64.33% non-Hispanic white. Senate District 4, which contained the rest of the Town of Islip and part of the Town of Babylon had a VAP that was 16.74% Hispanic and 70.1% non-Hispanic white. As noted in my chapter in *New York’s Broken Constitution*, and demonstrated in detail in the testimony I submitted to LATFOR in 2012, this was part of a pattern of splitting the Long Island Hispanic and African-American communities in several consecutive decades of Senate redistrictings. My testimony can be found as “plan\_submission\_19” in the “Senate’s Department of Justice Submission” available on the LATFOR website at: <https://latfor.state.ny.us/justice2012/?sec=sendoj2012>.

63. The 2012 version of Senate District 3 cut into the Town of Islip from the Town of Brookhaven in three places: a large piece north of the convoluted eastward extension of Senate District 4, a small piece at the northeast corner of the Town of Islip, and a large piece south of the eastward extension of Senate District 4. These repeated cuts across a town line served no legitimate redistricting purpose, and were plainly imposed to advance Republican partisan interests. In the new configuration, Senate District 3 includes a single contiguous part of the Town of Islip, and Senate Districts 3 and 4 are both much more compact. Each of these changes comport with and can be explained by neutral constitutional redistricting criteria.

64. In the 2022 plan, Senate District 3, still wholly within Suffolk County, has a VAP that is 38.1% Hispanic, 10.5% non-Hispanic Black, and 45.0% non-Hispanic white. In the testimony I submitted to LATFOR in 2012, I observed that, “The line through Brentwood, splitting the Hispanic and black populations of the Town of Islip between SD’s 3 and 4, is precisely identical to the boundary that was drawn in 1982, 1992, and 2002. Apparently it has proven its effectiveness.” That division through Brentwood has been eliminated in the 2022 Senate plan, thereby uniting communities of interest in Brentwood that had been divided for decades for partisan reasons. Because Hispanic and Black voters tend to favor Democratic candidates, this change will further the interests of the Democratic Party, but Mr. Lavigna does not explain why the redrawing of Senate District 3 and adjoining districts should not be understood as a good faith attempt to comply with the new Article III, section 4(c)(1), given the elimination of a line that had been drawn in order to split minority communities across multiple districts for the purpose of intentionally diluting their voting strength.

65. Mr. Lavigna also asserts that, “Long Island’s new state Senate Districts 5 and 6 have no coherent explanation except for seeking partisan and incumbent-protection advantage,

including by reducing competitiveness. . . . In state Senate District 5, the Legislature removed the Town of Oyster Bay and added the Town of Babylon, picking up heavily Democratic communities to make the district more favorable to Democratic candidates.” LaVigna Report at 7.

66. A comparison of the 2012 and 2022 plans shows that in 2012 the Town of Huntington was split by two highly irregular boundaries within the town. Moreover, the 2012 plan created a pair of Nassau/Suffolk districts, with part of the divided Town of Huntington attached to the divided Nassau County Town of Oyster Bay. In contrast, the 2022 plan keeps the Town of Huntington intact within a compact district in Senate District 5. Combining the intact Town of Huntington with the northern part of the Town of Babylon, which adjoins Huntington to the south, keeps Senate District 5 wholly within Suffolk County. One result is that there is now only a single Nassau/Suffolk district, Senate District 4.

67. The constitutional requirement for Senate districts that towns not be divided if their populations are small enough to fit in one district is stated as a mandatory requirement. The fact that the 2012 plan violated this rule in Huntington by splitting the town into three parts across two districts, but the 2022 enacted plan follows the rule, is a coherent explanation for many of the changes in Senate District 5 and the surrounding Senate districts.

68. The 2022 reconfiguration of Senate District 5 thus serves several constitutional principles: avoiding the division of towns, limiting the division of counties, and compactness. The violation of these principles in 2012 may have served Republican partisan interests, and a reconfiguration that adheres to these principles may therefore benefit Democrats. But Mr. LaVigna does not show that the adherence to these principles in the 2022 plan does not represent

a good faith effort to abide by constitutional principles, or that abiding by those principles does not provide a coherent explanation for the reconfiguration of Senate District 5.

69. Mr. Lavigna objects to the addition of a large area from the northern part of the Town of Oyster Bay to Senate District 6 as a partisan Democratic design. But the attachment of that part of Oyster Bay to an area to the south was a necessary result of treating the Town of Huntington in accordance with sound constitutional principles, as described above, and of preserving the county line as the border of Senate District 6.

70. The enacted Senate District 6 has a VAP that is 52.1% non-Hispanic white, 10.1% non-Hispanic Black, 20.6% Hispanic, and 14.5% non-Hispanic Asian. In contrast, the Senate District 6 enacted in 2012 had a VAP that was 62.54% non-Hispanic white, 14.55% non-Hispanic Black, 16.52% Hispanic, and only 5.13% non-Hispanic Asian. There has clearly been a serious attempt to preserve the core of the existing Senate District 6 in a manner that preserves the ability of the multi-racial coalition that elected the first Indian-American (the first person of South Asian descent) to the New York State Senate to elect the candidate of its choice.

71. Mr. LaVigna states that, “The new state Senate Districts 7 and 9 have no coherent explanation except for seeking partisan and incumbent-protection advantage, including by reducing competitiveness.” But he provides no further explanation, description, or argument about Senate District 7. Senate District 7 is little changed. It remains a compact district. It still includes the whole Town of North Hempstead, and an area in the northwest corner of the Town of Hempstead. It includes a different, and somewhat larger part of the Town of Oyster Bay, but this again is an adjustment resulting from keeping intact the county boundary where it runs between the towns of Oyster Bay and Huntington.

72. Mr. Lavigna complains, “In the new Senate District 9, the Legislature removed the Five Towns, a conservative Orthodox Jewish community of interest, moving it to Senate District 10, a heavily Democratic district in Queens.” (The Five Towns are a compact group of villages, not all incorporated and not towns in the legal sense, in the southwest corner of the Town of Hempstead.) He ignores the fact that this joins the Five Towns to the immediately adjacent community of Far Rockaway. A web search on the phrase “Jewish community Far Rockaway Queens New York” will immediately produce a long list of Jewish congregations, communal organizations, and institutions in Far Rockaway, many of which straddle the county line, including the Far Rockaway - Lawrence Community Mikvah. A mikvah is a ritual bath, of great importance to Orthodox Jews especially. Lawrence is, of course, one of the Five Towns.

73. The 2012 plan divided Far Rockaway with a boundary that can best be described as squiggly, but the 2022 plan keeps Far Rockaway intact within a single district. Far Rockaway and the Five Towns share a common transit line on the Long Island Railroad, which stops in each of the Five Towns before completing its run in Far Rockaway.

74. An argument can be made for keeping the Queens/Nassau boundary intact, creating nine districts wholly within Long Island (*i.e.*, Nassau and Suffolk Counties together), with the trade-off of a somewhat larger total population deviation. But the New York State Constitution prescribes no hierarchy of redistricting criteria that can be used to determine when one rule should be subordinated to another if the two conflict. The 2022 Plan creates a Queens/Nassau district, and a total of 37 districts comprising Long Island, New York City, and the City of Mount Vernon and the Town of Pelham in Westchester County, all of which have equal total populations to within two persons. There is no basis to argue that, in giving priority to population equality and minimizing the population deviations among districts, the 2022 plan

violates the state constitutional rules, much less that it results from bad faith or improper purpose.

***Brooklyn***

75. Mr. Lavigna says that Senate District 22 “bizarrely extends” from Bay Ridge through Sunset Park into Carroll Gardens and Boerum Hill to the north. He ignores the history of Republican-designed Senate districts in this area. In the 1982 redistricting, Senate District 23 was drawn to further the re-election of a Republican State Senator. It was designed by Donald Zimmerman, who had been for several decades the leading Republican expert on New York State redistricting. The district included Bay Ridge, Dyker Heights, and part of Bensonhurst, and extended north through Sunset Park to Windsor Terrace and Park Slope – to the east of the newly enacted Senate District 22, and nearly as far north. The district enacted in 1982 did not work quite as intended. The Republican incumbent was narrowly defeated in 1982 (by a margin of 294 votes), but recaptured the seat in 1984. The Republicans tried several other configurations after that. The 2012 version of Senate District 22 extended from Bay Ridge through a winding course to Marine Park, picking up as many Republicans as possible along the way. The populations thus captured shared no commonalities other than partisan affiliation. This, too, worked for a while, until a Democrat defeated the Republican incumbent in 2018.

76. Mr. Lavigna does not explain why the highly irregular Senate District 22 enacted in 2012 should not be regarded as “bizarre.” A comparison of the Senate district maps from 2012 and 2022 shows that throughout Brooklyn and Queens a spectacular array of highly non-compact districts with intricately convoluted borders from 2012 have been replaced by districts that are admirably compact and keep together communities of interest.

77. In addition to 2012 Senate District 22, one should consider 2012 Senate Districts 11, 12, 14, 16, 17, 18, 19, and 20. A comparison between these 2012 districts and the districts that have now replaced them will show that the drafters of the 2022 Senate plan were quite serious about creating compact, coherent districts that keep communities intact, a remarkable departure from what was done in 2012.

78. Unlike the 2012 Senate Plan, for example, the 2022 Senate plan keeps the Jewish communities of Borough Park, Midwood, and Sheepshead Bay intact within Senate District 26.

79. There is an additional important reason for the new configuration of Senate District 22. The fair regional reapportionment of the 2022 Senate plan adds two districts to New York City. One of these is Senate District 27, which adjoins part of Senate District 22 to the east and unites the neighborhoods of Windsor Terrace, Kensington, Sunset Park, Dyker Heights, Bensonhurst, and Gravesend. It appears that this district was designed to keep together the Chinese-American community in Sunset Park and Bensonhurst that has grown substantially in recent years. Mr. Lavigna does not explain why the configuration of Senate District 27, with the complementary reconfiguration of Senate District 22, should not be regarded as a good faith effort to unite a growing community of interest and comply with Article III, section 4(c)(1).

***Upstate – Westchester County and the Hudson Valley***

80. Mr. LaVigna criticizes the new Senate District 42, in Westchester and Putnam Counties, as having a bizarre shape. It appears, rather, that the Westchester County districts were redrawn to correct the wildly non-compact forms of the 2012 Senate districts, and to eliminate the unnecessary splitting of cities.

81. 2012 Senate District 35 included much of the City of Yonkers and the whole Town of Greenburgh. It then divided the City of White Plains in half, turned south to divide the

City of New Rochelle with a convoluted boundary, and nearly touched the Long Island Sound. 2012 Senate District 37 was a highly non-compact district beginning in the northern part of Westchester County with the Town of Bedford, then extending south to take in the other half of the City of White Plains, taking in several parts of the City of New Rochelle where it shared the wildly convoluted boundary with old Senate District 35, and eventually including the other half of the City of Yonkers. A comparison with the 2022 plan is striking. The new Senate District 37 (which is most similar to old Senate District 35) is a compact district, mostly along the Hudson River, including most of the City of Yonkers, and extending north to include the whole towns of Greenburgh, Mount Pleasant, and New Castle. It includes only a few blocks from the City of White Plains, which had to be separated from the rest of the city to satisfy the mandatory block-on-border rule.

82. New Senate District 39 is a highly compact district. It includes the eastern part of the City of Yonkers, the undivided cities of New Rochelle and Rye, and the towns of Eastchester, Mamaroneck, Scarsdale, Harrison, and Rye. It borders on the City of White Plains, but does not cut into it at all. The new Senate District 42 keeps the City of White Plains intact, except where a few blocks on the western side of the city had to be included in Senate District 37 to satisfy the mandatory block-on-border rule. What Mr. Lavigna describes pejoratively as “a thin finger” in this district is the undivided Town of New Castle. The district connects the northern part of Westchester County with much of Putnam County, adjoining it to the north. Unlike 2012 Senate District 40, which also connected northern Westchester with an eastern part of Putnam County, Senate District 42 does not extend into Dutchess County.

83. The Constitution calls for compact districts, preservation of communities of interest, and maintaining political subdivisions. From the standpoint of compactness, the 2022



plan for Westchester is a vast improvement over the 2012 plan. And keeping small cities intact, which had not been done previously for partisan reasons intended to benefit Republicans, maintains those political subdivisions while preserving communities of interest. The new Senate plan for Westchester County reflects a good faith effort to comply with constitutional rules.

84. Mr. LaVigna faults various districts that connect communities that face each other on opposite sides of the Hudson River. But he does not fault Senate District 40, which unites much of Rockland County with the Town of Ossining, across the river in Westchester County. Senate District 40 is identical to the river-crossing Senate District 38 of the 2012 plan, drawn by the Republicans.

85. Communities that face each other across the Hudson River often have more in common with one another than with more distant areas of the same counties. For example, the cities of Newburgh and Beacon, physically joined and closely linked by the Newburgh-Beacon Bridge, are now joined in Senate District 41.

86. Ulster County is now kept whole within Senate District 48, which also includes the whole of Greene County, part of Albany County, and several towns and cities along the east bank of the Hudson River. In the 2012 Senate plan, Ulster County was divided among four districts: Senate Districts 39, 42, 46, and 51. Mr. LaVigna complains about the political consequences of “removing Democratic-voting parts of Ulster County” from District 44 and placing Democratic-leaning areas in Ulster in District 48. Ending the four-way split of Ulster County may indeed defeat the partisan purposes that were served by chopping up the county in 2012, but the 2022 Senate plan cannot be faulted for abiding by the constitutional rule of minimizing the division of counties. The resulting changes in surrounding districts are a

consequence of the fact that once Ulster County is kept whole, and population deviations are minimized in surrounding districts, the boundaries of districts must be adjusted.

87. Similarly, the new Senate District 44 reflects a good faith attempt to comply with the same constitutional requirement. In the 2012 plan, Delaware County had been split among three districts. Delaware County is wholly contained in 2022 Senate District 44.

88. Mr. Lavigna complains about Senate District 46 “disconnecting the City of Albany and the Albany County river cities across the Hudson River to protect Democratic candidates and reduce competitiveness.” LaVigna Report at 9. Senate District 46 is a compact district that unites the three principal capital region cities, other than the City of Albany: Schenectady, Troy, and Saratoga Springs. It does so without dividing any of those three cities, unlike the 2012 Senate plan, which divided all three. Keeping all three of those cities intact reflects a good faith effort to comply with Article III, section 4(c)(5). It is incorrect to assert, as Mr. LaVigna does, that Saratoga Springs “ha[s] nothing in common with the rest of the District.” LaVigna Report at 9.

89. Like the 2012 Senate District 44, new Senate District 45 unites the City of Albany with the City of Rensselaer across the river, clearly part of the same metropolitan area, but instead of taking in part of the City of Troy, Senate District 45 includes the Rensselaer County towns of North Greenbush, East Greenbush, and Shodack. All of those towns are riverside towns facing Albany County across the river. Senate Districts 45 and 46 both clearly abide by the constitutional rules calling for compact districts that preserve communities of interest and respect town boundaries.

90. Beyond his failure to acknowledge or address how each of these districts complies with neutral redistricting criteria, Mr. LaVigna infers a partisan intent to benefit Democrats

without accounting for the fact that the previous districts were drawn in 2012 for the indisputable purpose of maximizing the Republicans' partisan advantage. This, in particular, was the area of the state in which the Republican Senate Majority added a 63rd seat through manipulating both the Senate-size formula and population deviations across regions. Old Senate District 46 was the 63rd district that was added to the Senate in 2012 for the sole purpose of trying to create a new Republican district in a region that did not have the population to support one. Old Senate District 46 is currently severely underpopulated – its adjusted population is 295,281, more than 25,000 persons below the statewide mean for new districts. Any Senate redistricting plan that respects neutral redistricting criteria and adds the population to each Senate district required by statewide population growth – and the need to remedy systemic and egregious underpopulation of these districts – is bound to result in changes in political performance. The fact that certain changes benefitted Democrats more than Republicans is not surprising or evidence of partisan purpose. It would be surprising if a neutral plan that corrected an egregious partisan gerrymander intended to benefit one party *did not* have the effect of benefitting the other party.

### *Upstate – North and West*

91. Before discussing Mr. LaVigna's comments about the rest of the Upstate area, we should note that the 2012 Senate plan split St. Lawrence County among three districts: Senate Districts 45, 47, and 48. The 2022 Senate plan keeps St. Lawrence County intact within the compact Senate District 50. This is another example of how the 2022 Senate plan adheres to constitutional principles that were ignored in 2012.

92. Mr. LaVigna states: "The new state Senate District 51 is a large, central New York district. This new district is drawn to lump together two Senators, Republican James Tedisco of the 2012 Senate District 49 and Republican Peter Oberacker of the 2012 Senate

District 51, into the same district. It appears highly likely that the Democratic leaders in the Legislature drew this district specifically to disfavor or remove one of these two incumbent Republican Senators.” LaVigna Report at 9.

93. In order to apportion the districts among regions of the State in proportion to each region’s share of the total State population, and complying with the State constitutional requirement to minimize population deviations, it was necessary to reduce the number of upstate districts by two. Mr. LaVigna does not attempt to explain how such a reapportionment could be achieved without pairing incumbents in two places upstate. The other pairing is of Sen. Timothy F. Kennedy, a Democrat residing in the City of Buffalo, and Sen. Edward A. Rath III, a Republican residing in the Town of Amherst, in the new Senate District 63, which is discussed further below. Senate District 51 is a compact rural district that keeps intact all of Schoharie, Chenango, Otsego, and Montgomery Counties, with adjoining parts of Herkimer, Fulton, and Schenectady Counties. Beyond the fact that this district is home to two incumbents in a region of the state where an incumbent pairing was inevitable, Mr. LaVigna does not identify any reason why this compact, rural district does not comply with constitutional requirements.

94. Mr. LaVigna misleadingly suggests that the decision to combine Senate District 49 with Senate District 51 was an arbitrary and partisan choice. But there was an obvious, neutral reason for the decision to select these districts: Senate District 51 is currently the most underpopulated of all 63 Senate Districts from 2012, with an adjusted population of 275,176, a deficit of 45,000 below the mean Senate district in the enacted plan. Senate District 49 is also significantly underpopulated, with an adjusted population of 298,927. Mr. LaVigna does not explain why the logical decision to select the most underpopulated district in the State as one to combine with another district necessarily evidences improper partisan purpose.

95. Mr. LaVigna complains that Senate District 52 “has no coherent explanation except for seeking partisan and incumbent protection advantage. The Legislature transformed the district from a consistently Republican district to a Democratic district by adding more of the City of Syracuse to completely unrelated suburbs in Onondaga County.” LaVigna Report at 9. Mr. LaVigna offers no explanation for the eyebrow-raising claim that the City of Syracuse should be regarded as “completely unrelated” to its own suburbs, including those directly adjoining the city. Far from “completely unrelated suburbs,” these connected communities form a compact area mostly within Onondaga County, except that the district extends as far as the City of Auburn in neighboring Cayuga County. In the 2012 plan, Senate District 50, which contained most of Onondaga County including several pieces of the City of Syracuse, also extended to the City of Auburn. But in the 2012 plan Auburn was divided between two districts. An analysis of the maps of the Onondaga County Senate districts enacted in 2012 and 2022 shows that the 2022 plan demonstrates respect for the constitutional principle of compactness, while the 2012 plan clearly does not. Rather than the new district reflecting an attempt to obtain partisan advantage, it was the 2012 plan that divided communities of interest to protect Republicans’ political interests.

96. Mr. LaVigna says, “The new state Senate District 53 has no coherent explanation except for seeking partisan and incumbent-protection advantage, including reducing competitiveness . . . disconnecting communities in Tompkins County from surrounding areas with which they have historical connections.” LaVigna Report at 10. Again, he ignores the clear effort to comply with constitutional redistricting principles. In the 2012 Senate plan Tompkins County was divided among three districts: Senate District 54, which extended north to Wayne and Monroe Counties; Senate District 58, which extended to include Steuben County; and Senate

District 51, which extended east to Schoharie and Ulster Counties. In Ulster County, Senate District 51 bordered on New Paltz. It appears to be Mr. LaVigna's view that the communities in Tompkins County have a close historical connection with towns in the Hudson Valley and on the shore of Lake Ontario, but not with the other towns in Tompkins County. In the new Senate District 53 Tompkins County is kept undivided, in a compact district that extends to the City of Binghamton and surrounding towns in Broome County. It unites two of the State's principal universities in one district. In creating Senate District 53 the Legislature abided by the constitutional rules to minimize the division of counties and create compact districts. The only non-compact feature of the district's configuration, the exclusion of the Town of Berkshire in Tioga County, can be explained by adherence to the town-on-border rule, which limits population deviations between adjoining districts.

97. Mr. LaVigna objects that Senate District 54 is packed with Republican voters. *See* LaVigna Report at 10. In fact, Senate District 54 unites rural areas in the northern part of western New York. It includes the whole of Genesee, Ontario, and Wayne Counties, and the northern parts of Livingston and Cayuga Counties. Unlike the Senate Districts 54, 55, 59, and 61 enacted in 2012, it does not cut into Monroe County, which had been divided across six districts in the 2012 plan. It is a coherent district uniting communities of interest.

98. In 2012, the City of Rochester was divided among three districts, one of which, Senate District 61, extended through Genesee and Erie Counties to the Buffalo city line. In the 2022 plan, Rochester is divided between two districts, Senate Districts 56 and 57, both of which are compact districts, entirely within Monroe County, uniting the city with nearby suburbs. Mr. LaVigna says this change cannot be explained except as a partisan gerrymander. *See* LaVigna Report at 10. He does not explain why it cannot be regarded as a good faith effort to apply the

constitutional principles of compactness, uniting communities of interest, and limiting the division of counties and cities. He makes no attempt to defend the wildly non-compact Senate District 61 of 2012. That the abandonment of that odd configuration may be helpful to Democrats is no reason why sound constitutional principles should not be followed.

99. Mr. LaVigna's critique of new Senate Districts 56 and 57, for adding back population in the City of Rochester that had been excluded for partisan reasons, also ignores that the population that had been excluded from those districts and cynically connected to Erie County featured a high percentage of Black voters. It appears that these voters were excluded from the districts of the city in which they lived as part of an extreme racial and political gerrymander. The fact that the Legislature corrected this problem in the 2022 enacted Senate Plan by adding population from the City of Rochester back into the City of Rochester is not a basis for inferring partisan intent to favor Democrats.

100. Where Mr. Lavigna appears to complain about the new Senate District 58, that is apparently a typo. *See* LaVigna Reply at 10. He seems to be discussing Senate District 59, which borders on Tompkins County. His complaint is that, unlike the 2012 Senate District 58, the new Senate District 59 is not part of a trio of districts splitting Tompkins County. New Senate District 59 is part of the scheme to unite in a single district all those communities within Tompkins County that in Mr. LaVigna's view have no historical connection to one another (but rather, according to Mr. LaVigna, have an historical connection to farflung regions of the State). The new Senate District 59 is actually a compact district uniting five whole counties (Chemung, Seneca, Schuyler, Steuben, and Yates) and parts of three adjoining counties (Cayuga, Livingston, and Tioga). The same may be said of the new Senate District 58, immediately to the west, a highly compact district uniting the whole of Chautauqua, Cattaraugus, Allegany, and Wyoming

Counties with a compact cluster of adjoining towns in the southernmost part of Erie County.

The treatment of the whole of the Southern Tier clearly represents a good faith effort to follow the constitutional principles of compactness, limiting the division of counties, and uniting communities of interest.

101. Mr. LaVigna argues that only a design to favor Democrats can explain the configuration of Senate District 60, uniting the City of Niagara Falls with the Town of Grand Island, the City and Town of Tonawanda, part of the City of Buffalo, part of the City of Lackawanna, and the Town of Hamburg. *See* LaVigna Report at 10. Mr. LaVigna does not explain why in 1992 the Republicans drew Senate District 57 so as to unite the City of Niagara Falls with the Town of Grand Island, part of the City of Tonawanda, and a large part of the City of Buffalo, or why in 2002 the Republicans drew Senate District 60 to unite the City of Niagara Falls with the Town of Grand Island, part of the City of Tonawanda, and a large part of the City of Buffalo. Assuming that the Republicans were not trying to defeat themselves in 1992 and 2002, the most plausible explanation is that the 1992, 2002, and 2022 plans were all designed to unite industrial areas with similar communities of interest in the Buffalo / Niagara Falls region. In other words, the joinder of Niagra Falls with Buffalo follows historical precedent, and reflects the shared characteristics between the industrial areas and cities in this region. It is not evidence of partisan intent.


102. Mr. LaVigna offers no coherent objection to uniting much of the City of Buffalo with most of the City of Lackawanna, adjoining Buffalo to the south, and the Town of Amherst, adjoining Buffalo to the northeast. Mr. LaVigna states that new Senate District 63 combines “several geographically distant and unrelated areas: the suburban swing Town of Amherst, the east side of Buffalo, and part of Lackawanna County [sic].” LaVigna Report at 11. He meant to



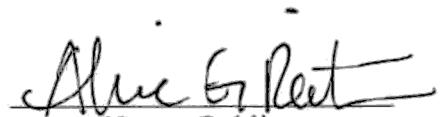
refer to the City of Lackawanna, not county. Amherst adjoins Buffalo to the north and Lackawanna adjoins Buffalo to the south. Mr. LaVigna’s critique ignores the fact that former Senate District 61, enacted in 2012, united the Town of Amherst with the City of Rochester.

103. Former Senate District 61 was among the most galling and egregious partisan gerrymanders in the 2012 Senate plan. It was necessary for the Legislature to significantly alter the boundaries of that patently unconstitutional district, which combined wholly unrelated communities for no legitimate reason. New Senate District 63 is a reasonable, good-faith effort to correct infirmities in the old plan. Contrary to Mr. LaVigna’s claim, the boundaries of this district are not “geographically distant”; they certainly are not distant in comparison to former Senate District 61, or in comparison to other surrounding upstate districts in the 2012 plan and 2022 plan. Nor are the municipalities that are joined in new Senate District 63 “unrelated.” The Town of Amherst is now joined with similar and adjoining parts of the City of Buffalo, including both campuses of the State University of New York at Buffalo, which had been divided into two districts in the 2012 plan, but are now contained within a single district.

Dated: March 10, 2022

  
Todd A. Breitbart

Sworn and Subscribed before me this 10th day of March, 2022

  
Notary Public

**ALICE G. REITER**  
Notary Public, State of New York  
Registration #02RE6290446  
Qualified In New York County  
Commission Expires March 5, 2022

2026