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May 18, 2022

Via E-filing and Email (cervas@cmu.edu)

Jonathan Cervas, Ph.D., Special Master
Carnegie Mellon University
5000 Forbes Avenue
Pittsburgh, Pennsylvania 15213

Re: Harkenrider, et al. v. Hochul, et al., Index No. E2022-0116CV

Dear Special Master Cervas:

We are co-counsel for Assembly Speaker Carl Hastie in this special proceeding, together with Phillips Lytle LLP. We write to respectfully offer comments for your consideration in finalizing the proposed Congressional map that was released on Monday, May 16, 2022. Senate Majority Leader Andrea Stewart-Cousins joins in this submission.

Detailed below are instances where we believe that the draft district lines do not comport with specific redistricting mandates set forth in article III of the New York Constitution. In several districts, the proposed lines are detrimental to minority voting rights in derogation of section 4(c)(i) of article III; in others, the placement of district boundaries pits incumbents against one another and disregards incumbent residences, which disfavors incumbents contrary to section 4(c)(5) of article III. In at least one case, both of these concerns are implicated. Further, cores of existing districts have not been maintained in many districts, including several in New York City where population shifts since the federal Special Master's 2012 redistricting have been minimal.

In particular:

As to the racial composition of districts:

Proposed District 5 is a voting rights district represented by a Black Congressperson, Gregory Meeks. The Black population¹ in this proposed district has been

¹ Historically, New York State has followed the eight race categories used by the Department of Justice ("DOJ") when it evaluates districts. We therefore use the term "Black" to refer to the category "Non-Hispanic Black plus Non-Hispanic Black and White" used by DOJ, and consistent with DOJ's placement of all Hispanics in a separate category, we do not include Hispanic Black persons within our use of the term "Black."

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reduced to 40.79%. The Black population in this district was 50.32% in the 2012 federal Special Master's plan and 44% in the Legislature's enacted plan. Contrary to public testimony, the Black community of Elmont in Nassau County was removed from this district. Elmont should be included in District 5 to preserve the voting power of the Black community.

Proposed District 9 is a minority opportunity district represented by a Black Congressperson, Yvette Clarke. The Black population in this proposed district has been reduced to 39.45% and the White population has been increased by 1.5% over that in the Legislature's enacted plan. In the Legislature's enacted plan, the Black population in the district was 41%.

The Black community in the northeast Bronx which was kept whole both in the federal Special Master's 2012 plan and in the Legislature's enacted plan is now split among Districts 14, 15 and 16. The Black population in proposed District 16 has been cut down to 21.01% from 30.89% in 2012. In the Legislature's enacted plan, the Black population was 29.08%. In the proposed plan, the White population of this district is 39.58% -- four points higher than in the Legislature's enacted plan. The 2012 version of District 16 united the Black community around the Bronx/Westchester border in the Co-op City, Eastchester, Wakefield, and Mount Vernon neighborhoods. The proposed plan divides these communities. Not only does this change adversely affect District 16, but it also changes the character of adjoining District 15. In the 2012 plan, District 15 had a Hispanic VAP of 64%, which drops to 53.5% in new District 15 (compared to 58.5% in the enacted plan). The splintering of these Black and Hispanic communities is harmful not only to Black and Hispanic voters, but also disadvantages a Black incumbent, Congressperson, Jamaal Bowman. The Black community in northeast Bronx should be kept together to prevent the derogation of the community's voting power and disruption to nearby districts.

The proposed plan pairs two sets of minority incumbents: Congresspersons Clarke and Jeffries in District 9 and Congresspersons Jones and Bowman in District 16.

Asian communities in Manhattan and Brooklyn are now split among three Congressional districts. Bath Beach is in District 9, Chinatown is in District 10, and Sunset Park is in District 11. Consistent with testimony from Asian community representatives, the Legislature's enacted plan had combined these three communities in a single district. The federal Special Master's 2012 plan kept Chinatown and Sunset Park in a single district. This community should be united in one district.

As explained below, these unnecessary and significant disruptions to minority communities throughout New York City are confirmed through core retention statistics for many of the adversely affected districts. These troubling changes appear to arise from the decision to include significant portions of Queens in District 3, rather than to draw a Long Island Sound district in the manner reflected in the Legislature's enacted plan and in the plans proposed by the Unity Map Coalition and Common Cause. The decision to ignore these proposals caused deleterious ripple effects to minority communities throughout New York City. The Legislature,

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Unity Map Coalition, and Common Cause all explained that protecting minority communities in New York City, which the New York Constitution requires, could not be accomplished without drawing District 3 in a manner that avoids significant disruption to existing Queens districts. The Special Master's proposed plan confirms the validity of this concern. Not only does proposed District 3 trigger a cascade of disruptions to other districts, but it does so while retaining significantly less of the core of District 3 than the portion retained in the enacted plan (which retained 75.9% of former District 3, whereas the proposed plan retains only 60% of former District 3).

The 2012 Special Master plan carefully considered New York City's minority communities of interest. Those communities should have been considered and protected again in 2022, but the proposed plan repeatedly dislocates minority voters and their elected representatives. We urge the adoption of a plan for New York City that limits the intrusion of District 3 into Queens and thus avoids the unnecessary intrusion upon minority voting rights.

As to disfavoring incumbents:

The proposed map systematically disfavors incumbents. It pairs twelve members of Congress, nearly half of the statewide delegation, in six districts. In addition to the two pairings of minority Congresspersons noted above in Districts 9 and 16, Congresspersons Tonko and Stefanik are paired in District 20, Congresspersons Higgins and Jacobs are paired in District 23, Congresspersons Velazquez and Malliotakis are paired in District 11, and Congresspersons Nadler and Maloney paired in District 12. The proposed map disfavors these incumbents in contravention of principles set forth in the Constitution. Further, District 12 combines the East Side and West Side of Manhattan, which do not share commonalities that are sufficiently substantial to justify the destruction of the cores of prior districts. Testimony before the Commission urged that these disparate communities be kept in separate districts, as the federal Special Master did in the 2012 Plan. The 2022 proposed plan should heed this community input and do the same.

Additionally, the residences of the following eight members of the Congressional delegation are situated outside the districts they currently represent: Congressperson Meng; Congressperson Velazquez; Congressperson Jeffries; Congressperson Nadler; Congressperson Sean Patrick Maloney; Congressperson Jones; Congressperson Tonko² and Congressperson Higgins. The proposed plan needlessly disfavors all of these Democratic incumbents.

² We note that the City of Amsterdam has been removed from District 20, an urban area which it shares a community of interest, and placed in a largely rural district with which it has little in common. The local community has vehemently protested this change through numerous submissions to the Court.

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As to cores of existing districts:

The core retention in the proposed plan, which is a mandatory principle that must be considered under the New York Constitution, is significantly below the core retention in the enacted plan and the remedial plan proposed by the Legislature. The average core retention in the enacted plan is 76.9%, and the average core retention in the Legislature's proposed remedial plan is 81%. By contrast, the average core retention in the proposed plan is only 69%.

The effects of the overall reduction in core retention fall particularly hard on a number of districts that have shed significant portions of their cores as drawn by the Special Master in 2012. Seven districts in the proposed plan keep less than 60% of the prior Congressional district, namely, Districts 7, 9, 10, 14, 19, 23, and 24. Four of these districts are in New York City where the population change was relatively insignificant, and these changes were therefore excessive and unnecessary. Moreover, a number of other New York City districts were substantially and needlessly changed, including Districts 8, 12, and 15, where the core retention numbers are significantly below those in the enacted plan. The Legislature's enacted plan contained only four districts with less than 60% core retention. None of them was in New York City, where relatively stable district populations allowed for adherence to this constitutional requirement.

For the above-mentioned reasons, we respectfully request that you take into account our above comments in promulgating the final Congressional plan that you will be releasing on Friday.

Thank you for considering this submission.

Respectfully submitted,



Elaine M. Reich

EMR/mal

cc: All Counsel of Record