

# Exhibit 1



10 G Street NE, Suite 600 | Washington, DC 20002

May 18, 2022

Hon. Patrick F. McAllister  
Supreme Court, Steuben County  
3 East Pulteney Square  
Bath, NY 14810

Re: *Harkenrider v. Hochul*, Index No. E2022-0116CV – Letter on behalf of DCCC and New York Voters Lauren Foley, Belinda de Gaudemar, Lauren Furst, Courtney Gibbons, Seth Pearce, Leah Rosen, Susan Schoenfeld, Nancy Van Tassel, Verity Van Tassel Richards, and Ronnie White, Jr.

Dear Judge McAllister:

On behalf of DCCC, the national political party committee dedicated to electing Democrats to the U.S. House of Representatives, and a group of diverse voters from different parts of New York, including Brooklyn, Manhattan, Long Island, Rochester, Syracuse, the Hudson River Valley, and the Utica area, we write to express serious concerns about the congressional map proposed by Special Master Jonathan Cervas (the “Proposed Map”).

First, the Proposed Map pairs four Black incumbents in two districts, suggesting that they should run against each other. This would result in fewer Black members of Congress from New York, undoing decades of hard-fought racial progress that began with the creation of a majority-Black congressional district in Brooklyn represented by Shirley Chisolm following the enactment of the Voting Rights Act of 1965 (“VRA”). Second, the Proposed Map fractures important communities of interest throughout New York in contravention of the New York Constitution. The Proposed Map dismantles historic minority communities in New York City, including Brooklyn, Woodside, and the Bronx. It also splits communities of interest on Long Island and in the Hudson River Valley. The Proposed Map is the result of a flawed process that did not provide the public, including minority voters who live in historically marginalized communities, with an opportunity to provide input.

We urge the Special Master to uncouple Black incumbents and reunite communities of interest around New York City, on Long Island, and in the Hudson River Valley. Additionally, we urge this court to ensure that the map drawn by the Special Master only be used for the 2022 congressional election. The Court should then require the elected representatives of the people—who are best equipped to consider the interests of local populations and to weigh the specific equities involved—to enact a congressional map that complies with both the United States and New York Constitutions to be used for the rest of the decade.

- I. The Proposed Map pairs four Black incumbents, which is likely to result in fewer Black members of the New York congressional delegation.**

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New York’s congressional delegation is currently comprised of 27 members. Of those, seven are Black: Rep. Jamaal Bowman, Rep. Yvette Clarke, Rep. Antonio Delgado, Rep. Hakeem Jeffries, Rep. Mondaire Jones, Rep. Gregory Meeks, and Rep. Ritchie Torres, all of whom are Democrats. The Proposed Map pairs four of those members in two districts.<sup>1</sup> Rep. Yvette Clarke and Rep. Hakeem Jeffries are paired in NY-09, and Rep. Jamaal Bowman and Rep. Mondaire Jones are paired in NY-16. The Proposed Map appears to suggest that these Black Members should run against each other, which would result in a reduction in the number of Black members in New York’s congressional delegation.

The Black members of the New York congressional delegation all represent minority opportunity districts. These districts are not comprised of a majority of Black voters, but Black voters in these districts nonetheless have the opportunity to elect representatives of their choice. In many ways, these districts embody the spirit of the Voting Rights Act, which was enacted to “remedy 95 years of pervasive racial discrimination in voting” and “enable[] racial minorities to participate in the political life of the nation.” S. Rep. No. 109-925, at 2 (2006) (S. Rep. accompanying 2006 amendments to VRA). Black members of New York’s congressional delegation have built diverse coalitions of support; they represent communities of Black, Brown, and White voters. The Proposed Map threatens to undo this significant progress.

After Illinois, New York voters have elected more African-American representatives to Congress than any other state—a total of 14.<sup>2</sup> But this is the result of hard-fought progress. New York has a history of discrimination in voting that deprived Black voters of the opportunity to elect their candidates of choice. The New York State Senate recently recognized that history in a 2021 report: “Although its record has significantly improved in recent years, New York has a long history of discrimination against racial, ethnic, and language minority groups in voting. The result is a persistent gap between white and non-white New Yorkers in political participation ***and elected representation***.” Rep. and Findings of the N.Y. State S. Elections Comm. (Nov. 15, 2021), at 35, [https://nysenate.gov/sites/default/files/press-release/attachment/elex1115\\_vfinal.pdf](https://nysenate.gov/sites/default/files/press-release/attachment/elex1115_vfinal.pdf) (emphasis added). Indeed, New York voters did not elect a Black member of Congress until 1944, and not again until after the passage of the VRA, which led to the creation of a majority-Black congressional district in Brooklyn represented by Shirley Chisolm, who was the first African-American woman elected to Congress. Prior to the enactment of the VRA—which was aimed at overcoming nearly 100 years of barriers at the state and local levels that prevented Black Americans from exercising their right to vote after the passage of the 15th Amendment—Black voters were divided among several predominantly white congressional districts.<sup>3</sup>

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<sup>1</sup> Antonio Delgado is not running for Congress. Out of the six Black candidates who are running for re-election in 2022, four—a majority—are paired.

<sup>2</sup> See <https://history.house.gov/Exhibitions-and-Publications/BAIC/Historical-Data/Black-American-Representatives-and-Senators-by-State-and-Territory/>.

<sup>3</sup> Debra Michaels, *Shirley Chisolm (1924-2005)*, National Women’s History Museum (2015), <https://www.womenshistory.org/education-resources/biographies/shirley-chisolm>; Voting Rights Act, Gotham Gazette, <https://www.gothamgazette.com/index.php/about/1856-voting-rights-act>.

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Not only do these pairings threaten to reduce Black representation, they also disfavor incumbents. Under the New York Constitution, maps cannot be drawn for the purpose of favoring or disfavoring incumbents, particular candidates, or political parties. *See* N.Y. Const. art. III, § 4 (c)(5). But the Special Master’s map does just that, bunking six Democratic incumbent representatives and pairing no Republican incumbents who are running for re-election. Courts have found far less to be compelling evidence of illicit intent to favor or disfavor particular incumbents. As the North Carolina trial court recently found in determining the plan to be an illegal Republican gerrymander, that map’s single instance of “double bunking” of incumbents that disadvantaged Democrats was evidence of “intentional, pro-Republican partisan redistricting.” *Harper v. Hall*, Nos. 21 CVS 015426 and 21 CVS 500085 ¶¶ 549, 551 (Wake Cnty. Sup. Ct.), *aff’d*, *Harper v. Hall*, 868 S.E.2d 499 (N.C. Feb. 14, 2022).

Whether these pairings were intended or not, their effect is real and threatens to harm New York’s voters and the diversity of representation in New York. The U.S. Supreme Court has recognized that avoiding contests between incumbents and preserving the relationship between an elected official and their constituents is a legitimate redistricting goal. *See Karcher v. Daggett*, 462 U.S. 725, 740 (1983); *White v. Weiser*, 412 U.S. 783, 797 (1973). In *Diaz v. Silver*, the Eastern District of New York explained why courts adopting redistricting plans should respect “the ability of representatives to maintain relationships they had already developed with their constituents.” 978 F. Supp. 96, 123 (E.D.N.Y. 1997). As that court and many others have recognized, this provides continuity to residents and helps ensure that their elected officials are familiar with their concerns. *See, e.g., Arizonans for Fair Representation v. Symington*, 828 F. Supp. 684, 688-89 (D. Ariz. 1992) (“The court [plan] also should avoid unnecessary or invidious outdistricting of incumbents. Unless outdistricting is required by the Constitution or the Voting Rights Act, the maintenance of incumbents provides the electorate with some continuity. The voting population within a particular district is able to maintain its relationship with its particular representative and avoids accusations of political gerrymandering.”) (citation omitted), *aff’d sub nom. Hisp. Chamber of Com. v. Arizonans for Fair Representation*, 507 U.S. 981 (1993).

These relationships are particularly critical in districts with a substantial number of minority voters, whose representatives are already acutely familiar with the needs of the voters in that district. The Special Master’s Proposed Map jeopardizes those relationships for millions of New York’s voters, including in particular for at least hundreds of thousands of New York’s Black voters.

## **II. The Proposed Map unnecessarily divides important communities of interest—particularly minority communities—across the state.**

The Proposed Map needlessly fractures communities of interest across the state in direct contravention of the New York Constitution, which mandates the consideration of several different factors, including keeping together communities of interest. N.Y. Const. art. III, § 4(c)(5). Although the New York Constitution does not provide an explicit definition of what constitutes a “community of interest,” that term has a specialized meaning in the redistricting context. Other state constitutions, for instance, define a “community of interest” as a community of voters who

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are united by certain social, cultural, racial, economic, and historical issues and dynamics. *See, e.g.*, Mich. Const. art. IV, § 6(13)(c) (“Districts shall reflect the state’s diverse population and communities of interest. Communities of interest may include, but shall not be limited to, populations that share cultural or historical characteristics or economic interests.”); Cal. Const. art. XXI, § 2(d)(4) (“A community of interest is a contiguous population which shares common social and economic interests that should be included within a single district for purposes of its effective and fair representation. Examples of such shared interests are those common to an urban area, a rural area, an industrial area, or an agricultural area, and those common to areas in which the people share similar living standards, use the same transportation facilities, have similar work opportunities, or have access to the same media of communication relevant to the election process.”). Dividing communities of interest, in particular minority communities of interest, disregards and disturbs on-the-ground political, cultural, and social realities.

It is not surprising that that the Proposed Map dismantles communities that have long been united in one congressional district. The remedial map-drawing process has taken place in a vacuum, essentially closed off to the public. The Special Master has thus drawn a map based on what may look visually pleasing but that ignores the realities on the ground. Indeed, this Court explicitly prohibited anyone other than the Respondents from submitting a proposed remedial plan. *See* Second Am. Order (Apr. 29, 2022), NYSCEF Doc. No. 296. And once maps were submitted, there was no meaningful opportunity for the public to comment. The Court held only one hearing on a weekday in Bath, New York. It was nearly impossible for most voters, including minority voters, to attend that hearing because Bath is nearly five hours away from New York City and essentially inaccessible via public transportation. As a result, the voices of the richly diverse communities of New York have not been heard in the remedial map-drawing process. The consequence of that process is the deeply flawed Proposed Map. We urge the Special Master to unite the following communities in the final map.

**a. New York City**

First, the Brooklyn neighborhoods of Bedford-Stuyvesant, Prospect Heights, Fort Greene, East New York, and Canarsie should be kept together in one congressional district. These communities have historically been grouped together in one congressional district, a seat once held by Shirley Chisholm, who, as noted above, was the first African-American woman elected to Congress. As discussed below, the Proposed Map instead needlessly fractures these communities between several districts when they should be united in one.

- Even though the Bedford-Stuyvesant neighborhood has been kept together in the same congressional district for decades, the Proposed Map splits it between two districts—NY-8 and NY-9—fracturing a community that has been the center of Brooklyn’s Black community since the early 1800s.<sup>4</sup> The Bedford-Stuyvesant

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<sup>4</sup> *See, e.g.*, Melanie Eversley, *Protecting black history from gentrification*, USA Today (Feb. 2, 2016), <https://www.usatoday.com/story/news/nation-now/2016/02/02/black-history-gentrification-new-york-brooklyn/78685354/>; Sam Roberts, *Striking Change in Bedford-Stuyvesant as the White Population Soars*, New

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communities have large Black populations with shared business districts, public safety concerns, transportation modalities, and education concerns, and their issues should be represented by one member of Congress.

- Prospect Heights is cracked between NY-9 and NY-10, which means that part of the predominantly working-class Black community in that area has been combined with the wealthy Manhattan residents in the Financial District and Tribeca.<sup>5</sup> These communities have very few shared interests. Prospect Heights should be reunited with other Brooklyn neighborhoods with which its voters have shared interests.
- The neighborhood of Fort Greene alone is inexplicably split across *three* congressional districts—NY-7, NY-9, and NY-10.

The Proposed Map severely fractures these predominantly Black communities and should be revised to restore the congressional district lines that have housed these communities for so long.

Second, Woodside should remain whole. The predominantly South Asian community in Woodside is cracked between NY-6, NY-7, and NY-14, diluting that community's voting strength and voice. NY-7, for example, reaches into increasingly gentrified Williamsburg and Greenpoint, which are neighborhoods whose voters share few concerns with the South Asian community in Woodside.<sup>6</sup>

Third, Black voters in Northeast Bronx should be kept together in NY-16. In yet another example of cracking minority communities with shared interests across multiple districts, the predominantly Black voters of Northeast Bronx, including residents of Williamsbridge, Baychester, Wakefield, Edenwald, and Co-Op City, are split among NY-14, NY-15, and NY-16. Those communities were previously all residents of NY-16. Not only is this area predominantly

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York Times (Aug. 4, 2011), <https://www.nytimes.com/2011/08/05/nyregion/in-bedford-stuyvesant-a-black-stronghold-a-growing-pool-of-whites.html> (noting that Bedford-Stuyvesant “traces its African-American roots to the early 19th century and has been the borough’s black cultural capital for decades”).

<sup>5</sup> Compare NYC Health Community Health Profiles 2018: Crown Heights and Prospect Heights (noting that 64% of the population of Crown Heights and Prospect Heights is Black, and that its poverty rate is higher than New York City as a whole), with Shelly Hagan and Wei Lu, *NYC’s Trendy Neighborhood Leaps Into Top Five Richest Zip Codes*, Bloomberg (Mar. 4, 2019), <https://www.bloomberg.com/news/articles/2019-03-04/nyc-s-trendy-neighborhood-leaps-into-top-five-richest-zip-codes>, and Katie Warren, *NYC’s richest and most expensive ZIP code has an average income of \$879,000 and a median sale price of \$3.9 million*, Business Insider (Nov. 18, 2019, 5:18 PM), <https://www.businessinsider.com/tribeca-new-york-city-richest-neighborhood-photos-tour-2019-6> (noting that Tribeca contains one of the top five richest zip codes in America).

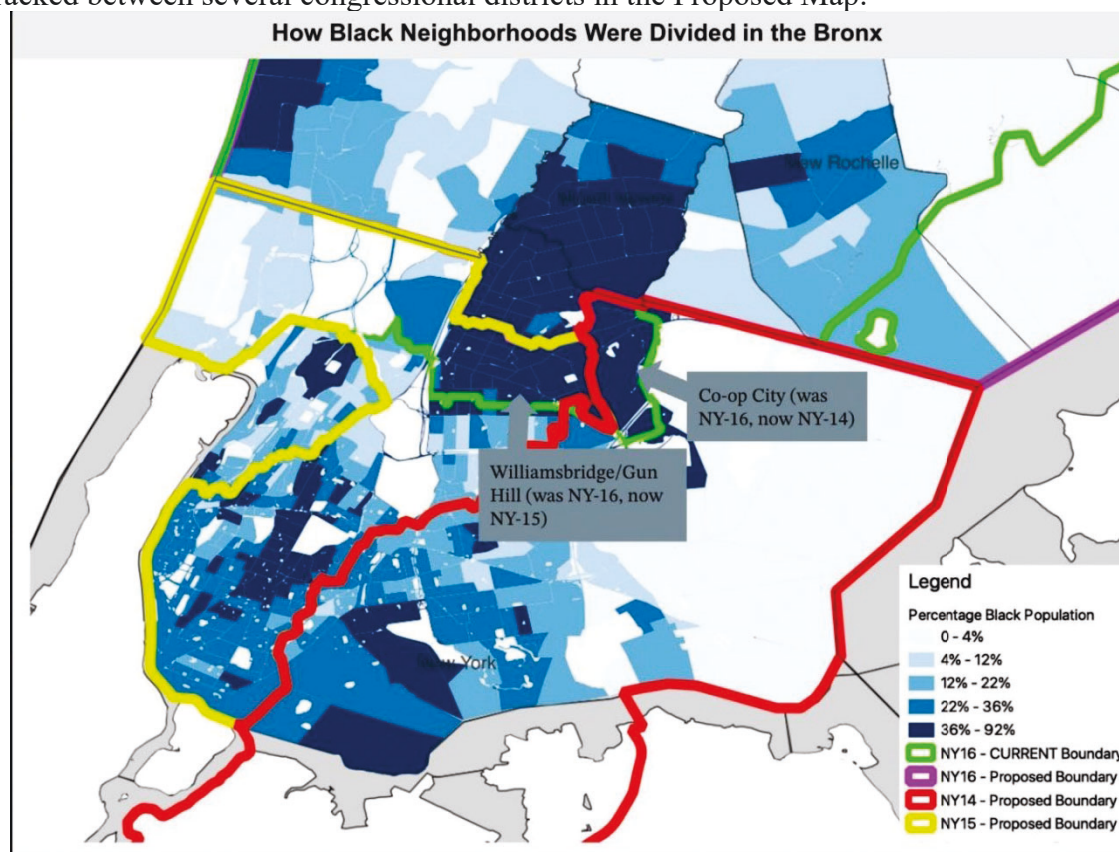
<sup>6</sup> See, e.g., NYC Health Community Health Profiles 2018: Greenpoint and Williamsburg at 7, available at: <https://www1.nyc.gov/assets/doh/downloads/pdf/data/2018chp-bk1.pdf>; John V. Santore, *Study: Williamsburg and Greenpoint Are NYC’s Gentrification Capitals*, Patch (May 11, 2016), <https://patch.com/new-york/williamsburg/study-williamsburg-greenpoint-are-nycs-gentrification-capitals>.

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Black in a part of the City that is predominantly Hispanic,<sup>7</sup> but it includes Co-Op city, which is historically the largest housing cooperative in the world and an obvious and important community that should be represented by one Member of Congress. Under the Proposed Map, however, Co-Op City is split between two districts, including one—NY-15—that snakes around to group some of these residents of affordable housing with predominantly affluent, white Woodlawn and Riverdale. In the Proposed Map, the residents of public housing in Edenwald are separated from the other parts of the Bronx Black community. They should continue to be connected with the predominantly Black city of Mount Vernon, but also joined with other parts of the Bronx such as Co-Op City, Baychester and Williamsbridge. This area makes one connected community of interest as they share an interest in common issues such as affordable housing.

The figure below shows how the predominantly Black community in the Northeast Bronx is cracked between several congressional districts in the Proposed Map:



The Northeast Bronx community should remain united in NY-16. These residents send their children to the same public schools and are grappling with shared political interests and issues

<sup>7</sup> See Co-Op City: History (last visited May 17, 2022), <https://coopcitynyc.com/aboutus>; NYC Housing Preservation and Development, City Secures Affordability and Prevents Displacement for Over 16,000 NYC Households (Apr. 3, 2020), <https://www1.nyc.gov/site/hpd/news/021-20/city-secures-affordability-prevents-displacement-over-16-000-nyc-households#/0>.

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including combatting the threat of gun violence in their neighborhoods.

### **b. Long Island**

The New York Constitution requires the consideration of “pre-existing political subdivisions including counties, cities, and towns, and of communities of interest,” making each criteria equally important. N.Y. Const. art. III, § 4(c)(5). The Proposed Map, however, seems to prioritize minimizing county splits in Long Island over all other criteria, including preserving existing communities of interest. The Special Master must correct this problem when finalizing the map by uniting communities of interest across Long Island.

Long Island should be divided using district lines that run from East to West instead of North to South. This would result in three districts across the majority of Long Island: a North Shore district, a South Shore district, and a Central Long Island district. East-to-West lines would allow voters with similar socio-economic interests to vote together, and shared economic interests is a traditional ground for recognizing a community of interest. *See Diaz*, 978 F. Supp. at 123 (“Courts will find the existence of a community of interest where residents share substantial cultural, economic, political and social ties.”).

In addition, the East-to-West division reflects common commuter patterns, which courts often consider as part of a community-of-interest analysis. *See Kelley v. Bennett*, 96 F. Supp. 2d 1301, 1321 (M.D. Ala. 2000), *vacated on other grounds by Sinkfield v. Kelley*, 531 U.S. 28 (2000); *Johnson v. Miller*, 864 F. Supp. 1354, 1389 (S.D. Ga. 1994); *see also Caster v. Merrill*, No. 2:21-cv-1536-AMM, 2022 WL 264819, at \*20 (N.D. Ala. Jan. 24, 2022) (quoting *Johnson*, 864 F. Supp. at 1389-90). The commuter patterns on Long Island are divided between the North Shore, South Shore, and Central areas and would correspond to districts being drawn in those regions. The Babylon/Montauk branch of the Long Island Railroad runs all the way across the South Shore and is a thoroughfare for people commuting into New York City. The North Shore has the Port Washington, Oyster Bay, and Port Jefferson railroad branches, in addition to ferries that cross the Long Island Sound to bring passengers to Connecticut. Those in Central Long Island have access to the Long Island Expressway and the Ronkonkoma Branch of the Long Island Railroad.<sup>8</sup>

Creating districts using East-to-West lines also provides a greater opportunity for minority voters who have been historically marginalized on Long Island to have the opportunity to elect candidates of their choice. Practices like redlining, restrictive zoning, blockbusting, discriminatory tax assessments, and racial steering have caused Long Island to be one of most segregated regions in the country.<sup>9</sup> Just ten years ago, a 2012 report concluded that one in three Black Long Islanders have experienced housing discrimination first-hand or within their immediate family. And *Newsday*, a newspaper that serves Long Island, conducted a three-year investigation culminating

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<sup>8</sup> *See* Long Island Railroad Map, Metropolitan Transportation Authority, <http://web.mta.info/lirr/Timetable/SystemMap.pdf>.

<sup>9</sup> The planned community of Levittown famously excluded people of color with a restrictive covenant and remains overwhelmingly white. Olivia Winslow, *Dividing Lines, Visible and Invisible*, *Newsday* (Nov. 17, 2019), <https://projects.newsday.com/long-island/segregation-real-estate-history/#nd-promo>.



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in 2019 that revealed that real estate agents continue to show Black residents houses in predominantly Black areas, and white people houses in predominantly white areas. This practice has had the effect of pushing people of color into a small number of communities towards Central Long Island. Census estimates from 2017, for example, showed that half of Long Island's black residents lived in just 11 communities, and 90% lived in 62 communities.<sup>10</sup>

These communities with large minority populations are currently split among Districts 1, 2, 3, and 4. Cities with some of the highest minority populations are located relatively close to each other in West-Central Long Island—like Elmont, Roosevelt, Hempstead, Uniondale, Westbury, North Amityville, and Wyandanch—yet are split between districts. A map that unites these cities, and runs East-to-West in the center of the Island, would afford minority voters a greater chance to elect candidates who represent their interests. It seems particularly unjust that, after using discriminatory tactics to force people of color into these locations, we would also divide their political power in a part of the state that has highly racially polarized voting. While these voters would not currently make up a majority of any district, they would be well-positioned to build coalitions and, by the end of the decade, there could be a compact Central Long Island majority-minority district.

Finally, environmental factors favor building East-to-West districts. As Dr. Stephen Ansolabehere presented to this Court in his expert report, the North Shore of Long Island is a unique ecological zone. It is part of the Long Island Sound Watershed and is managed by the New York Department of Environmental Conservation and under the oversight of the Long Island Sound Study. Expert Rep. of Dr. Stephen Ansolabehere ¶ 74 (Feb. 24, 2022), NYSCEF Doc. No. 92. Keeping the communities of the North Shore together in one district, rather than splitting them between several districts, would allow voters there to prioritize their environmental needs. Because the next decade is poised to have an increasing policy focus on climate change and clean energy, this court should put New York's residents in the best position possible to have a representative who can focus on their specific circumstances and resources. *See Diaz*, 978 F. Supp. at 123 (listing shared political interests as a factor that defines a community).

### c. Hudson River Valley

The Congressional district lines along the Hudson River Valley should be drawn North-to-South to account for the communities of interest that live in this region. Under the Proposed Map, this region is divided East-to-West. New York's Hudson River towns in Greenburgh and Rockland should be united—across the river—in one district that includes White Plains, the urban and transit center of that part of the region. Instead, the Proposed Map divides the Hudson River towns between NY-16 and NY-17, a division that splits a community of interest and creates an arguably

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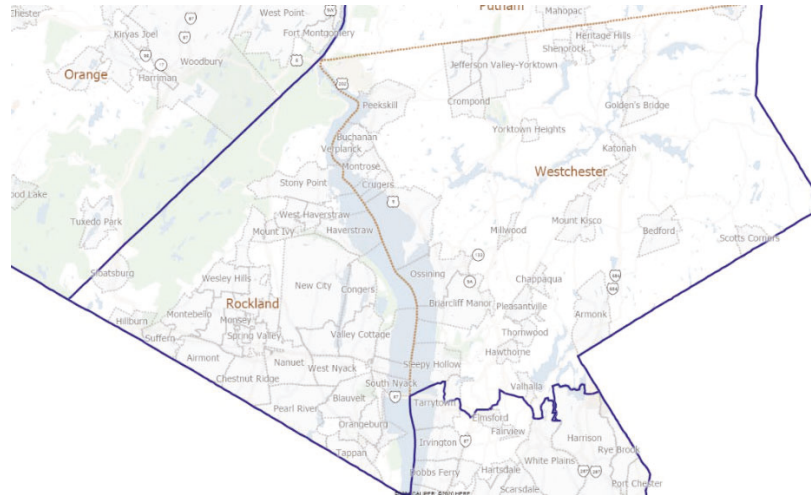
<sup>10</sup> *See* Erase Racism, Housing and Neighborhood Preferences of African Americans on Long Island at 2 (Feb. 2012), [http://www.eraseracismny.org/storage/documents/FINAL\\_ERASE\\_Racism\\_2012\\_Housing\\_Survey\\_Report\\_web\\_ersion.pdf](http://www.eraseracismny.org/storage/documents/FINAL_ERASE_Racism_2012_Housing_Survey_Report_web_version.pdf); Winslow, *supra* note 8.

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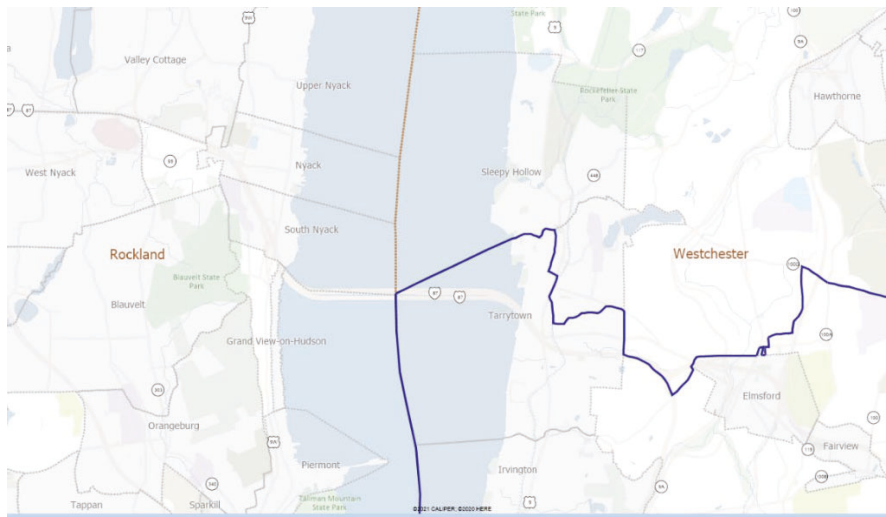
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not contiguous 17th district that cannot be traversed by bridge without entering another district, as shown in the maps below.<sup>11</sup>

## District 17



## Governor Mario M. Cuomo (Tappan Zee) Bridge

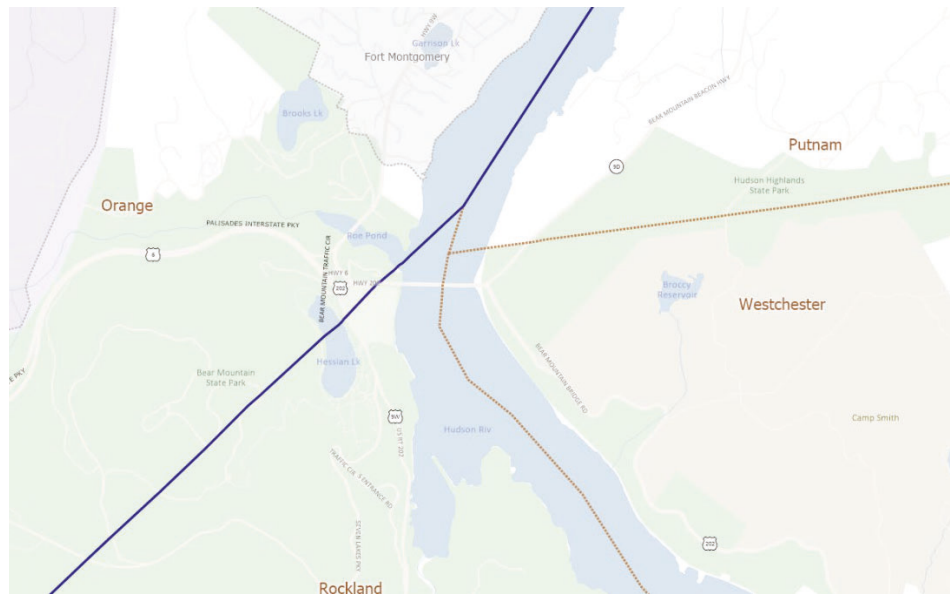


<sup>11</sup> No bridge directly connects both sides of the NY-17. The Governor Mario M. Cuomo (Tappan Zee) Bridge and the Bear Mountain Bridge are the only two options for crossing the Hudson in the area. However, once across a bridge, a person would have to cross through NY-16 or NY-18, respectively, to get back to NY-17, meaning the district cannot be traversed in whole without entering another district. *See Matter of Schneider v. Rockefeller*, 31 N.Y. 2d 420, 430 (1972) (finding contiguity when it is not “necessary to travel through an adjoining district to keep within the boundaries of the challenged district”); *Ince v. Rockefeller*, 290 F. Supp. 878, 883 (S.D.N.Y. 1968) (finding contiguity when “no part of any district separates the two sections of the ... District”). Further, the entrance and exit ramps off the Bear Mountain Bridge appear to be in NY-18, rather than NY-17, requiring residents to enter NY-18 in order to traverse back to NY-17.

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## Bear Mountain Bridge



Residents of the Hudson River towns share a common identity. The villages (Hastings-on-Hudson, Dobbs Ferry, Irvington, Tarrytown, Elmsford, and Ardsley) and unincorporated areas that comprise the town of Greenburgh share public services like a common police department and sanitation department. These Westchester River towns are connected by infrastructure and commuter lines including the Metro North’s Hudson Railroad line, the Old Croton Aqueduct, and U.S. Route 9. The towns spanning both sides of the Hudson River share significant environmental concerns—several were affected by Hurricane Sandy and other recent weather events. These towns, situated on the Hudson River floodplain are likely to experience flooding in the future, and having singular congressional representation is important for that interest. The court must not split this community of interest.

Additionally, White Plains should be part of any district that includes the Hudson River towns. White Plains is an important hub for the minority communities in the Hudson River valley; Hispanic residents along the towns of the Hudson River congregate in White Plains. Additionally, the National Association for the Advancement of Colored People (“NAACP”) chapter in this region is headquartered in White Plains and is aptly called the “NAACP White Plains/Greenburgh” Branch because it serves the Black residents of both White Plains and Greenburgh.

## Conclusion

For the reasons above, we urge the Court to recognize the limitations of the Proposed Map and to promptly direct the Special Master to make immediate changes to account for these problems. Additionally, the Court should allow the duly elected representatives of the people an

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opportunity to draw this state's electoral map consistent with both the United States and New York Constitutions to be used in this state the rest of the decade.

Dated: May 18, 2022

Respectfully Submitted,

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