

May 5, 2022

By E-Filing and E-Mail (cervas@cmu.edu)

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

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

Dear Special Master Cervas:

We represent Senate Majority Leader Andrea Stewart-Cousins in this special proceeding. We write to comment briefly on the proposed Senate map that Petitioners submitted yesterday.

Once again, Petitioners' professed concern for non-partisanship is belied by the Senate lines they have proposed. Petitioners seek to perpetuate longstanding, nakedly pro-Republican practices in drawing Senate districts. As with their congressional plan, Petitioners attempt to hide their partisan designs behind the veneer of Sean Trende's simulations. But when the true lean of their proposed districts is exposed, even Mr. Trende's model confirms that Petitioners' proposal is a partisan gerrymander.

As to the reliability of Mr. Trende's simulations, the Legislature showed through extensive expert testimony that his Senate simulations have significant performance issues. Mr. Trende used a very small sample of 5,000 simulations for the 63-district Senate map, and his simulations suffered from a fatal redundancy problem. This was shown through the bi-modal distribution in Mr. Trende's Polsby-Popper compactness score and by the fact that in approximately 64% of the maps generated by a replication of Mr. Trende's simulations, almost one half of the districts were identical. This Court rejected Petitioners' substantive challenge to the Enacted Plan, which was based almost entirely on Mr. Trende's Senate simulations. There is no reason to permit the same simulations to influence decisions at this stage.

Moreover, Mr. Trende's dot plot is highly misleading. Senate Districts 22, 23, 24, and 25 skew Mr. Trende's black dots for proposed districts and cause them to appear as if the proposed districts fall within the simulation range. Using ALARM Project data, these districts fall in ranked columns 14, 18, 20, and 21 on the dot

plot. But in the 2020 presidential election, the results in these proposed Senate districts were 2nd, 5th, 7th, and 12th lowest statewide in their performance for Biden. Adjusting the lean of these districts to reflect their vote for Biden plus 3 points (the average difference between ALARM Project data and 2020 presidential election data statewide) would cause nearly all dots for proposed districts in columns 9-23 to fall below the range of the simulated districts. By Mr. Trende's own methodology, this would evidence an egregious pro-Republican gerrymander.

Even without this adjustment, districts in the competitive range of Mr. Trende's dot plot consistently fall at the absolute bottom for Democratic performance, whereas districts in higher numbered columns waste Democratic votes. Combining this fact with Petitioners' effort to mask the actual performance and lean of Districts 22, 23, 24, and 25, it seems that Petitioners were more focused on presenting a dot plot that appears to convey partisan neutrality than on actually drawing constitutionally valid districts that do not seek partisan advantage.

In any event, Petitioners' proposed map is unconstitutional for at least three reasons as demonstrated by a review of specific districts.

First, Petitioners continue the longstanding Republican practice of packing and cracking minority communities. As explained in the affidavit of Todd Breitbart, Republicans have cracked minority communities of interest in the Town of Islip for decades. The 2012 Republican gerrymander cracked Hispanic communities in Islip into two districts. Petitioners' proposed plan goes even further by cracking the same communities into three districts (Districts 1, 2, and 3). The Enacted Plan unites these communities.

In their response to the Legislature's critique of their proposed congressional map, which cracked minority communities on Long Island in similar ways, Petitioners cite recent Supreme Court decisions that describe predominantly race-based redistricting as "odious," and argue that their professed color-blindness is a virtue. This defense is baseless. New York Republicans have not cracked minority communities on Long Island for decades for the salutary purpose of achieving a color-blind society. They have cracked minority communities on Long Island because they want to elect more Republicans to the Senate.

Petitioners disregard other racial and language minority groups in their proposed plan. To highlight just two examples, in the Enacted Plan, District 17 in Queens is a plurality Hispanic district that reflects the growth of that community along the Brooklyn-Queens border. Petitioners' proposal includes no comparable district. Petitioners also crack the Asian community in South Brooklyn into four districts, whereas the Enacted Plan (District 27), both Commission plans, and the Unity Map Coalition draw districts that reflect the growth of this community.

Second, Petitioners have gerrymandered districts for partisan gain in a variety of other ways. On Long Island, for example, Petitioners decrease the Democratic vote share of every district presently held by a Democratic incumbent.

On Staten Island, Petitioners propose an obviously gerrymandered district configuration. Staten Island has for decades been divided with a southern district and northern district, and the primary dividing line for the southern, Staten Island-only district has been the Staten Island expressway, which bisects the borough. Petitioners disregard that natural and historical dividing line and instead conceive a plan that distributes Republican votes with maximum efficiency and pairs Democratic and Republican incumbents in a district that heavily supported Donald Trump. In the process, Petitioners crack minority communities in northern Staten Island, which are united in District 23 in the 2012 plan and Enacted Plan.

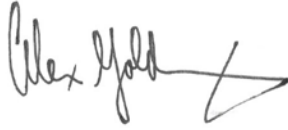
Petitioners' proposals for several upstate districts also betray partisan intent. In Central New York, the Enacted Map combines the capital area cities of Troy, Saratoga Springs, and Schenectady, undoing prior gerrymanders that had diminished their votes and split them into multiple districts. In Petitioners' plan, Troy is in Dutchess County-based District 45, and Saratoga Springs is placed with Fulton County and Schenectady County in a district that stretches far west into Chenango County.

Petitioners' proposed District 61 takes the portion of Buffalo that includes City Hall and combines it in a district with Wyoming and Genesee Counties. This unprecedented and gerrymandered district pairs the Democratic incumbent with a Republican incumbent in a heavily Republican district. Petitioners' proposed District 54 also needlessly maintains the prior split of Tompkins County, notwithstanding that the Enacted Plan and both Commission plans endorsed keeping Tompkins County whole and combining it with Broome County.

Finally, there are several serious block-on-border violations in Petitioners' proposed map. One occurs in Westchester County, where District 39 and District 42 border one another along the boundary of the City of White Plains but differ in population by 8,800 people. Another occurs upstate, where District 62 and District 63 meet along the boundary of the City of Buffalo but differ in population by 6,000. There is also a block-on-border violation between Districts 49 and 50, which share a border along Utica and Rome. These indisputable constitutional violations are an additional reason that Petitioners' proposed plan should be rejected.

Thank you for considering this submission.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Alex Goldenberg", with a stylized flourish at the end.

Alexander Goldenberg

cc: All Counsel of Record