

Exhibit 3

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF STEUBEN

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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.

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**PETITIONERS' MEMORANDUM REGARDING
PROPOSED REMEDIAL STATE SENATE MAP**

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DISCUSSION

New York's Constitution requires that:

- Each district “shall contain as nearly as may be an equal number of inhabitants,” N.Y. Const. art. III, § 4(c)(2);
- Each district be contiguous, *id.* § 4(c)(3);
- Mapdrawers “consider the maintenance of cores of existing districts, of pre-existing political subdivisions, including counties, cities, and towns, and of communities of interest,” *id.* § 4(c)(5);
- Each district “be as compact in form as practicable,” *id.* § 4(c)(4);
- Mapdrawers “consider whether such lines would result in the denial or abridgement of racial or language minority voting rights,” precluding mapdrawers from drawing districts for the purpose of, or resulting in, “the denial or abridgement of such rights,” *id.* § 4(c)(1);
- Districts cannot “be drawn to discourage competition or for the purpose of favoring or disfavoring incumbents or other particular candidates or political parties,” *id.* § 4(c)(5); and,
- When drawing Senate districts, “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,” *id.* § 4(c)(6).¹

The proposed remedial Senate map submitted by Petitioners complies with each of these requirements and “would be an outstanding choice for this Court to replace the 2012 state Senate Map.” Remedial State Senate Map Expert Report of Sean P. Trende (“Trende.Sen.Rem.Rep.”) at 8.

I. The Remedial State Senate Map Expert Report Of Sean Trende Establishes That Petitioners’ Proposed Remedial State Senate Map Complies With New York’s Constitutional Requirements For Redistricting

Petitioners’ Proposed Remedial State Senate Map (“Proposed Map”) complies with all of the measurable constitutional requirements for redistricting, while avoiding the unconstitutional

¹ The requirements that Senate districts not divide counties or towns, as well as the “block-on-border” and “town-on-border” rules, remain in effect.

infirmity in the Legislature's enacted 2022 state Senate Map. Although this Court did not declare substantively unconstitutional the 2022 enacted state Senate map because "Petitioners could not show that the enacted 2022 senate map was drawn with political bias *beyond a reasonable doubt*," the Court acknowledged that "Petitioners presented credible evidence that this map also was gerrymandered." NYSCEF No.243 at 14 (emphasis added). That beyond-a-reasonable-doubt standard, of course, does not apply at the remedial phase here, and Mr. Trende's already credited methodology should govern questions of partisanship in this phase, consistent with the law of the case doctrine and the appellate courts' conclusions that Mr. Trende's methodology was valid for measuring partisanship. *See Martin v. City of Cohoes*, 37 N.Y.2d 162, 165 (1975).

First, as Mr. Trende's Remedial State Senate Map Expert Report explains, all of the Senate districts in the Proposed Map are contiguous, N.Y. Const. art. III, § 4(c)(3), and have a maximum population deviation of 1.6% (5,199 residents), which easily satisfies the requirement to have "nearly as may be an equal number of inhabitants," N.Y. Const. art. III, § 4(c)(2); Trende.Sen.Rem.Rep.1-2 (including chart showing population and deviation in each district).

Second, Petitioners' Proposed Map adequately respects and maintains "pre-existing" political units, *id.* § 4(c)(5), with limited county splits. As Mr. Trende's Remedial State Senate Map Report shows, Petitioners' Proposed Map splits only 25 counties across the State, which is fewer than the number of counties split by the 2012 state Senate Map and the Legislature's 2022 enacted map, each of which splits 30 counties. Trende.Sen.Rem.Rep.3. Further, Petitioners' Proposed Map only splits those counties a total of 69 times, which is slightly over the minimum possible number of 62, and under the 72-split total present in the 2012 state Senate Map and the Legislature's 2022 enacted map. Trende.Sen.Rem.Rep.3.

Third, Petitioners' Proposed Map is "as compact in form as practicable," N.Y. Const. art. III, § 4(c)(4), surpassing the compactness score of the Legislature's 2022 enacted map on all metrics—sometimes substantially so—and scoring comparably to the 2012 state Senate Map. *Trende.Sen.Rem.Rep.3–4*. Additionally, comparing the least compact district in each of the three maps, the Proposed Map fares better than the 2012 state Senate Map on all metrics, and better than the Legislature's 2022 enacted map on all metrics but one. *Trende.Sen.Rem.Rep.4*.

Fourth, the Proposed Map significantly retains the cores of the prior districts in the 2012 state Senate Map. N.Y. Const. art. III, § 4(c)(5). As Mr. Trende's analysis shows, the Proposed Map maintains 64% of the cores of the 2012 state Senate Map, which is comparable to the core-retention rate of 69.1% in the Legislature's 2022 enacted map. *Trende.Sen.Rem.Rep.4*.

Fifth, the Proposed Map respects "racial or language minority voting rights," making sure not to draw districts that "den[y] or abridge[] . . . such rights." N.Y. Const. art. III, § 4(c)(1). While Petitioners did not draw the Proposed Map to predominate issues of race over any traditional redistricting criteria, *see Wis. Legislature v. Wis. Elections Comm'n*, 142 S. Ct. 1245, 1248 (2022) (per curiam), their map adequately respects New York's racial diversity, providing multiple minority-majority and minority-plurality districts, comparable to the Legislature's 2022 enacted map. *Trende.Sen.Rem.Rep.6*.

Finally, Petitioners' Proposed Map was not drawn "to discourage competition or for the purpose of favoring or disfavoring incumbents or other particular candidates or political parties," N.Y. Const. art. III, § 4(c)(5), in contrast to the Legislature's 2022 enacted map. Replicating his prior analysis of the Legislature's 2022 enacted Senate map, Mr. Trende analyzed Petitioners' Proposed Map by generating a dotplot and a Gerrymandering Index, allowing him to determine whether the Proposed Map exhibits signs of packing and cracking or attempts to diminish

competition in more competitive districts. Trende.Sen.Rem.Rep.6–8. Both these methodologies definitively show that the Proposed Map does not crack and pack districts or diminish the competitiveness of competitive districts. Trende.Sen.Rem.Rep.6–8. As illustrated in Mr. Trende’s dotplot analysis, the percentage of Democratic voters in all districts of the Proposed Map, ordered from most Republican to most Democratic, falls within the range that would be expected from a map drawn without reference to politics and to ensure a substantial number of competitive districts. Trende.Sen.Rem.Rep.7. Further, the largest deviation from the means—seen in districts 24 to 27 of the dotplot—are in regions where Republicans would not be expected to win. Trende.Sen.Rem.Rep.7. This demonstrates that the districts of the Proposed Map were not drawn to decrease competition or protect one party or another. Trende.Sen.Rem.Rep.7.

The Proposed Map fares equally well when assessing its Gerrymandering Index. The index score for the Proposed Map is .09, which is less than one standard deviation away from the average Gerrymandering Index of the ensemble maps, i.e., .0828, Trende.Sen.Rem.Rep.7–8, and thus well within an expected range.

In all, Mr. Trende’s analysis confirms that the Proposed Map does not violate the Constitution’s prohibition against partisan gerrymandering, as it “treats the parties fairly and proportionally, and the partisanship that it produces strongly resembles that produced from maps drawn without respect to politics.” Trende.Sen.Rem.Rep.8.

II. The Individual Districts

As an initial matter, Petitioners’ Proposed Senate Districts all comply with the “block-on-border” and “town-on-border” requirements in all possible instances providing that “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,” N.Y. Const. art. III, § 4(c)(6). Beyond this point, and the contiguity and equal-population requirements discussed above,

Petitioners' Senate Districts are all compact and contained as best as possible within county and municipality lines, while also reflecting communities of interest.

Senate District 1

Proposed Senate District 1 is a compact district on the east end of Long Island. It begins at the eastern-most part of New York and encompasses as much of Long Island as is needed to reach the population target. It is entirely contained in Suffolk County.

Senate District 2

Proposed Senate District 2 is a compact district on the north shore of Long Island. It is entirely contained in Suffolk County.

Senate District 3

Proposed Senate District 3 is a compact district on the south shore of Long Island. It is entirely contained in Suffolk County. Notably, the north-south division creating Districts 2 and 3 generally mimics the natural division of two very different communities.

Senate District 4

Proposed Senate District 4 is a compact district in western Suffolk County. It includes communities of interest on the shore of Suffolk County.

Senate District 5

Proposed Senate District 5 is a compact district on the north shore of Long Island. Contained in Suffolk and Nassau Counties, it includes the Town of Huntington and the northern part of the Town of Oyster Bay.

Senate District 6

Proposed Senate District 6 is a compact district on the south shore of Long Island. Primarily contained in Nassau County, it reaches into Suffolk County just enough to meet the population target.

Senate District 7

Proposed Senate District 7 is a compact district on the east side of Long Island. Entirely contained in Nassau County, it includes all of the Town of North Hempstead.

Senate District 8

Proposed Senate District 8 is a compact district in the middle of Long Island. It is entirely contained in Nassau County.

Senate District 9

Proposed Senate District 9 is a compact district on the south shore of Long Island. It is entirely contained in Nassau County.

Senate District 10

Proposed Senate District 10 is a compact district in central Long Island. Stretching west from Elmont to Jamaica in Queens, it is primarily contained in Queens County but adds a small part of Nassau County to reach its population target.

Senate District 11

Proposed Senate District 11 is a compact district in the Queens Borough of New York City. It is entirely contained in northeast Queens County.

Senate District 12

Proposed Senate District 12 is a compact district in the Queens Borough of New York City. It is entirely contained in Queens County.

Senate District 13

Proposed Senate District 13 is a compact district in the Queens Borough of New York City. It is entirely contained in Queens County.

Senate District 14

Proposed Senate District 14 is a compact district in the Queens Borough of New York City. It is entirely contained in Queens County.

Senate District 15

Proposed Senate District 15 is a compact district primarily in the Brooklyn Borough of New York City. It is contained in Kings County and a small portion of Queens County.

Senate District 16

Proposed Senate District 16 is a compact district in the Queens Borough of New York City. It is entirely contained in Queens County.

Senate District 17

Proposed Senate District 17 is a compact district in the northern Brooklyn area of New York City. It is entirely contained in Kings County.

Senate District 18

Proposed Senate District 18 is a compact district in Queens, New York City. It is entirely contained in Queens County.

Senate District 19

Proposed Senate District 19 is a compact district on the south shore of Brooklyn. It is primarily contained in Kings County with a small portion of Queens County for population purposes.

Senate District 20

Proposed Senate District 20 is a compact district in Brooklyn. It is entirely contained in Kings County.

Senate District 21

Proposed Senate District 21 is a compact district in Brooklyn. It is entirely contained in Kings County.

Senate District 22

Proposed Senate District 22 is a compact district on Staten Island. It is entirely contained in Richmond County.

Senate District 23

Proposed Senate District 23 is a compact district connecting the east side of Staten Island with the Bay Ridge neighborhood in Brooklyn across the Verrazzano-Narrows Bridge, which are historically connected communities. It is contained in Richmond and Kings Counties.

Senate District 24

Proposed Senate District 24 is a compact district in the heart of Brooklyn linking Bensonhurst and Borough Park and keeping an Orthodox Jewish community of interest together. It is entirely contained in Kings County.

Senate District 25

Proposed Senate District 25 is a compact district along the south shore of Brooklyn, containing Gravesend, Brighton Beach, and part of Sheepshead Bay. It connects Orthodox Jewish and Russian communities of interest. It is entirely contained in Kings County.

Senate District 26

Proposed Senate District 26 is a compact district connecting Sunset Park in Brooklyn with part of lower Manhattan to keep communities of interest together. It is contained in Kings County with a small portion of New York County.

Senate District 27

Proposed Senate District 27 is a compact district in Brooklyn. It is entirely contained in Kings County.

Senate District 28

Proposed Senate District 28 is a compact district in lower Manhattan. It is entirely contained in New York County.

Senate District 29

Proposed Senate District 29 is a compact district in Midtown Manhattan and the Upper West Side of New York City. It is entirely contained in New York County.

Senate District 30

Proposed Senate District 30 is a compact district primarily comprised of the Upper East Side of New York City. It is entirely contained in New York County.

Senate District 31

Proposed Senate District 31 is a compact district in Harlem in New York City. It is entirely contained in New York County.

Senate District 32

Proposed Senate District 32 is a compact district in the Upper Manhattan area. It is entirely contained in New York County.

Senate District 33

Proposed Senate District 33 is a compact district primarily situated in the Bronx with a small portion of New York County for population purposes.

Senate District 34

Proposed Senate District 34 is a compact district in the Bronx area. It is entirely contained in Bronx County.

Senate District 35

Proposed Senate District 35 is a compact district in the Bronx area. It is entirely contained in Bronx County.

Senate District 36

Proposed Senate District 36 is a compact district connecting the City of Mt. Vernon with Williams Bridge and Baychester—historically connected areas. It is contained in Westchester and Bronx Counties.

Senate District 37

Proposed Senate District 37 is a compact district connecting the Village of Pelham with the eastern shoreline in the Bronx—historically connected areas. It is contained in Westchester and Bronx Counties.

Senate District 38

Proposed Senate District 38 is a compact district in southern Westchester County. It includes the City of Yonkers, Town of Scarsdale, Eastchester, and part of New Rochelle.

Senate District 39

Proposed Senate District 39 is a compact district entirely contained in central Westchester County. It connects Greenburgh, the Town of Mount Pleasant, the City of White Plains, the Town of Rye, the town of Harrison, the City of Rye, and the Town of Mamaroneck.

Senate District 40

Proposed Senate District 40 is a compact district primarily in Dutchess County along with portions of Westchester and Putnam Counties.

Senate District 41

Proposed Senate District 41 is a compact district wholly contained in Rockland County.

Senate District 42

Proposed Senate District 42 is a compact district contained in parts of Rockland and Orange Counties and northwest Westchester County. It connects communities of interest along the Hudson River.

Senate District 43

Proposed Senate District 43 is a compact district wholly contained within Orange County.

Senate District 44

Proposed Senate District 44 is a compact district in the Catskill Mountain region. It is primarily contained in Ulster, Delaware, and Sullivan Counties, with a portion in Chenango County.

Senate District 45

Proposed Senate District 45 is a compact district that keeps Rensselaer and Columbia Counties whole, while reaching into Dutchess County to reach its population target.

Senate District 46

Proposed Senate District 46 is a compact district composed solely of Albany County.

Senate District 47

Proposed Senate District 47 is a compact district including the majority of Saratoga County, all of Fulton County, and portions of Schenectady and Montgomery Counties.

Senate District 48

Proposed Senate District 48 is a compact district in the Adirondacks. It contains all of Washington, Warren, Essex, Hamilton, Franklin, and Clinton Counties as well as portions of Saratoga County.

Senate District 49

Proposed Senate District 49 is a compact district in the Adirondacks. It contains all of St. Lawrence and Lewis Counties as well as portions of Herkimer and Oneida Counties.

Senate District 50

Proposed Senate District 50 is a compact district containing all of Madison County, the eastern part of Onondaga County, and a portion of Oneida County. It includes the City of Rome.

Senate District 51

Proposed Senate District 51 is a compact district comprised of all of Otsego, Schoharie, and Greene Counties as well as parts of Montgomery, Herkimer, Schenectady, and Chenango Counties.

Senate District 52

Proposed Senate District 52 is a compact district in western Onondaga County. It includes the City of Syracuse.

Senate District 53

Proposed Senate District 53 is a compact district containing all of Wayne and Otsego Counties and parts of Cayuga, Jefferson, and Onondaga Counties. It connects communities of interest along the shore of Lake Ontario.

Senate District 54

Proposed Senate District 54 is a compact district in the Southern Tier region. It connects all of Tioga, Cortland, and Broome Counties, with portions of Cayuga and Tompkins Counties.

Senate District 55

Proposed Senate District 55 is a compact district made up of all of the Southern Tier counties of Steuben, Yates, Schuyler, and Chemung, and the majority of Tompkins County.

Senate District 56

Proposed Senate District 56 is a compact district containing the eastern portion of Monroe County.

Senate District 57

Proposed Senate District 57 is a compact district containing the majority of Rochester, a distinct community of interest, and Greece in Monroe County.

Senate District 58

Proposed Senate District 58 is a compact district containing parts of Genesee, Monroe, and Cayuga Counties and all of Ontario and Seneca Counties.

Senate District 59

Proposed Senate District 59 is a compact district in the Southern Tier region. It combines all of Chautauqua, Cattaraugus, and Allegany Counties, with parts of Wyoming and Erie Counties for population purposes.

Senate District 60

Proposed Senate District 60 is a compact district containing all of Niagara and Orleans Counties, along with the western part of Monroe County. It keeps communities along the lake together.

Senate District 61

Proposed Senate District 61 is a compact district containing portions of Erie, Wyoming, and Genesee Counties.

Senate District 62

Proposed Senate District 62 is a compact district in Erie County. It contains the northern suburbs of Buffalo, which make up a community of interest.

Senate District 63

Proposed Senate District 63 is a compact district in Erie County. It contains parts of the City of Buffalo and the Town of Cheektowaga.

CONCLUSION

For the reasons set forth above, Petitioners respectfully request that the Special Master and this Court adopt Petitioners' Proposed Remedial Senate Map.

Dated: New York, New York

May 4, 2022

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CERTIFICATION

I hereby certify that the foregoing memorandum complies with the bookmarking requirement and word count limitations set forth in Rule 202.8-b of the Uniform Rules of Supreme and County Courts. *See* 22 NYCRR § 202.8-b. This memorandum contains 3,086 words, excluding parts of the document exempted by Rule 202.8-b(b).

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May 4, 2022

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