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

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

Dear Special Master Cervas:

We represent Senate Majority Leader Andrea Stewart-Cousins. We respectfully submit that you should adopt the enacted 2022 Senate plan (the “Enacted Plan”) in lieu of drawing or adopting a different plan. Images of the Enacted Plan are attached hereto as Exhibit 1. The technical data for the plan is available from LATFOR’s website: https://latfor.state.ny.us/maps/?sec=2022_senate.

As discussed in detail below, the Enacted Plan is a fair and neutral plan that outperforms other proposed plans in its adherence to constitutional criteria and the cleanliness of its lines. It corrects the significant regional malapportionment effectuated by the Senate Republican majority in 2012, addresses the population changes that occurred during the past decade, respects established communities of interest, is fair to racial and language minority groups, preserves counties, towns, and cities, draws compact districts, and complies with the mandatory Senate-specific town-splitting, town-on-border, and block-on-border rules. Moreover, unlike any other proposed plan, the Enacted Plan was thoroughly vetted and tested through adversarial litigation, and was adjudged to be substantively lawful by the Court in this case.

Adopting the Enacted Plan also would have significant practical benefits because candidates would not have to start the petitioning process over and the State therefore could avoid unnecessary additional confusion in this year’s election process. For all of these reasons, Assembly Speaker Carl Heastie joins this application, and the Legislature respectfully and jointly asks the Court to adopt the Enacted Plan.

Overview of the Enacted Plan

Redistricting any legislative body is a challenging task that requires balancing multiple factors, but redistricting the New York State Senate is particularly difficult because of arcane rules that apply only to that body. The New York Constitution explicitly prohibits splitting any town unless the population of the town is too large to fit within one Senate district (an issue that arises only on Long Island). N.Y. Const., art. III, §§ 4(a), (c)(6). The town-on-border and block-on-border rules require meticulous analysis of each district boundary to assess where population must be equalized. *Id.* Where those rules apply, a thorough equalization process must follow, and changes to one pair of districts often affect surrounding districts.

These Senate-specific factors must be applied in adherence to the other applicable rules, which require that legislative districts (a) avoid the denial or abridgement of racial or language minority voting rights, (b) ensure that racial and language minority 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, (c) consist of contiguous territory, (d) are as compact as practicable, (e) are not drawn to discourage competition or for the purpose of favoring or disfavoring incumbents or other particular candidates or political parties, (f) maintain the cores of existing districts, (g) unite communities of interest, and (h) consider pre-existing political subdivisions, including counties, cities, and towns. N.Y. Const., art. III, §§ 4(c)(1), (3), (4), (5). Additionally, districts must be equal in population to “the extent practicable” (except where the block-on-border rule requires strict equality). *See Brown v. Thomson*, 462 U.S. 835 (1983); *see also* N.Y. Const., art. III, § 4(c)(2).

The Enacted Plan satisfies each of these requirements in a fair, effective, and lawful manner. The Enacted Plan was challenged by Petitioners in this special proceeding and was subjected to rigorous adversarial testing – including a trial at which five different experts testified about the Enacted Plan – and was found by this Court to be substantively lawful. Petitioners did not appeal that decision.

The Enacted Plan corrects a 2012 plan that was an extreme partisan gerrymander. The Affidavit of Todd A. Breitbart, which was submitted in this litigation and is attached to this submission as Exhibit 2, explains that the Republican majority achieved its partisan gerrymander using at least three tools.¹

¹ This Court credited Mr. Breitbart’s affidavit and trial testimony about the validity of the Enacted Plan. In particular, Mr. Breitbart identified constitutional violations in the 2012 plan and explained how they were corrected in the Enacted Plan. The Court did not credit Mr. Breitbart’s explanation that the 2012 plan was the result of a pro-Republican gerrymander because the Court observed that the

First, the Republicans manipulated the constitutional formula for determining the size of the Senate to serve their partisan objectives. *Breitbart Aff.* ¶¶ 22-27. Second, they capitalized on the general rule that up to a ten percent total population deviation is presumptively acceptable to systematically under-populate upstate districts and overpopulate New York City and Long Island districts, which resulted in an extra district upstate and one too few districts downstate. *Id.* ¶¶ 28-32. Third, they gerrymandered individual districts to advance their partisan agenda. These tactics included packing and cracking minority communities, needlessly dividing towns and cities, and separating communities of interest. *Id.* ¶¶ 33-34. The combination of needing to correct the dramatic regional malapportionment in the 2012 plan and account for uneven population shifts throughout the State as recorded in the 2020 Census means that any 2022 redistricting plan must shift two Senate seats from the upstate region to the downstate region. *Id.* ¶¶ 43-47.

The Enacted Plan corrects these errors without injecting pro-Democrat partisan unfairness into the Senate map. It begins by prioritizing equal population, both between and among regions and districts, to ensure that each voter has an equal voice. The total population deviation between the most populous and least populous district in the Enacted Plan is 5,179 people, which is equal to 1.62% of the mean district population of 320,537. *Id.* ¶ 52. Beyond that exceptionally low total deviation, the average population deviation in the Enacted Plan is 0.33%, which is unusually and laudably low. The contrast between the Enacted Plan and 2012 plan is striking: in 2012, the total deviation was 8.8%, and the average deviation was 3.67%, more than ten times that in the Enacted Plan. These statistics can be found in the expert report of Dr. Michael Barber, which is attached hereto as Exhibit 3.

Assembly and executive branch were controlled by Democrats at the time. We respectfully disagree with the Court that the mere fact that the Assembly and Governor's mansion were controlled by Democrats in 2012 made it impossible that the 2012 Senate plan was a Republican gerrymander. It has never been disputed or questioned that the Senate Republicans exercised exclusive power over the Senate map in 2012 and prior redistricting cycles. In lawsuits challenging the State Senate gerrymanders in 2002 and 2012, this dynamic was expressly recognized by the courts and never denied by Senate Republicans. *See Favors v. Cuomo*, 285 F.R.D. 187, 203 (E.D.N.Y. 2012) ("It is undisputed that the 2012 Senate Plan 'was developed exclusively within the Senate [M]ajority redistricting office of LATFOR . . . work[ing] exclusively under the direction of Senate Majority Leader Skelos, LATFOR Co-Chair Senator Nozzolio, and Senators Skelos' and Nozzolio's Senate staff."); *Rodriguez v. Pataki*, 02 Civ. 618, 2003 WL 22109902, at *2 (S.D.N.Y. Sept. 11, 2003) ("Although the members and staff of LATFOR traveled throughout the state in 2001 to conduct public hearings, the Senate redistricting plan was developed exclusively within the confines of the Senate majority redistricting office, which did not share details of it with non-Republicans.").

The Enacted Plan also compares favorably to both proposed Commission plans with respect to population equality. Commission Plan A (“Plan A”) has a total population deviation of 2.5% and an average deviation of 0.52%; Commission Plan B (“Plan B”) has a total population deviation of 4.6% and an average deviation of 0.61%. The average deviation in Plan B is nearly twice the average deviation in the Enacted Plan.

The Enacted Plan corrects the 2012 regional malapportionment and achieves a historically low population deviation while still respecting the cores of existing districts to the greatest extent possible. The average core retention in the Enacted Plan is 69%. That is higher than the core retention in either Commission plan: Plan A has average core retention of 68%, and Plan B has average core retention of 66%.

The Enacted Plan splits 30 counties a total of 71 times. That is significantly fewer county cuts than Plan A, which splits 40 counties a total of 93 times. Plan B splits 24 counties a total of 72 times. While Plan B cuts fewer counties than the Enacted Plan, it ends up with one more total county split because it prioritizes protecting low-population counties while repeatedly and gratuitously cutting counties with larger populations. As explained below, this dynamic reflects a partisan purpose because the larger counties generally favor Democrats. Plan B splits such counties across districts for the purpose of cracking Democratic voters.

The Enacted Plan’s compactness scores are similar to the Commission plans. The Enacted Plan’s average Polsby-Popper compactness score is .278, its average Convex Hull score is .703, and its average Schwartzberg score is .520. Plan A is nearly identical, with a Polsby-Popper average of .275, a Convex Hull average of .746, and a Schwartzberg average of .517. Plan B scores slightly better, with a Polsby-Popper average of .314, a Convex Hull average of .746, and a Schwartzberg average of .551. Each of these plans is more compact than the 2012 plan, which had a Polsby-Popper average of .229, a Convex Hull average of .679, and a Schwartzberg average of .462.

The Enacted Plan is fair to racial and language minorities. It avoids the intentional cracking of minority communities that permeated the 2012 plan and remains a feature in Plan B. For example, Plan B continues to crack minority communities in the Towns of Islip and Babylon on Long Island. The Enacted Plan also contains a comparable, though slightly greater, number of majority-minority districts. The Enacted Plan has 26 majority non-White districts, whereas the Commission plans each have 24 majority non-White districts and the 2012 plan currently results in 21 such districts. The Enacted Plan has four majority-Black districts, four majority-Hispanic districts, and one majority-Asian district. Plan A has five majority-Hispanic districts, five majority-Black districts, and one majority-

Asian district. Plan B has four majority-Black districts, five majority-Hispanic districts, and one majority-Asian district.

The Enacted Plan satisfies these criteria and achieves many improvements over the 2012 plan and proposed Commission plans while also respecting the constitutional prohibition on partisan gerrymandering. In this litigation, the Senate submitted an unrebutted expert report from Dr. Jonathan Katz, a leading professor of statistics at Caltech. Using the same methodology that Dr. Katz has used in dozens of other cases (more often than not, Dr. Katz testifies on behalf of Republicans), Dr. Katz conducted a thorough and rigorous analysis of the partisan fairness of the Enacted Plan and concluded that there is no statistically significant evidence of partisan bias in the Enacted Plan, and that if anything the Enacted Plan is slightly biased in favor of Republicans. Dr. Katz's report is attached hereto as Exhibit 4.

As noted above, the Senate also submitted testimony from Todd Breitbart, a leading expert on Senate redistricting who spent decades working professionally on Senate redistricting plans. Mr. Breitbart provided critical background about the 2012 plan, the baseline from which the Enacted Plan was drafted. He also addressed each district about which Petitioners' purported expert Claude LaVigna complained, and explained why Mr. LaVigna's criticisms were unfounded and the districts adhere to neutral constitutional criteria.

District-By-District Analysis

Long Island Districts

All of the Long Island and New York City districts in the Enacted Plan are equally populated within two votes of one another and to a maximum deviation of approximately 800 people from the ideal district size, which is a deviation of less than 0.3%. In addition to correcting for the gross regional malapportionment in the 2012 plan, this equalization across the downstate districts avoids sending New York City districts further into Westchester in a way that would upset the cores of the New York City districts and the suburban districts to their north.

The Enacted Plan contains only one district crossing between Nassau and Suffolk counties, whereas the 2012 plan had two such districts. The Town of Huntington remains wholly within one district in the Enacted Plan; the 2012 plan and Plan A needlessly divide the Town of Huntington in violation of the mandatory rule against splitting towns.

District 1

District 1 was overpopulated by more than 21,000 people following the 2020 Census. Enacted District 1 preserves the core of the district while shedding the necessary population and uniting the Hamptons/East End towns with similar communities on the North Shore. Plan A similarly includes a portion of Brookhaven in this district, but in a significantly less compact way. (Brookhaven has too much population to be kept whole in any single district.)

District 2

Enacted District 2 preserves Smithtown as the core of the district and respects the constitutional mandate to keep towns whole and minimize county splits. This proposed district no longer juts out unnecessarily to split the Town of Huntington. The district is entirely within Suffolk County. Plan A continues to split Huntington.

District 3

Enacted District 3 has a similar shape to the previous district, and it unites communities of interest in Brentwood and Islip. Brentwood, which had previously been split, is now entirely within proposed District 3. The growing Hispanic communities in Baywood, North Bay Shore, and Bay Shore are united in this proposed district with similar communities in Brookhaven and Central Islip. Plan B continues to crack these minority communities, following a longstanding pattern in Republican Senate plans. *Breitbart Aff.* ¶¶ 34, 62-64. This proposed district is considerably more compact than its predecessor, and it cuts the Town of Islip only once (in contrast to its three cuts in the 2012 plan).

District 4

Enacted District 4 uncracks the prior racial gerrymander of Hispanic communities and unites South Shore communities of interest in Suffolk and Nassau Counties, including parts of Massapequa.

District 5

Enacted District 5 is entirely within Suffolk County, includes the whole Town of Huntington, and unites communities of interest in the Town of Babylon, such as Amityville and Wyandanch. The 2012 plan and both Commission plans include parts of Nassau and Suffolk Counties in District 5.

District 6

Enacted District 6 includes the northern part of the Town of Oyster Bay, which must be divided for population reasons. This population must be added because of the loss of population from Huntington that results from Huntington being kept whole in District 5. In addition, Enacted District 6 respects minority voting power by uniting South Asian communities and protecting the minority plurality's ability to elect the candidate of its choice.

District 7

Enacted District 7 is little changed from its predecessor and remains a compact district. It maintains its core in the Town of North Hempstead, which is kept whole, and unites the well-defined community of Elmont, which had previously been split across two districts.

District 8

Enacted District 8 is now entirely contained within Nassau County, eliminating a county boundary crossing in the 2012 plan. This district keeps the historically Black and Hispanic communities of interest in Freeport and Roosevelt united.

District 9

Enacted District 9 remains a Long Beach-centered district while correcting a prior racial gerrymander in the Lakeview area that unnecessarily divided communities of interest. This proposed district is considerably more compact than the 2012 version.

District 10

Enacted District 10 is an extremely compact district that unites Jewish communities of interest in Nassau County and the Rockaways while avoiding retrogression of minority voting power in the district. To achieve minimal population deviation in this region, this district's need to gain population resulted in uniting the Five Towns communities with similar communities on the other side of the Queens-Nassau border. The Commission plans were able to prevent a Nassau County boundary crossing by over-populating the Long Island districts.

New York City Districts

Historically Black, Hispanic, and Asian communities are kept united throughout New York City to avoid retrogression of minority voting power. The

New York City districts are cleaner and more compact than the 2012 lines. *See* Breitbart Aff. ¶ 77. The districts in New York City also unite communities of interest in new districts that are created along the Brooklyn-Queens border to correct the regional malapportionment from 2012 and account for population growth in the downstate area. These districts reflect the significant population growth in these areas since the 2010 Census.

District 11

Enacted District 11 was not challenged by Petitioners in this litigation. The district unites Asian-American communities in downtown Flushing with Queens neighborhoods to the east that mirror population trends in the area. This proposed district is significantly more compact than the 2012 plan, whose squiggly lines demonstrate an obvious gerrymander. This proposed district is also considerably more compact than the versions in both Commission plans.

District 12

Enacted District 12 was not challenged by Petitioners in this litigation. The proposed district maintains its Astoria core while shedding population in less affiliated communities to the southeast in order to help create a Brooklyn-Queens border district that unites multiple communities of interest. Following the 2020 Census, this district was considerably overpopulated, and the proposed version is more compact than the bizarrely drawn version in the 2012 plan. Like both Commission plans, this proposed district includes some portions of Manhattan.

District 13

Enacted District 13 was not challenged by Petitioners in this litigation. It retains largely the same lines as its predecessor district, and maintains its status as a performing majority-Hispanic district while minimizing population deviation. This district removes some parts of Elmhurst to unite them with similar Asian-American communities.

District 14

Enacted District 14 was not challenged by Petitioners in this litigation. It is an extremely compact district that retains largely the same lines as its predecessor. It maintains its core as a historically Black district in southeast Queens, while losing blocks on its fringes that unnecessarily split communities of interest.

District 15

Enacted District 15 was not challenged by Petitioners in this litigation. The proposed district unites the South Asian communities in Ozone Park and South Ozone Park and corrects the previous unnecessary splits of communities in the eastern part of the Rockaways and east of the Van Wyck Expressway.

District 16

Enacted District 16 was not challenged by Petitioners in this litigation. This district unites Elmhurst with the growing Asian communities further east and more cleanly unites communities of interest along Union Turnpike and in College Point and Whitestone. It also corrects the 2012 plan's egregiously squiggly lines.

District 17

Enacted District 17 was not challenged by Petitioners in this litigation. This district unites diverse communities of interest along the Brooklyn-Queens border, taking in areas where population growth has been most significant.

District 18

Enacted District 18 was not challenged by Petitioners in this litigation. This district maintains its core in Bushwick and most of its previous shape while more cleanly uniting communities of interest without unnecessary jagged lines weaving in and out of neighborhoods.

District 19

Enacted District 19 was not challenged by Petitioners in this litigation. This compact district maintains much of its current shape and preserves minority voting power in this historically Black Brooklyn district.

District 20

Enacted District 20 was not challenged by Petitioners in this litigation. This considerably more compact district maintains its core while losing blocks in Sunset Park that were part of an egregious gerrymander of that community.

District 21

Enacted District 21 was not challenged by Petitioners in this litigation. This district is much more compact and preserves minority voting power in a historically Black district.

District 22

Enacted District 22 maintains its Bay Ridge/Dyker Heights core, while accommodating the unification of the Chinese communities in Sunset Park and South Brooklyn in proposed District 27. This district also adds new areas in northwest Brooklyn to unite them with communities of interest in southern Brooklyn.

District 23

Enacted District 23 was not challenged by Petitioners in this litigation. This district maintains its core in Staten Island and its foothold in Coney Island while also taking in additional waterfront communities in northwest Brooklyn. In addition, this proposed district sheds blocks in Sunset Park as part of the effort to undo the prior gerrymander of that community.

District 24

Enacted District 24 was not challenged by Petitioners in this litigation. This district maintains much of its current lines and remains an entirely Staten Island-based district.

District 25

Enacted District 25 was not challenged by Petitioners in this litigation. This district is much more compact than its predecessor and maintains its Bedford-Stuyvesant core while preserving the Black community's voting power. This district also sheds blocks in Sunset Park as part of the effort to undo the gerrymander of that community.

District 26 (former District 17)

Enacted District 26 was not challenged by Petitioners in this litigation. This district continues to unite predominantly Orthodox Jewish communities of interest in Brooklyn located in Borough Park, Midwood, and Sheepshead Bay.

District 27

Enacted District 27 was not challenged by Petitioners in this litigation. This proposed district is one of the two districts that resulted from correcting the prior regional malapportionment. It unites the growing Chinese-American communities in Kensington, Sunset Park, Dyker Heights, Bensonhurst, and Gravesend.

District 28

Enacted District 28 was not challenged by Petitioners in this litigation. This district cleanly unites communities of interest on the East Side of Manhattan below 92nd Street.

District 29 (former District 26)

Enacted District 29 was not challenged by Petitioners in this litigation. This district is now entirely within Manhattan, eliminates an unnecessary crossing between boroughs, and unites all of lower Manhattan in one district.

District 30 (former District 27)

Enacted District 30 was not challenged by Petitioners in this litigation. This district cleanly unites communities of interest on the West Side of Manhattan below 81st Street.

District 31 (former District 29)

Enacted District 31 was not challenged by Petitioners in this litigation. This district maintains its South Bronx core and unites that core with East Harlem while shedding the 2012 district's unnecessary movement into the West Side of Manhattan.

District 32 (former District 30)

Enacted District 32 was not challenged by Petitioners in this litigation. This district is mostly unchanged with 84% core retention. The district maintains its core in Harlem, and preserves minority voting power of the Black community.

District 33 (former District 31)

Enacted District 33 was not challenged by Petitioners in this litigation. This district maintains much of its previous shape, taking in communities along the waterfront on the West Side of Manhattan while no longer unnecessarily cutting into neighborhoods in Midtown Manhattan and further south.

District 34 (former District 32)

Enacted District 34 was not challenged by Petitioners in this litigation. This district maintains the core of this historically Hispanic district and preserves Hispanic voting power while making the district considerably more compact.

District 35 (former District 33)

Enacted District 35 was not challenged by Petitioners in this litigation. This district maintains and preserves minority voting power in this historically Hispanic district while more cleanly uniting communities of interest.

Hudson Valley/Capital Region

The Enacted Plan corrects the unnecessary splitting of cities throughout Westchester County, including of the City of White Plains, the City of New Rochelle, and the City of Yonkers, to create significantly more compact districts than the 2012 plan. In addition, Ulster County, which was split among four districts in the 2012 plan, is united within one district.

District 36 (former District 34)

Enacted District 36 was not challenged by Petitioners in this litigation. This district maintains the core of the existing district while no longer unnecessarily splitting communities of interest in the South Bronx.

District 37 (former District 35)

Enacted District 37 was not challenged by Petitioners in this litigation. This district maintains its core in Yonkers and Greenburgh while taking in towns further north to undo the gerrymandering of New Rochelle and White Plains. This proposed district retains a few blocks within White Plains to comply with the block-on-border requirements. Breitbart Aff. ¶ 82.

District 38 (former District 36)

Enacted District 38 was not challenged by Petitioners in this litigation, and it maintains nearly all of its existing lines (its core retention is 94%).

District 39 (former District 37)

Enacted District 39 was not challenged by Petitioners in this litigation. This district maintains its core as a Sound Shore district while now taking in the entire City of New Rochelle, which had previously been divided.

District 40 (former District 38)

Enacted District 40 was not challenged by Petitioners in this litigation, and it is identical to former District 38 (its core retention is 100%, and it maintains exactly the same territory).

District 41 (former District 39)

Enacted District 41 maintains its core in northeastern Orange County while uniting communities of interest in Newburgh, Middletown, and Haverstraw. It also unites communities of interest across from one another along the Hudson River. Breitbart Aff. ¶ 85.

District 42 (former District 40)

Enacted District 42 maintains its core in northern Westchester County while taking nearly the entire City of White Plains and shedding the parts of Dutchess County that had previously been included in the district. Breitbart Aff. ¶ 82.

District 43 (former District 41)

Enacted District 43 was not challenged by Petitioners in this litigation. This district maintains its core in Dutchess County while taking in communities of interest along the Connecticut and Massachusetts borders.

District 44 (former District 42)

Enacted District 44 maintains much of its footprint in Orange County while uniting Sullivan and Delaware Counties. Delaware County had previously been split across three districts, and it is now kept whole in District 44. Breitbart Aff. ¶ 87.

District 45 (former District 44)

Enacted District 45 was not challenged by Petitioners in this litigation. This district maintains its core in the City of Albany and surrounding suburbs, including Rensselaer, which is part of the same metropolitan area. This district also unites other Rensselaer County towns that face Albany County along the river.

District 46 (former District 43)

Enacted District 46 unites three principal capital region cities – Schenectady, Troy, and Saratoga Springs – without dividing any of them. In the 2012 plan, all three of those cities were divided.

Upstate Districts

The Enacted Plan accomplishes several goals throughout the upstate region, in addition to correcting the previous regional malapportionment. In particular, it reduces considerably the number of times counties are split, for example by uniting

Tompkins County in one district instead of three and by eliminating three of six prior splits of Monroe County. The City of Rochester is no longer divided across three districts.

District 47 (former District 45)

Enacted District 47 was not challenged by Petitioners in this litigation. Along with proposed District 50, this district preserves its core and unites the North Country in two districts instead of four to correct the previous gerrymander.

District 48 (former District 46)

Enacted District 48 unites Ulster County in one district while also uniting communities of interest on either side of the Hudson River. It retains parts of suburban and exurban Albany County as well. Proposed District 48 is the most populous district in the Enacted Plan, with a total deviation of 1.33% above the statewide mean.

District 49 (former District 47)

Enacted District 49 was not challenged by Petitioners in this litigation. This district maintains its core in Rome, while keeping Oswego County whole.

District 50 (former District 48)

Enacted District 50 keeps St. Lawrence County whole, whereas it was previously divided among three districts in the 2012 plan. Along with proposed District 45, this district preserves its core and unites the North Country in two districts instead of four to correct the previous gerrymander.

District 51 (former District 49 and former District 51)

Former District 51 was the most underpopulated of all 63 districts in the 2012 plan, needing to gain approximately 45,000 people. The total deviation between District 51 and the most overpopulated district in the 2012 plan under 2020 Census data is more than 102,000 people, or 32%. Enacted District 51 is a compact district that unites rural communities in upstate New York while keeping Schoharie, Chenango, and Otsego Counties whole. This is one of two district combinations in upstate New York that were necessary to correct the regional malapportionment and accommodate population growth downstate.

District 52 (former District 50)

Enacted District 52 unravels the previous gerrymander of the City of Syracuse and its suburbs to create a more compact district while keeping the City of Auburn entirely within its boundaries. Breitbart Aff. ¶ 95.

District 53 (former District 52)

Enacted District 53 places the college-centered communities of Ithaca and Binghamton into one district. Both Commission plans also unite these communities. Tompkins County – which had previously been divided across three districts – is kept whole in proposed District 53. The only non-compact feature of this proposed district is the exclusion of the Town of Berkshire in Tioga County, which is due to adherence to the town-on-border rule. Breitbart Aff. ¶ 96.

District 54

Enacted District 54 unites rural communities in the Finger Lakes and along Lake Ontario while keeping as many counties as possible whole within one district. This district also reduces previous cuts into Monroe County.

District 55 (former District 53)

Enacted District 55 was not challenged by Petitioners in this litigation. This district unites the cities of Syracuse and Utica while taking in a number of college towns with common interests including Cortland, Clinton, Cazenovia, Eaton, and Hamilton. This proposed district is the least populous district in the proposed Plan, but its total population deviation is only .29% below the statewide mean.

District 56 (former District 55)

Enacted District 56 is now wholly contained within Monroe County. It includes parts of the City of Rochester and its surrounding suburbs to the east. Together with Enacted District 57, this district undoes the extreme gerrymander of Rochester in the 2012 plan, which cracked the Black community in Rochester into three districts. Breitbart Aff. ¶ 99.

District 57 (former District 56)

Enacted District 57 is also wholly contained within Monroe County and includes parts of the City of Rochester and its surrounding suburbs on the west side. Together with proposed District 56, the proposed district undoes the extreme gerrymander of Rochester in the 2012 plan, which cracked the Black community in Rochester into three districts. *Id.*

District 58 (former District 57)

Enacted District 58 unites Southern Tier communities of interest and keeps all counties whole except for Erie County. It is an extremely compact district with a Polsby-Popper score of .508.

District 59 (former District 58)

Enacted District 59 unites Southern Tier and Finger Lakes communities of interest and keeps counties whole to the extent practicable. It is virtually identical to the versions in both Commission plans.

District 60

Enacted District 60 largely maintains its previous shape and unites the City of Buffalo with the City of Niagara Falls. This was the configuration in the 1992 and 2002 redistricting cycles, and it unites similar industrial areas.

District 61 (former District 59)

Enacted District 61 was not challenged by Petitioners in this litigation. This district is entirely within Erie County and unites suburbs and exurbs of the City of Buffalo.

District 62

Enacted District 62 unites communities of interest along Lake Ontario.

District 63 (former District 61 and former District 63)

Enacted District 63 unites parts of the City of Buffalo, keeps communities of interest together, and combines Buffalo with the neighboring Town of Amherst and the City of Lackawanna. This district undoes the previous connection of Buffalo suburbs with far-away Rochester. This is the second joinder of upstate districts required to achieve reasonable population equality.

Comparison of the Enacted Plan to Other Proposed Plans

Beyond its overall positive features and the merits of each of its districts, the Enacted Plan also compares favorably to other proposed plans in a variety of ways. We briefly compare the Enacted Plan to four such plans here: the two Commission plans, the Empire Center Plan, and the Unity Map Coalition's proposed Unity Map.

Comparison to Commission Plan A

Commission Plan A splits many more counties than the Enacted Plan. Whereas the Enacted Plan splits 30 counties a total of 71 times, Plan A splits 40 counties 93 times. Plan A also draws a number of districts that are inexplicably large and that span an excessive number of counties. For example, District 48 in Plan A spans a remarkable 14 counties, stretching from Newark Valley in Tioga County to Fort Drum in Jefferson County via Herkimer County in a highly non-compact district. District 47 stretches from Ulster County to Hamilton County, taking in nine counties along the way. District 58 meanders from the southern border to Lake Ontario, taking in ten counties. By contrast, no district in the Enacted Plan contains more than eight counties. There are many other examples of strange and non-compact districts in Plan A, like District 51 and the four districts that split Onondaga County and then head off in various directions.

Plan A also violates mandatory constitutional rules. For example, it splits the Town of Huntington on Long Island, and it violates the block-on-border rule in Districts 10 and 15 in Queens, which unlawfully vary by more than 3,500 people, and in Districts 62 and 63 upstate, which share the border city of Niagara Falls but differ in population by almost 6,000 people.

Plan A also raises concerns about retrogression of minority voting power. For example, District 28, which is most analogous to old District 12, is no longer a majority-minority district, and District 11 suffers a reduction in its share of Asian population. Plan A corrects the unlawful, historical cracking of the Hispanic community in Islip, but it preserves the prior split of the minority community in Babylon between Districts 4 and 8.

Plan A continues to split cities in Westchester County. New Rochelle is split in Plan A but kept whole in the Enacted Plan, and White Plains is split in Plan A but kept whole in the Enacted Plan other than adjustments that are required for block-on-border compliance.

Comparison to Commission Plan B

As a threshold matter, Plan B was not the work of an independent, neutral body. All of the Republican commissioners appointed by the legislative Republicans are themselves former Republican legislators, many of whom were actively involved in redistricting while in office. The Republican Vice Chair of the Commission, Jack Martins, served in that role while operating with the flagrant conflict that he was planning a run for office and focused on drawing himself an advantageous district in which to do so. Vice Chair Martins is currently running for State Senate in Enacted District 7. See <https://tinyurl.com/2p958w8z>. In Plan B, Vice Chair Martins' custom-designed District 7 removes the Black community of Elmont, which directly

and significantly lowers the Democratic performance of the district. By contrast, the Enacted Plan keeps the community of Elmont whole in District 7, thereby remedying the cracking of that community under prior Republican plans. It is notable that in addition to attempting to draw himself a politically advantageous district, Vice Chair Martins also led the bloc of Republican commissioners that denied the Commission a quorum to vote on a second proposed plan or plans to present to the Legislature, thereby extinguishing the Legislature's power to act. Vice Chair Martins strategically drew himself a desirable district and then set up and executed a scenario in which a court or special master would be empowered to effectuate his ultimate plan of implementing that district.

Plan B is an obvious partisan gerrymander in other respects as well. Even though the population loss in New York State occurred upstate, and even though the Republican-leaning upstate districts currently are so underpopulated that they have more than a full district more than their populations support (nine of the ten most underpopulated districts under the 2012 map presently have Republican incumbents), Plan B pairs no Republican incumbents and yet pairs twelve Democratic incumbents in six districts, including four Democratic incumbents who are non-White. By contrast, the Enacted Plan pairs only two sets of Republican incumbents, in one case in a district combination that includes the most underpopulated district in the State, District 51, and in another case to correct the longstanding and unlawful racial gerrymander in Islip. Plan B also pairs Democratic and Republican incumbents in two upstate districts that retain only around one third of the Democrats' constituents. The only Democrat-Republican pair in the Enacted Plan came as a direct consequence of uniting the populous Buffalo suburb of Amherst with the City of Buffalo, thus correcting the previous egregious gerrymander of the district that connected Amherst with far-away Rochester. Moreover, the two upstate districts targeted for elimination in Plan B in order to create new districts downstate are both urban/suburban districts that *grew in population* over the past decade and now have significant portions being attached to far-flung rural regions. The only possible basis for selecting these districts for elimination was that they are represented by Democrats.

As if this pattern did not provide sufficient proof of invidious partisan intent, perhaps the most punitive act in Plan B is that it specifically targets and obliterates the district represented by Deputy Majority Leader Michael Gianaris, the Senate Democrats' LATFOR appointee and the second highest ranking Democrat in the Senate. Plan B splits Senator Gianaris' district into *six* different districts, and he is drawn into a district where he is paired with the only Asian incumbent in New York City. These changes make no sense from a population perspective and reflect petty political maneuvers that are nakedly unlawful and anathema to the notion of a fair redistricting body.

Another partisan feature of Plan B – albeit more subtle – is how it handles county splits. As noted above, Plan B splits only 24 counties, which is fewer than other proposed plans. But despite doing so, it has more total county splits than the Enacted Plan (72 instead of 71). That is because Plan B goes out of its way to protect Republican-leaning counties while gratuitously splitting counties with larger numbers of Democratic voters. For example, Plan B splits Ulster County three times, whereas the Enacted Plan keeps it whole. Plan B also splits Erie, Monroe, Kings, and New York Counties more times than the Enacted Plan. These are among the most heavily Democratic counties in New York.

Plan B packs Democrats into a Rochester district, District 56, the most overpopulated district in the plan. The district contains 10,506 voters more than the ideal district, a deviation of 3.278%. Beyond the obvious political implications of this packing, the district blatantly violates the block-on-border rule. The City of Rochester is on the border of District 56 and District 55, which is the most underpopulated district in the plan. The populations of these districts should have been equalized, and the large population disparity is a fatal constitutional defect. As explained above, this district-specific population equality problem is part of a broader pattern, in which Plan B proposes districts that deviate significantly more in population than the districts in the Enacted Plan.

Plan B also openly disregards the constitutional principle requiring racial fairness. Plan B perpetuates the longstanding crack of the Hispanic community in the Town of Islip, which is divided between Senate Districts 3 and 4. *Breitbart Aff.* ¶¶ 62-64. Senate Districts 4 and 8 also crack the minority communities in the Town of Babylon. In each instance, these communities of interest are united in the Enacted Plan (in Districts 3 and 5, respectively). In District 6, Plan B packs minority voters into a district that is still more than 50% White according to the numbers provided in the Commission’s report. Despite packing these minority voters, the district manages to draw the only non-White Senator on Long Island out of the district. In Queens, Plan B transforms District 11 from plurality Asian to plurality White, and after doing so, it reaches down a couple of blocks and out of its regular shape to grab the Democratic incumbent, the only Asian Senator representing New York City, to pair him with another Democratic incumbent.

Comparison to the Empire Center Plan

The Empire Center Plan is a naked pro-Republican gerrymander with an even sharper political imbalance than Plan B. This proposed plan inexplicably combines twelve pairs of Democratic incumbents and zero pairs of Republican incumbents. It also pairs three other Democrats with Republican incumbents in districts in which a majority voted for Donald Trump. In total, 27 of 43 incumbent Democrats are paired with one another or with a Republican in a Republican-friendly district, while every Republican incumbent is protected. On Long Island,

four out of five Democratic incumbents are now in districts that shifted heavily toward Trump from the 2012 districts, and a new, incumbent-less Long Island district is created that is heavily pro-Trump. This egregious pattern of incumbent pairings and partisan shifts – grafted onto a 2012 plan that was drawn by Republicans, and already favored that party – is evidence that the plan should be disregarded in its entirety.

The Empire Center Plan also raises extremely serious concerns about racial fairness, eliminating a Hispanic plurality district in Brooklyn and failing to create an Asian plurality district in Brooklyn that the Enacted Plan and both Commission plans create. Across multiple districts, there are significant disruptions to minority communities, which consistently have low core retention numbers.

Finally, the Empire Center Plan violates the mandatory anti-town splitting rule in Mamaroneck, Barton, Greenburgh, and Mount Pleasant, and it appears to violate the block-on-border rule in Syracuse, Saratoga Springs, and Newburgh.

In sum, the Empire Center Plan is an illegal, extreme pro-Republican gerrymander. It merits no consideration.

Comparison to the Unity Map Coalition Plan

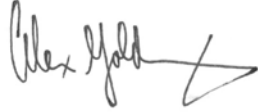
The Legislature shares the Unity Map Coalition’s goal of protecting minority voting power and respecting federal law and state constitutional requirements regarding the rights of racial and language minority groups. The Legislature has valued the input of the Unity Map Coalition throughout the redistricting process, but its proposed Senate Plan is not a usable starting point for this remedial process for at least three reasons. First, the plan draws districts only for New York City, and therefore simply avoids many of the challenges in drawing a statewide map. Second, the plan appears to violate the block-on-border rule in many if not all instances, by proposing districts that are not equal in population. Third, all of the proposed districts in the plan vary below the mean statewide district population by at least 4,000 people. Especially when aggregated over the entire proposed plan, these deviations would result in a significant and unfair regional malapportionment.

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In summary, the Enacted Plan is a fair, well-constructed map that is superior to other plans in its adherence to neutral redistricting criteria, and reflects no partisan bias. The Enacted Plan achieves exceptionally low population deviations while still retaining a greater proportion of former district cores than either Commission plan. It is the only plan that has been subjected to rigorous scrutiny

and upheld after a multi-day trial. We respectfully submit that you should adopt the Enacted Plan as your plan for the New York State Senate.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Alex Gold", with a stylized flourish extending to the right.

Alexander Goldenberg

cc: All Counsel of Record