UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

MARK A. FAVORS, HOWARD LEIB, LILLIE H. GALAN, EDWARD A. MULRAINE, WARREN SCHREIBER, and WEYMAN A. CAREY,

Plaintiffs,

and

DONNA KAY DRAYTON, EDWIN ELLIS, AIDA FORREST, GENE A. JOHNSON, JOY WOOLLEY, and SHELIA WRIGHT,

Plaintiff-Intervenors,

and

LINDA LEE, SHING CHOR CHUNG, JULIA YANG, JUNG HO HONG,

Plaintiff-Intervenors,

and

JUAN RAMOS, NICK CHAVARRIA, GRACIELA HEYMANN, SANDRA MARTINEZ, EDWIN ROLDAN, MANOLIN TIRADO,

Plaintiff-Intervenors,

and

LINDA ROSE, EVERET MILLS, ANTHONY HOFFMANN, KIM THOMPSON-WEREKOH, CARLOTTA BISHOP, CAROL RINZLER, GEORGE STAMATIADES, JOSEPHINE RODRIGUEZ, and SCOTT AUSTER,

Plaintiff-Intervenors,

v.

ANDREW M. CUOMO, as Governor of the State of New York, ROBERT J. DUFFY, as President of the Senate of the State of New York, DEAN G. SKELOS, as Majority Leader and President Pro Tempore of the Senate of the State of New York, SHELDON SILVER, as

Case No. 1:11-cv-05632 (DLI)(RR)(GEL)

MEMORANDUM ON PROPOSED MAP AND ITS COMPLIANCE WITH REDISTRICTING PRINCIPLES

Speaker of the Assembly of the State of New York, JOHN L. SAMPSON, as Minority Leader of the Senate of the State of New York, BRIAN M. KOLB, as Minority Leader of the Assembly of the State of New York, the NEW YORK STATE LEGISLATIVE TASK FORCE ON DEMOGRAPHIC RESEARCH AND REAPPORTIONMENT ("LATFOR"), JOHN J. McENENY, as Member of LATFOR, ROBERT OAKS, as Member of LATFOR, ROMAN HEDGES, as Member of LATFOR, MICHAEL F. NOZZOLIO, as Member of LATFOR, MARTIN MALAVE DILAN, as Member of LATFOR, and WELQUIS R. LOPEZ, as Member of LATFOR,

Defendants.

As directed by the Court at the hearing on February 27, 2012, Dkt. # 129, Plaintiff-Intervenors Linda Rose, Everet Mills, Anthony Hoffmann, Kim Thompson-Werekoh, Carlotta Bishop, Carol Rinzler, George Stamatiades, Josephine Rodriguez, and Scott Auster ("Plaintiff-Intervenors") submit the attached proposed congressional redistricting map and this brief explaining why the map complies with federal law and longstanding redistricting principles.

I. REDISTRICTING LAW AND NEW YORK REDISTRICTING HISTORY

The New York Constitution does not address congressional redistricting, and no New York statute establishes principles for congressional redistricting. Therefore, Plaintiff-Intervenors' proposed map, and this brief, are based on the federal rules governing redistricting and the traditional redistricting principles used by this Court and other courts when called upon in the past to adopt redistricting plans.

New York federal courts have significant experience with redistricting, experience that has helped shape Plaintiff-Intervenors' proposed map and should guide the Court's actions here. After the 2000 census, the Assembly and Senate initially deadlocked over congressional redistricting, and a three-judge panel in the Southern District of New York developed a plan to use in case the Legislature failed to reach agreement by the election filing deadline. *See*

Rodriguez v. Pataki, No. 02-618, 2002 WL 1058054 (S.D.N.Y. May 24, 2002). The Legislature then adopted a plan somewhat similar to the Court's plan, and the Court withdrew its plan. *See Rodriguez v. Pataki*, 308 F. Supp. 2d 346 (S.D.N.Y. 2004). The Court later upheld the Legislature's plan against various legal challenges. *See id.*

Similarly, after the 1990 census, the Legislature initially deadlocked over congressional redistricting. *See Puerto Rican Legal Def. & Educ. Fund, Inc. v. Gantt*, 796 F. Supp. 681 (E.D.N.Y. 1992) ("*PRLDEF*"). A three-judge panel of this Court crafted an alternative plan to use if the Legislature failed to adopt one in time. *See id.* Ultimately, however, the Legislature adopted its own plan. *See Diaz v. Silver*, 978 F. Supp. 96, 99 (E.D.N.Y. 1997), *aff'd* 522 U.S. 801 (1997). This Court later rejected one congressional district in the Legislature's plan as drawn based predominantly on race, in violation of the Fourteenth Amendment. *See id.* at 131.

From these decisions and those of other courts across the country, several key principles emerge to guide this Court. To begin with, the Court's redistricting plan must use as a starting point the last plan adopted by the Legislature, i.e., the plan adopted in 2002. "When faced with the necessity of drawing district lines by judicial order, a court, as a general rule, should be guided by the legislative policies underlying the existing plan, to the extent those policies do not lead to violations of the Constitution or the Voting Rights Act." *Abrams v. Johnson*, 521 U.S. 74, 79 (1997). Moreover, "[i]n fashioning a remedy in redistricting cases, courts are generally limited to correcting only those [illegal] aspects of a state's plan." *Johnson v. Miller*, 922 F. Supp. 1556, 1559 (S.D. Ga. 1995), *aff'd sub nom. Abrams*, 521 U.S. 74 (citing *Upham v. Seamon*, 456 U.S. 37 (1982)). Thus, the Court may not start from scratch and simply craft the plan it likes best; instead, the Court should start from the last lawful plan enacted by the Legislature (in 2002) and make those changes necessary to bring that plan into compliance with the law based on the new census data. *See, e.g., id.*; *White v. Weiser*, 412 U.S. 783, 795 (1973)

("In fashioning a reapportionment plan or in choosing among plans, a district court should not . . . intrude upon state policy any more than necessary.") (internal quotation marks omitted); *see also Below v. Gardner*, 963 A.2d 785, 794-95 (N.H. 2002) ("The goal of the court's plan is to remedy the constitutional deficiencies in the existing . . . districts. . . . [W]e use as our benchmark the existing . . . districts because the . . . plan enacted in 1992 is the last validly enacted plan and is the clearest expression of the legislature's intent.").

Here, the existing plan contains districts that, in light of the 2010 census, are malapportioned, creating the need to eliminate two congressional districts and balance the population in the remainder. Accordingly, achieving districts of equal population must be the Court's "'paramount objective.'" *PRLDEF*, 796 F. Supp. at 692 (quoting *Karcher v. Daggett*, 762 U.S. 725, 732 (1983)). In revising districts to achieve equal population, the Court must comply with the Voting Rights Act. *Id.* at 685. While this requires some consideration of race, the Court may not allow race to be the "predominant factor" in any redistricting decision unless there is a compelling interest and the use of race is narrowly tailored to meet that interest. *Bush v. Vera*, 517 U.S. 952, 976 (1996) (plurality opinion); *Diaz*, 978 F. Supp. at 128. In satisfying these requirements of federal law, the Court should also respect traditional redistricting principles such as "contiguity, compactness, respect for traditional boundaries, maintenance of communities of interest," *PRLDEF*, 796 F. Supp. at 687, "preserving the 'cores' of existing districts, [and] preventing contests between incumbents." *Rodriguez*, 308 F. Supp. 2d at 352.

Plaintiff-Intervenors discuss each of these criteria in turn and how their map complies.

II. REDISTRICTING PRINCIPLES AND THEIR APPLICATION TO PLAINTIFF-INTERVENORS' PROPOSED MAP

A. Equal Population

Article I, Section 2 of the Constitution provides that the U.S. House of Representatives "shall be composed of Members chosen . . . by the People of the several States," and that

"[r]epresentatives . . . shall be apportioned among the several states . . . according to their respective Numbers." In *Wesberry v. Sanders*, 376 U.S. 1, 7-8 (1964), the Supreme Court held that this provision "means that as nearly as is practicable one man's vote in a congressional election is to be worth as much as another's." Since that time, the Court has made clear that "the 'as nearly as practicable' standard requires that the State make a good-faith effort to achieve precise mathematical equality." *Kirkpatrick v. Preisler*, 394 U.S. 526, 530-31 (1969). "Unless population variances among congressional districts are shown to have resulted despite such effort, the State must justify each variance, no matter how small." *Id.* at 531; *see also id.* at 530 (there is no "fixed numerical or percentage population variance small enough to be considered de minimis" without justification); *Karcher*, 462 U.S. at 734 ("We thus reaffirm that there are no *de minimis* population variations, which could practicably be avoided, but which nonetheless meet the standard of Art. I, § 2 without justification.").

As a result of the one-person, one-vote rule, most congressional districts contain virtually no deviations. In the 2000 redistricting cycle, 19 states drew congressional plans with an overall range of either zero or one person, and ten more states drew plans with an overall range of two to ten persons. National Conference of State Legislatures, Redistricting 2000 Population Deviation Table, http://www.ncsl.org/default.aspx?tabid=16636.[1] The Supreme Court, insisting on this near mathematical exactitude, has rejected numerous attempts by jurisdictions to justify even small variations. *See, e.g.*, *Karcher*, 462 U.S. at 744; *Kirkpatrick*, 394 U.S. at 533; *Weiser*, 412 U.S. at 790-91. After the 2000 Census, the congressional redistricting plan prepared by the SDNY achieved a population variance of only one person between districts, *Rodriguez*, 2002 WL 1058054, at *5, and the same can and should be achieved by this Court.

Given that the population of New York is 19,378,102, U.S. Census Bureau, 2010 Census Data, http://2010.census.gov/2010census/data/, the ideal population for each of the State's 27

[1] In a single-member district plan, the "ideal" district population is equal to the total state population divided by the total number of districts. *See Brown v. Thomson*, 462 U.S. 835, 839 (1983); *Gorin v. Karpan*, 775 F. Supp. 1430,1439 (D. Wyo. 1991). The "overall range," often referred to as "maximum deviation," is the difference in population between the largest and the smallest districts, expressed either as a percentage or as the number of people. *See Gorin*, 775 F. Supp. at 1439.

congressional districts is 717,707. Every district in Plaintiff-Intervenors' proposed plan falls within one person of this ideal population, *see* Exhibit 2, complying with this requirement.

B. The Voting Rights Act

1. Section 2 of the Voting Rights Act

Section 2 of the Voting Rights Act prohibits "minority vote dilution," i.e., the use of a "voting qualification or prerequisite to voting or standard, practice, or procedure . . . which results in a denial or abridgement of the right of any citizen of the United States to vote on account of race." 42 U.S.C. § 1973(a); *see also id.* § 1973b(f)(2). The question posed by Section 2 is "whether as a result of the challenged practice or structure plaintiffs do not have an equal opportunity to participate in the political processes and to elect candidates of their choice." *Thornburg v. Gingles*, 478 U.S. 30, 44 (1986) (internal quotation marks and citation omitted).[2]

In redistricting, "manipulation of district lines can dilute the voting strength of politically cohesive minority group members" in at least two ways: "by fragmenting the minority voters among several districts where a bloc-voting majority can routinely outvote them" (sometimes referred to as "cracking" a district), "or by packing them into one or a small number of districts to minimize their influence in the districts next door" (sometimes referred to as "packing" a district). *Johnson v. De Grandy*, 512 U.S. 997, 1007 (1994). "Section 2 prohibits either sort of line-drawing where its result, interact[ing] with social and historical conditions, impairs the ability of a protected class to elect its candidate of choice on an equal basis with other voters." *Id.* (internal quotation marks and citation omitted).

In limited circumstances, Section 2 may require state officials or courts to create

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[2] The statute provides that:

> A [Section 2 violation] . . . is established if, based on the totality of circumstances, it is shown that the political processes leading to nomination or election in the State or political subdivision are not equally open to participation by members of a [protected class of citizens] in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice. The extent to which members of a protected class have been elected to office in the State or political subdivision is one circumstance which may be considered: *Provided*, That nothing in this section establishes a right to have members of a protected class elected in numbers equal to their proportion in the population.

42 U.S.C. § 1973(b).

"majority-minority districts," i.e., districts in which "a minority group composes a numerical, working majority of the voting-age population." *Bartlett v. Strickland*, 129 S. Ct. 1231, 1242 (2009). Because "[r]acial classifications are antithetical to the Fourteenth Amendment," however, deliberately crafting a district where the predominant purpose is to achieve a certain level of minority voting strength can be justified only in very narrow circumstances. *Hunt*, 517 U.S. at 907. To justify such a district, a plaintiff must show, at a minimum, that a violation of Section 2 would otherwise occur. *Id.* at 914-16.

Courts considering whether Section 2 requires creation of a majority-minority district engage in a two-part analysis. First, the court must determine whether the claim satisfies the three "*Gingles* preconditions." *Gingles*, 478 U.S. at 50-51; *see also Strickland*, 129 S. Ct. at 1241 (plurality opinion). These are: (1) the minority group must be "sufficiently large and geographically compact to constitute a majority in a single-member district"; (2) the minority group must be "politically cohesive"; and (3) the majority must vote "sufficiently as a bloc to enable it . . . usually to defeat the minority's preferred candidate." *Gingles*, 478 U.S. at 50-51; *see also Growe v. Emison*, 507 U.S. 25, 40-41 (1993).

If the *Gingles* preconditions are met, then the court must determine whether a Section 2 violation has occurred based on the "totality of circumstances." 42 U.S.C. § 1973(b); *see also Strickland*, 129 S. Ct. at 1241 ("[O]nly when a party has established the *Gingles* requirements does a court proceed to analyze whether a violation has occurred based on the totality of the circumstances."); *Gingles*, 478 U.S. at 69. As the Court noted in *Gingles*, 478 U.S. at 36-37, some of those circumstances are outlined in Section 2's legislative history.[3] A party claiming

[3] These circumstances include:

> "1. the extent of any history of official discrimination in the state or political subdivision that touched the right of the members of the minority group to register, to vote, or otherwise to participate in the democratic process;
> 2. the extent to which voting in the elections of the state or political subdivision is racially polarized;
> 3. the extent to which the state or political subdivision has used unusually large election districts, majority vote requirements, anti-single shot provisions, or other voting practices or procedures that may enhance the opportunity for discrimination against the minority group;
> 4. if there is a candidate slating process, whether the members of the minority group have been denied access to that process;

that Section 2 requires the creation of a majority-minority district bears the burden of proving that the *Gingles* criteria and the totality of the circumstances require such a district. *See Voinovich v. Quilter*, 507 U.S. 146, 155-56 (1993) (quoting 42 U.S.C. § 1973(b)).

Section 2 does not always provide a remedy, even when the "*Gingles* preconditions [are] satisfied," the minority group has "suffered historically from official discrimination," and its members continue to feel "the social, economic, and political effects" of that discrimination. *Johnson*, 512 U.S. at 1009. Application of the totality-of-circumstances test is still required. Moreover, a Section 2 violation does not automatically result whenever a map creates "anything short of the maximum number of majority-minority districts consistent with the *Gingles* conditions," even "where societal discrimination against the minority had occurred and continued to occur." *Id*. at 1016. "Failure to maximize" majority-minority districts "cannot be the measure of § 2." *Id*. at 1017.

Plaintiff-Intervenors' proposed map fully complies with Section 2. The map neither "packs" minority voters into a few districts to dilute their influence elsewhere nor "cracks" cohesive minority communities into different districts to prevent them from having influence in any one district. *See id.* at 1007 (explaining "packing" and "cracking"). Indeed, like the prior map, Plaintiff-Intervenors' plan contains three districts in which African Americans comprise a majority of the voting age population (Districts 6, 9, and 10), and it increases from one to two the number of districts in which Hispanics comprise a majority of the voting age population

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> 5. the extent to which members of the minority group in the state or political subdivision bear the effects of discrimination in such areas as education, employment and health, which hinder their ability to participate effectively in the political process;
>
> 6. whether political campaigns have been characterized by overt or subtle racial appeals;
>
> 7. the extent to which members of the minority group have been elected to public office in the jurisdiction.
>
> Additional factors that in some cases have had probative value as part of plaintiffs' evidence to establish a violation are:
>
> whether there is a significant lack of responsiveness on the part of elected officials to the particularized needs of the members of the minority group.
>
> whether the policy underlying the state or political subdivision's use of such voting qualification, prerequisite to voting, or standard, practice or procedure is tenuous."

Gingles, 478 U.S. at 36-37 (quoting S. Rep. No. 97-417, at 28-29 (1982), *reprinted in* 1982 U.S.C.C.A.N. 177, 206-07).

(Districts 14 and 15). *See* Exhibit 2.

In the past, plaintiffs have sometimes argued that Section 2 requires the creation of "coalition" congressional districts in New York, i.e., districts in which no one minority group constitutes a majority of the population, but several minority groups combined do create a majority. *See, e.g.*, *Rodriguez*, 308 F. Supp. 2d at 442. The Second Circuit has held that this may be required in some circumstances, but to satisfy the second *Gingles* precondition the different minority groups must vote cohesively. *See Bridgeport Coalition for Fair Representation v. City of Bridgeport*, 26 F.3d 271, 276 (2d Cir.), *vacated and remanded on other grounds*, 512 U.S. 1283 (1994); *see also Growe*, 507 U.S. at 41 (leaving open possibility that Section 2 might require coalition districts, but holding that in such a claim, "proof of minority political cohesion is all the more essential" and must be held to a "higher-than-usual" standard). In past redistricting cycles, plaintiffs in New York have failed to make such a showing. *See, e.g.*, *Rodriguez*, 308 F. Supp. 2d at 442 (finding that plaintiffs "failed to meet their burden in showing that blacks and Hispanics are politically cohesive in CD 17"). In some districts in Plaintiff-Intervenors' proposed plan (Districts 5, 7, and 11), no one minority group comprises a majority of the population, but several minority groups together do comprise a majority. *See* Exhibit 2. Plaintiff-Intervenors do not allege that these districts are required by Section 2; rather, their demographics arose because of naturally occurring population patterns and the application of traditional redistricting principles.

2. Section 5 of the Voting Rights Act

Section 5 of the Voting Rights Act requires that certain jurisdictions prove that each new voting "qualification, prerequisite, standard, practice, or procedure neither has the purpose nor will have the effect of denying or abridging the right to vote on account of race, or color, or [membership in a language minority group]." 42 U.S.C. 1973c(a). The enactment of a new redistricting map constitutes a change subject to Section 5 review. *See, e.g.*, *Georgia v. Ashcroft*, 539 U.S. 461, 471 (2003); *Beer v. United States*, 425 U.S. 130, 133 (1976). Because several New York counties, namely, New York, Bronx, and Kings (Brooklyn) Counties, are covered by

Section 5, any statewide congressional redistricting plan enacted by the Legislature must be precleared by either the Department of Justice or the United States District Court for the District of Columbia. *See Flateau v. Anderson*, 537 F. Supp. 257, 261 (S.D.N.Y. 1982) ("Any redistricting plan enacted by New York State reapportioning New York congressional, Senate and Assembly districts will have to be . . . precleared pursuant to Section 5 of the [Voting Rights Act]"); *see also Rodriguez*, 308 F. Supp. 2d at 358 (listing covered counties).

Preclearance is not required, however, when a redistricting plan is prepared and adopted by a federal court. *Connor v. Johnson*, 402 U.S. 690, 691 (1971) ("A decree of the United States District Court is not within reach of Section 5 of the Voting Rights Act."); *Rodriguez*, 2002 WL 1058054, at *4 ("Under Section 5, redistricting plans drawn by a federal court . . . are not subject to preclearance."). That said, when drawing new congressional districts, a district court "should follow the appropriate Section 5 standards, including the body of administrative and judicial precedents developed in Section 5 cases." *Abrams*, 521 U.S. at 96 (1997) (internal quotation marks and citation omitted).

A new redistricting plan satisfies Section 5 if it "neither has the *purpose* nor will have the *effect* of denying or abridging the right to vote on account of race or color [or membership in a language minority group]." 42 U.S.C. § 1973c (emphasis added); *see also id.* § 1973b(f)(2). The "purpose" standard prohibits preclearance for voting changes motivated "by any discriminatory purpose," 42 U.S.C. § 1973c(c), which is rarely an issue with plans adopted by federal courts. Under the "effect" standard, preclearance cannot be granted for voting changes "that would lead to a retrogression in the position of racial minorities with respect to their effective exercise of the electoral franchise." *Beer*, 425 U.S. at 141. Retrogression is proven by comparing a proposed plan with the existing or benchmark plan. *Reno v. Bossier Parish School Board*, 520 U.S. 471, 478 (1997). Whether a plan is retrogressive "depends on an examination of all the relevant circumstances," and "'[n]o single statistic provides courts with a shortcut to determine whether' a voting change retrogresses from the benchmark." *Georgia*, 539 U.S. at 479-80 (quoting *De Grandy*, 512 U.S. at 1020-21); *PRLDEF*, 796 F. Supp. at 694-95

(emphasizing "case-by-case approach . . . requir[ing] an extremely fact-intensive evaluation").

Plaintiff-Intervenors' proposed plan complies with Section 5. Even though New York is losing two congressional districts, Plaintiff-Intervenors' proposed plan actually *increases* the number of districts in which a minority group will be able, on its own, to elect its candidate of choice. As noted above, the map retains three districts in which African Americans comprise a majority of the voting age population (Districts 6, 9, and 10), and it increases by one the number of districts in which Hispanics will comprise a majority of the voting age population (Districts 14 and 15). *See* Exhibit 2.

C. Contiguity

Contiguity is one of the most common and uncontroversial rules for drawing district lines. *See, e.g., Shaw v. Reno*, 509 U.S. 630, 647 (1993) (identifying contiguity as a traditional districting principle); *PRLDEF*, 796 F. Supp. at 687 (same). A contiguous district generally can be defined as one in which one can travel from one part of the district to any other part without crossing the district boundary.

All of the districts in Plaintiff-Intervenors' proposed plan are contiguous. Some districts include numerous islands or bodies of water that prevent all areas from being connected by land, e.g., District 1 is on the east end of Long Island and includes numerous small islands that are not connected to Long Island. These disconnections are unavoidable, however, given the geography of New York, and courts, including New York state courts, have repeatedly held that districts that are connected in some places only by water are still contiguous. *See, e.g., Lawyer v. Department of Justice*, 521 U.S. 567, 581 n.9 (1997) ("The Supreme Court of Florida has held that the presence in a district of a body of water, even without a connecting bridge and even if such districting necessitates land travel outside the district to reach other parts of the district, 'does not violate this Court's standard for determining contiguity under the Florida Constitution.'" (quoting *In re Constitutionality of Senate Joint Resolution 2G*, 597 So.2d 276, 280 (Fla.1992))); *Schneider v. Rockefeller*, 31 N.Y.2d 420, 430, 293 N.E.2d 67, 72 (1972) ("[T]he requirement of contiguity is not necessarily violated because a part of a district is divided

by water.") (citing *Matter of Reynolds*, 202 N.Y. 430, 442-43, 96 N.E. 87, 89 (1911)); *Parella v. Montalbo*, 899 A.2d 1226, 1254-55 (R.I. 2006) ("[W]hile the districts are not contiguous on land, this Court finds that the districts are contiguous on the basis of shore-to-shore contiguity."); *Wilkins v. West*, 571 S.E.2d 100, 109 (Va. 2002) (district separated by water without any connecting bridge or ferry was contiguous).

D. Avoiding Incumbent Contests and Preserving Incumbent-Constituent Relationships

The Supreme Court has recognized that avoiding contests between incumbents and preserving incumbent-constituent relationships are legitimate redistricting goals. *See Karcher*, 462 U.S. at 740; *Weiser*, 412 U.S. at 797. In *Diaz v. Silver*, 978 F. Supp. 96, this Court agreed, citing two reasons why courts adopting redistricting plans should respect these goals. The first is "the ability of representatives to maintain relationships they had already developed with their constituents." *Id.* at 123. As this 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. Hispanic Chamber of Commerce v. Arizonans for Fair Representation*, 507 U.S. 981 (1993); *Rodriguez*, 308 F. Supp. 2d at 352 (recognizing "preventing contests between incumbents" as a "traditional districting principle[]").

The second reason to respect these criteria is that "the powerful role that seniority plays in the functioning of Congress makes incumbency an important and legitimate factor . . . to consider." *Diaz*, 978 F. Supp. at 123. By preserving existing incumbent relationships, the Court avoids unnecessary dilution of New York's political power, which is particularly important given that the state is already losing two congressional seats. For these reasons, the Court's

redistricting plan should avoid contests between incumbents and preserve incumbent-constituent relationships wherever possible.

Plaintiff-Intervenors' proposed map largely avoids incumbent contests and preserves relationships between incumbents and their current constituents. Under the proposed plan, nineteen of New York's incumbent members of Congress remain in districts that include over 60% of the population of their current districts. Additionally, no more incumbents are paired than is necessary in light of population shifts and compliance with other redistricting criteria (only three districts pair non-retiring incumbents), and the pairings reflect no partisan bias, affecting both Democrats and Republicans.

E. Respecting Existing Lines and Preserving Cores of Prior Districts

This Court and the Supreme Court have repeatedly recognized that "maintenance of the cores of existing districts" is a valid redistricting criteria. *PRLDEF*, 796 F. Supp. at 691; *see also, e.g.*, *Karcher*, 462 U.S. at 740; *Rodriguez*, 308 F. Supp. 2d at 352 (citing "traditional districting principles including: . . . preserving the 'cores' of existing districts"). By preserving the cores of existing districts and respecting the historical placement of district lines, courts not only show an appropriate level of deference for past legislative decisions about where districts should be located, but they also preserve existing relationships between constituents and their elected officials and help avoid voter confusion about which district they live in. *See, e.g.*, *id.*; *Alexander v. Taylor*, 51 P.3d 1204, 1211 (Okla. 2002) ("A court, as a general rule, should be guided by the legislative policies underlying the existing plan. . . . Widely recognized 'neutral redistricting criteria' may be considered. Included among these criteria are: (1) preserving cores of existing districts . . . (4) maintaining historical placement of district lines; . . . and (6) avoiding contests between incumbents running for reelection.") (citations omitted).

Plaintiff-Intervenors' proposed plan preserves the cores of existing districts. Even though New York's loss of two congressional seats required significant reshuffling of population, 21 of the 27 districts in Plaintiff-Intervenors' proposed plan retain over 60% of the population from a single prior district. *See* Exhibit 3. And 9 of the 27 districts retain over 80% of the population of

the prior district. *Id.*

Comparing prior and proposed versions of specific districts reinforces this point. For example, approximately 530,000 residents (almost 75%) of Plaintiff-Intervenors' proposed District 17 previously lived in prior District 18, and the core of the proposed district—including parts of Westchester County, Yonkers, New Rochelle, White Plains, Pelham, Scarsdale, Rye, Mamaroneck, and other communities—has been in the same district since at least 1982. Proposed District 16 includes nearly 75% of the population of prior District 17, and it preserves the core of the district in communities along the Hudson River in the Bronx, Westchester County, and Rockland County. On Long Island, proposed District 1 retains 87% of its prior population and continues to include its core in Brookhaven and the Five Towns, while District 2 retains 62% of its prior population and maintains its core communities, namely Huntington, Smithtown, Islip, Babylon, and Oyster Bay. Upstate, District 21 preserves the core of prior District 23 in Essex, Clinton, Franklin, and St. Lawrence Counties, and District 20 preserves the core of prior District 21, which included all of Montgomery, Schoharie, Schenectady, and Albany Counties and the towns of Troy, Schenectady, Amsterdam, and Albany, which have been continually represented by one district since 1992.

F. Preservation of Political Subdivision Boundaries

The Supreme Court and this Court have recognized respect for political subdivision boundaries as a traditional districting principle. *See, e.g.*, *Miller v. Johnson*, 515 U.S. 900, 908 (1995); *Shaw*, 509 U.S. at 636; *Bush*, 517 U.S. at 974; *PRLDEF*, 796 F. Supp. at 687. Following this principle makes it easier for election administrators to create precincts in which all voters receive the same ballot. Also, representatives elected from districts comprising whole political subdivisions may be better able to respond to the needs of their constituents. *See Bush*, 517 U.S. at 974 (noting that failure to adhere to political subdivision boundaries meant that "[c]ampaigners seeking to visit their constituents had to carry a map to identify the district lines, because so often the borders would move from block to block," and "voters did not know the candidates running for office because they did not know which district they lived in") (internal

quotation marks and citation omitted).

Plaintiff-Intervenors' proposed map respects political subdivision boundaries to the extent possible while complying with other redistricting criteria, and it improves upon the prior map in this respect. For example, proposed District 16, which retains most of the population of prior District 17, will now include all of Rockland County, which was previously split between three districts. Proposed District 24 is also drawn largely along county lines, includes three whole counties (Niagara, Orleans, and Wyoming), two of which were previously divided between two districts, and helps reduce the number of divisions in Erie and Monroe Counties. Similarly, District 21 will include six full counties (Essex, Clinton, Franklin, Jefferson, Oswego, and St. Lawrence) as well as the entire Army base at Fort Drum in Jefferson County, and it divides only one county (Oneida) for population reasons. Similarly, District 20 includes all of Montgomery, Schoharie, Albany, and Schenectady Counties.

G. Preservation of Communities of Interest

The Supreme Court and this Court have recognized preserving communities of interest as a traditional districting principle, provided that such communities are "defined by actual shared interests." *Miller*, 515 U.S. at 916; *PRLDEF*, 796 F. Supp. at 687 (recognizing "maintenance of communities of interest" as a traditional redistricting criteria); *LaComb v. Growe*, 541 F. Supp. 160, 164 (D. Minn. 1982) (drawing districts "generally . . . along recognized neighborhood lines . . . to join together identifiable neighborhoods with traditional ties").

Plaintiff-Intervenors' proposed plan protects recognized communities of interest. It is not possible to provide an exhaustive list of all the communities preserved in the proposed plan, but several examples demonstrate the point.

For instance, proposed District 13 is the home of Plaintiff-Intervenor Carol Rinzler and protects many communities of interest. It includes the east side of Manhattan from the Museo El Barrio at the top end of Museum mile down to the Lower East Side, from Central Park and Broadway through the East River, and it also includes Roosevelt Island and Western Queens. The district preserves the Hellenic community of Astoria (including its many civic organizations,

such as the Federation of Hellenic Societies) in one congressional district, and it keeps many economic communities of interest connected. For example, District 13 includes the healthcare community surrounding the many hospitals on the east side of Manhattan, including Mt Sinai Hospital, New York Hospital, Langone NYU Medical Center, Lenox Hill Hospital, Manhattan Eye and Ear, the Hospital for Special Surgery, Beth Israel Hospital, Bellevue Medical Center, New York Harbor VA Hospital, Metropolitan Hospital, Gouverneur Hospital and Coler-Goldwater Hospital. The district also connects much of New York's arts community, including the communities involved in New York's prominent museums on the east side of Manhattan.

Also in Manhattan, District 8 maintains numerous communities of interest. A large portion of Manhattan's sizable Lesbian, Gay, Bisexual, and Transgender community lives in the neighborhoods on the west side of Manhattan. District 8 also connects many of the communities and businesses in lower Manhattan that were affected by 9/11. In Brooklyn, District 8 connects Jewish populations in different neighborhoods including Borough Park, Brighton Beach, and Coney Island.

Outside the city, District 17 protects many economic communities of interest in the Bronx and urban centers in Westchester County, including White Plains, New Rochelle, Mount Vernon, Peekskill, Port Chester, and Yonkers. For example, although the residents of District 17 have diverse demographic and socio-economic characteristics, they share common economic foundations based both on commuting to New York City and on the corporate, service, healthcare, and education facilities that employ tens of thousands in Westchester and the Bronx. Many of these communities are also connected by major transportation corridors, including the Metro-North commuter line and I-95.

Plaintiff-Intervenors' plan also protects Long Island's communities of interest. District 4 includes all of the communities connected to Atlantic Beach, including Long Beach, Lido Beach, and Point Lookout, which was disconnected from the other communities under the prior plan. District 1 also preserves the rural communities of the east end of Long Island and connects the Hispanic communities in Brookhaven and Islip.

Further upstate, District 21 protects its communities of interest at the Army base at Fort Drum and the surrounding city of Watertown. It also connects industrial communities of interest, including those involved with the International Paper Plant in Essex County and the district's three nuclear power plants, and communities of interest that depend on the district's many border crossings into Canada. District 20 also protects the communities of interest in the Capital Region by including Albany, Schenectady, Troy, and Saratoga Springs. These cities also have a common economic interest in their traditional industrial economies and their growing reliance on "tech" economies, through General Electric and Global Foundries' establishment of development facilities in the region.

H. Compactness

The Supreme Court has repeatedly cited geographical "compactness" as a traditional districting principle. *See, e.g.*, *Bush*, 517 U.S. at 962; *Shaw v. Hunt*, 517 U.S. 899, 905-06 (1996). While experts have proffered more than 30 mathematical techniques to measure compactness, however, there is no single measure that has been accepted by courts or political scientists, *see* Richard H. Pildes & Richard G. Niemi, *Expressive Harms, "Bizarre Districts," and Voting Rights*, 92 Mich. L. Rev. 483, 536-59 (1993), and the Supreme Court has not provided a precise definition. In *Diaz*, this Court, with the consent of the parties, used three measures of compactness: "the geographical dispersion measure, the perimeter measure, and the population score measure." 978 F. Supp. at 114. In *Rodriguez*, the Court accepted several measures of compactness offered by the parties, including the "Reock" and "Polsby-Popper tests." 308 F. Supp. 2d at 408 n.84; *see also, e.g.*, *Comm. for a Fair and Balanced Map v. Ill. State Bd. of Elections*, 2011 WL 6318960, at *4 (N.D. Ill. 2011) ("The experts who testified at trial relied on two widely acceptable tests to determine compactness scores: the Polsby-Popper measure and the Reock indicator.").

While compactness should be given at least some weight in drawing district lines, courts around the country agree that compactness sometimes must give way to efforts to respect geographic boundaries, political subdivision boundaries, communities of interest, and other

criteria. *See, e.g.*, *Schneider v. Rockefeller*, 31 N.Y.2d 420, 429, 293 N.E.2d 67 (1972) (legislature "may, in good faith, take account of existing political subdivision lines, topography, means of transportation and lines of communication without violating [the compactness] standard"); *Preisler v. Kirkpatrick*, 528 S.W.2d 422, 426 (Mo. 1975) ("The county lines do not lend themselves to perfect compactness. The population density of the state is, of course, uneven and any effort to accomplish both the overriding objective of substantial equality of population and the preservation of county lines reasonably may be expected to result in the establishment of districts that are not esthetically pleasing models of geometric compactness."); *Davenport v. Apportionment Comm'n*, 65 N.J. 125, 133, 319 A.2d 718 (1974) ("Compactness is an elusive concept. . . . [I]t may be of limited utility in creating legislative districts in the light of the odd configurations of our State and its municipalities.").

Additionally, in *Diaz*, this Court noted that "in a city of peninsulas and islands, creating districts that are perfect circles is not a realistic possibility," and that New York has historically had several of the least compact congressional districts in the country. 978 F. Supp. at 118. Thus, other factors may sometimes require districts that are not perfectly compact.

Despite the challenges posed by New York geography, Plaintiff-Intervenors' proposed districts are compact. Although, as noted, there is no universally accepted measure of compactness, many experts believe that, as a general matter, "low compactness is equal to or less than .05 on the Polsby-Popper measure and equal or less than .15 on the Reock measure." *Comm. for a Fair and Balanced Map*, 2011 WL 6318960, at *4; *see also* Pildes & Niemi, *Expressive Harms, "Bizarre Districts," and Voting Rights*, 92 Mich. L. Rev. at 564 tbl.3 (using these same figures as cutoff points for non-compact districts). Every district in Plaintiff-Intervenors' proposed plan scores above .05 on the Polsby-Popper measure, and every district but one scores above .15 on the Reock measure. *See* Exhibit 4. The one exception, proposed District 8, scores as low as it does only because it includes two uninhabited islands.

III. CONCLUSION

In sum, Plaintiff-Intervenors' proposed map properly utilizes the 2002 map as a starting

point, achieves the paramount objective of equal population, complies with the Voting Rights Act, and respects the traditional redistricting principles of contiguity, avoiding incumbent contests, preserving the cores of prior districts, recognizing communities of interest and political subdivision boundaries, and compactness. Plaintiff-Intervenors respectfully ask that the Court adopt their proposed map as the redistricting plan for New York's congressional districts.

Dated: February 29, 2012

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