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BY ECF AND HAND

The Honorable Roanne L. Mann
United States Magistrate Judge
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: *Favors v. Cuomo*, No. 1:11-cv-05632-DLI-RR-GEL (E.D.N.Y.)

Dear Judge Mann:

In accordance with the Court's Orders, Defendants Dean G. Skelos, Michael F. Nozzolio, and Welquis R. Lopez respectfully submit their proposed Congressional redistricting plan, along with this explanation of how the plan comports with applicable law and the Court's mandate.

As the Court explained, "[t]he number of New York's members of the House of Representatives in Congress has been reduced from 29 to 27, based upon the results of the 2010 Census." Feb. 28, 2012 Order of Referral to Magistrate Judge at 4-5 ("Order"). Defendants propose a Congressional redistricting plan that reflects this reduction in Congressional seats, while at the same time complies with the traditional redistricting principles and the Voting Rights Act requirements identified by this Court. *See id.* ¶ 2.

Consistent with these mandates and the shift in population in New York State, Defendants' plan eliminates one Congressional district in upstate New York and the one Queens-Nassau Congressional district.

In upstate New York, Defendants collapse former District 22, where Rep. Maurice Hinchey is retiring. Collapsing this district into surrounding districts thus "respects the cores of [the remaining] districts *and* the communities of interest that have formed around them." *Rodriguez v. Pataki*, No. 02 Civ. 618(RMB), 2002 WL 1058054, at *6 (S.D.N.Y. May 24, 2002) (internal quotation marks omitted; emphasis added).

Defendants' plan also collapses District 5, the existing Queens-Nassau Congressional district. There are currently five Congressional incumbents from Nassau and Suffolk Counties. However, with the State's loss of two Congressional seats, these counties' proportional share is now just *under* four seats. Thus, like Special Master Lacey ten years ago, one can "beg[i]n the

process of redistricting with the Congressional districts on Long Island, and, in so doing, le[ave] largely intact Districts 1 through 4, the four districts completely within the boundaries of Suffolk and Nassau counties, except for necessary population adjustments." *Id.* at *5. With these necessary population adjustments, only a small amount of population from Queens is needed to round out District 4. Because there is now enough population only for four Long Island districts, two of the five Long Island incumbents must be paired (unless, instead of *one* district with a *minimal* intrusion from Nassau into Queens, one were to draw *two* districts with *substantial* population on both sides of the city and county line). Moreover, three counties in New York City—Bronx, Kings, and New York—are covered jurisdictions under Section 5 of the Voting Rights Act, *see* 28 C.F.R. pt. 51, app., so districts in those counties must be maintained in order to avoid retrogression. Defendants' plan thus collapses District 5, the district that was overwhelmingly in Queens but had one of the five Long Island incumbents. It maintains the remaining Long Island and New York City districts in a manner that respects their cores and communities of interest and avoids retrogression of minority voters' ability to elect candidates of their choice.

Defendants' plan therefore complies with traditional redistricting principles and the Voting Rights Act. In particular:

Equal Population. Defendants' proposed districts are "substantially equal in population." Order ¶ 2(b); *see also Karcher v. Daggett*, 462 U.S. 725, 732 (1983) ("[A]bsolute population equality [is] the paramount objective of apportionment."). Fourteen proposed districts have a population of 717,707, and 13 proposed districts have a population of 717,708. *See* Ex. D.

Compactness. A review of maps of Defendants' plan (Exs. A-C) reveals that the proposed districts are not bizarrely shaped. They are also compact. *See Diaz v. Silver*, 978 F. Supp. 96, 127 (E.D.N.Y. 1997) (Districts that are "'bizarre[ly] shape[d]'" violate "'traditional districting principles.'" (quoting *Bush v. Vera*, 517 U.S. 952 (1996) (emphasis omitted))); *see also* Order ¶ 2(c).

Contiguity. A review of maps of Defendants' plan (Exs. A-C) also demonstrates that the districts are contiguous because all territory is "touching, adjoining, and connected," and not "separated by other territory." *Matter of Schneider v. Rockefeller*, 31 N.Y.2d 420, 429 (1972); *see also* Order ¶ 2(c); *Rodriguez*, 2002 WL 1058054, at *4.

Political Subdivisions. Defendants' proposed districts also "respect political subdivisions." Order ¶ 2(c); *see also Rodriguez*, 2002 WL 1058054, at *4 ("[R]espect for political boundaries are traditional redistricting criteria under New York law." (citing *Diaz*, 978 F. Supp. at 127)). Given the size of Congressional districts following reapportionment, the Defendants' proposed plan was able to keep many counties and cities whole. There are 53

counties with population less than that of a Congressional district, and Defendants' plan keeps 44 of these counties entirely whole. The nine other such counties are split between only two districts each, and these splits are needed to satisfy equal population requirements and other redistricting principles. Moreover, Defendants' plan keeps several large cities in single districts, including Buffalo, Rochester, Syracuse and Albany.

Communities of Interest. Because preserving communities of interest is a well-established redistricting principle, *see* Order ¶ 2(c); *see also Rodriguez*, 2002 WL 1058054, at *6, and existing district lines generally reflect and foster communities of interest, redistricting plans must "respect[] the cores of current districts *and the communities of interest that have formed around them*." *Rodriguez*, 2002 WL 1058054, at *6 (emphasis added).[1]

Here, even though New York lost two Congressional seats, Defendants' plan respects the cores of current districts and the communities of interest that have formed around them. On average, roughly 70% of the population in a district under Defendants' plan is in the corresponding district under the existing plan. *See* Ex D.

Voting Rights Act. Defendants' plan also "compl[ies] with 42 U.S.C. § 1973(b) and with all other applicable provisions of the Voting Rights Act." Order ¶ 2(d); *see also Rodriguez*, 2002 WL 1058054, at *5 (a plan must "safeguard[] the voting strength of minority populations protected under the Voting Rights Act"). Notwithstanding the loss of two Congressional districts in the State, Defendants' plan maintains the voting strength of minority populations in all six districts that are majority-minority voting-age population and/or elect minority candidates:

Existing District	VAP% of Largest Minority Group	Proposed District	VAP% of Largest Minority Group
6	49.6%	5	45.8%
10	59.5%	9	52.9%
11	52.9%	10	51.1%
12	41.4%	11	46.2%
15	43.8%	14	54.6%
16	65.5%	15	60.4%
Average	52.1%	Average	51.8%

[1] In accordance with the Court's Order, Defendants are submitting separate briefing to explain that retaining cores of existing districts is a traditional districting principle that this Court should follow.

Moreover, Defendants' plan avoids retrogression under Section 5 by collapsing former District 5 rather than a covered district in Bronx, Kings, or New York Counties.

For the foregoing reasons, the Court should adopt Defendants' proposed plan.

Respectfully submitted,

/s/ Michael A. Carvin
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cc: All counsel of record (via ECF)