JONES DAY

51 LOUISIANA AVENUE, N.W. • WASHINGTON, D.C. 20001.2113

TELEPHONE: +1.202.879.3939 • FACSIMILE: +1.202.626.1700

Direct Number: (202) 879-7643
macarvin@JonesDay.com

February 29, 2012

BY ECF AND HAND

The Honorable Roanne L. Mann
United States Magistrate Judge
United States District Court
for the 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:

Pursuant to the Court's February 28, 2012 Order, Defendants New York State Senators Dean G. Skelos and Michael F. Nozzolio, and LATFOR member Welquis R. Lopez, respectfully submit this letter brief concerning why incumbency protection is an appropriate factor for the Court to consider in drawing redistricting maps.

It is well-established that "a federal district court, in the context of legislative reapportionment, should follow the policies and preferences of the State," *White v. Weiser*, 412 U.S. 783, 795 (1973), and should defer to the State's traditional districting principles, *see, e.g.*, *Rodriguez v. Pataki*, No. 02 Civ. 618(RMB), 2002 WL 1058054, at *4 (S.D.N.Y. May 24, 2002) (applying New York's traditional redistricting principles in drawing Congressional plan).[1]

Preserving the cores of existing districts—sometimes also referred to as incumbency protection—is a well-established, traditional districting principle in New York, *see, e.g.*, *id.* (explaining New York's traditional redistricting criteria include "'maintenance of the cores of existing districts'" (quoting *Puerto Rican Legal Defense and Educ. Fund, Inc. v. Gantt*, 796 F. Supp. 681, 691 (E.D.N.Y. 1992))); *Diaz v. Silver*, 978 F. Supp. 96, 122 (E.D.N.Y. 1997) ("traditional districting criteria . . . includ[e] incumbency [protection]"), and in other states as well, *see, e.g.*, *Abrams v. Johnson*, 521 U.S. 74, 99-100 (1997) (Georgia's interest in "maintaining core districts and communities of interest" justified certain deviations in population in plan drawn by district court); *White*, 412 U.S. at 791 (recognizing as a legitimate redistricting

[1] The Congressional plan drawn by the district court in *Rodriguez* was withdrawn after the plan enacted by the New York state legislature was pre-cleared by the United States Department of Justice. *See Rodriguez v. Pataki*, 308 F. Supp. 2d 346, 358 (S.D.N.Y. 2004).

goal a state policy aimed at maintaining existing relationships between incumbent representatives and their districts); *Colleton Cnty. Council v. McConnell*, 201 F. Supp. 2d 618, 647 (D.S.C. 2002) (finding incumbent protection to be a traditional state interest in South Carolina); *Johnson v. Miller*, 922 F. Supp. 1556, 1565 (S.D. Ga. 1995) (holding that protection of incumbents was a legitimate consideration); *Arizonans for Fair Representation v. Symington*, 828 F. Supp. 684, 688-89 (D. Ariz. 1992) (three-judge court) (same).

As this Court has recognized, preserving the cores of existing districts is "an important and legitimate factor" in Congressional redistricting due to "the powerful role that seniority plays in the functioning of Congress." *Diaz*, 978 F. Supp. at 123. Also, legislators have "quite legitimate concerns about the ability of representatives to maintain relationships they had already developed with their constituents." *Id.* Preserving cores also furthers the State's goal of preserving "the communities of interest that have formed around" existing districts. *Rodriguez*, 2002 WL 1058054, at *6; *see also Rodriguez v. Pataki*, 308 F. Supp. 2d 346, 363 (S.D.N.Y. 2004) (rejecting claim of partisan gerrymandering in plan adopted by the Legislature and noting that "preserving the cores of existing prior districts" and "avoiding contests between incumbent Representatives" are "important state policies in redistricting"); *see also id.* at 370 ("The plan promotes the traditional principles of maintaining the core of districts and limiting incumbent pairing.").

Due to the importance of this redistricting principle, federal courts in New York and elsewhere have relied on it in drawing plans. *See, e.g.*, *Rodriguez*, 2002 WL 1058054, at *6 (explaining court-drawn plan "respects the cores of current districts and the communities of interest that have formed around them" (internal quotation marks omitted)); *Abrams*, 521 U.S. at 99-100; *Colleton Cnty.*, 201 F. Supp. 2d at 647; *Johnson*, 922 F. Supp. at 1565; *Arizonans for Fair Representation*, 828 F. Supp. at 688-89; *see generally Gaffney v. Cummings*, 412 U.S. 735, 753 (1973) (upholding plan drawn by three-member bipartisan board after legislative impasse; "[p]olitics and political considerations are inseparable from districting and apportionment").

Likewise here, this Court "should follow the policies and preferences of the State," *White*, 412 U.S. at 795, and seek to preserve the cores of existing districts in drawing a redistricting plan.

Respectfully submitted,

/s/ Michael A. Carvin

Michael A. Carvin (MC 9266)
JONES DAY
51 Louisiana Avenue, N.W.
Washington, D.C. 20001-2113
macarvin@jonesday.com
202/879-3939

Todd Geremia (TG 4454)
JONES DAY
222 East 41st Street
New York, NY 10017-6702
trgeremia@jonesday.com
212/326-3939

David Lewis (DL 0037)
LEWIS & FIORE
225 Broadway, Suite 3300
New York, NY 10007
dlewis@lewisandfiore.com
212/285-2290

Attorneys For Defendants Dean G. Skelos, Michael F. Nozzolio, and Welquis R. Lopez

cc: All counsel (via ECF)