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VIA ELECTRONIC FILING

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

Re: Favors, *et al.* v. Cuomo, *et al.*
1:11-cv-05632-DLI-RLM

Dear Magistrate Judge Mann:

On behalf of Defendant Brian M. Kolb, Minority Leader of the New York State Assembly (“Minority Leader Kolb”), and in accordance instruction of the Court at the hearing conducted on February 27, 2012, we respectfully submit the following comments and objections to the redistricting plans submitted by the Assembly Majority, Common Cause, and Rose Intervenor-Plaintiffs. We also offer comments on the various iterations of the Unity Map submitted by some of the Intervenor-Plaintiffs.

The Three-Judge Panel’s Order of Referral to Magistrate Judge, dated February 28, 2012, prescribed the criteria to be used to develop a redistricting plan for New York’s Congressional districts. Included among those criteria are requirements that: (1) the plan substantially comply with population equity requirements (*i.e.*, the “one-person, one-vote” rule); (2) the concepts of compactness and contiguity guide the development of each district; (3) political subdivisions be respected to the extent possible; (4) “communities of interest” be included, as appropriate; and (5) the districts comply with the provisions of the Voting Rights Act, including in particular the preservation of minority districts. The Order also allowed the Magistrate Judge to consider other factors, such as incumbency, which affect New York’s influence in Congress. The redistricting plans proposed by the Assembly Majority, Common Cause, and the Intervenor-Plaintiffs who have advanced versions of the Unity Maps fail to properly adhere to these criteria.

Assembly Majority Plan

The Assembly Majority Plan does not guard political subdivisions with the same vigilance as the Redistricting Plan proposed by Minority Leader Kolb (“Assembly Minority Plan”). For example, the Assembly Majority keeps only 43 counties whole (the Assembly

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Minority Plan keeps 45 counties whole). Additionally, and inappropriately, that Plan divides the City of Buffalo into two Congressional districts and merges an urban part of the city with a very rural part of western New York. Similarly, it improperly divides Greece from Rochester (communities which are adjacent and form a community of interest). Further, the Assembly Majority's proposed 24th District unnecessarily circles the City of Rochester district and separates it off from outlying townships – areas that share common interests and which should be jointly represented.

In contrast, the Assembly Minority Plan preserves regional communities of interest by creating compact “Buffalo-centered,” “Rochester-centered,” “North Country/Adirondack,” and “Southern Tier” districts. This Plan not only fairly and accurately incorporates the criteria established by the Court, it is in accordance with the public's comments elicited at LATFOR's public hearings. Excerpts of the transcripts from those hearings which support this assertion are attached hereto.

The Assembly Majority's so-called “Southern Tier” District (20th District) is a blatant gerrymander that extends from the Vermont border to the Pennsylvania border and contains communities with very different interests and concerns. Indeed, for all purposes except the Assembly Majority's Plan, the Adirondacks are an entirely different region of the State than the Southern Tier, and treating the Town of Lake George in Warren County as a community of interest with the City of Binghamton in Broome County lacks reasonableness. Similarly, separating the Counties of Rockland and Westchester, both bedroom communities of New York City with many common interests and demographics is unsupportable.

In New York City, the Assembly Majority Plan is impermissibly regressive, in that it needlessly destroys the black majority in the 6th District, thereby reducing the total Majority Black Districts from three, to two. The Assembly Minority Plan preserves all three districts.

Common Cause Plan

The Common Cause Plan does not comport with the “one-person, one-vote” rule because it has population deviations among districts up to 34 people. The fact that virtually all of the other redistricting plans submitted to the Court by the parties reflect a deviation of only one person between districts demonstrates that almost perfect compliance with this rule is readily achievable. Common Cause offers no explanation for its inability to comply with this rule, and its failure to do so substantially reduces, if not eliminates, the weight the Court should ascribe to its Plan.

The Common Cause Plan also fails to respect political subdivisions. Only 36 counties are kept whole. In some cases, two or more towns in the same district are improperly divided. For example, the Towns of Pawling and Hyde Park in Dutchess County and the Town of

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Minisink in Orange County are split between the 18th and 19th Districts. The Towns of Rye, Harrison, and Scarsdale in Westchester County are split between the 16th and 17th Districts. On Long Island, the Towns of Brookhaven, Islip, and Smithtown are split between districts. In Rensselaer County, Common Cause inexplicably places the Towns of Brunswick and Schaghticoke, two very similar communities, in separate districts.

The Common Cause plan also reduces the total number of Black Majority Districts by one while increasing the number of Latino Majority Districts by two. Although communities of interest should be kept together, the demographics of the districts involved do not support these districts, and Common Cause created these districts by impermissibly favoring one community over another. Moreover, in keeping with its steadfast policy *against* incumbency, Common Cause pits two black majority incumbents against each other, and at the same time, creates an “incumbent free” district (8th District) which will require voters district to elect a freshman congressman. This proposal arguably reduces the voice of those Black communities, and the unnecessary elimination of a senior member of Congress is bad for New York, generally.

The Common Cause Plan is more than just “incumbent blind.” It appears to be incumbent *adverse* and would cause substantial harm to New York’s political strength in Congress and the benefits to the State that inure from the seniority of our Congressional delegation. This is illustrated by the fact that a total of 16 congressmen would need to run against each other – resulting in a loss of eight incumbents, while six districts would be left with no incumbent. Although incumbency was not established as a mandatory criteria by the Court, the Court also did not hold that incumbency should be entirely disregarded, as Common Cause proposes to do.

The Rose Plan

The Rose Intervenor-Plaintiffs’ Plan is substantially similar to the Assembly Majority’s Plan, and it suffers from many of the same defects. Notably, it needlessly splits an inordinate number of towns in the State. In Monroe County, for example, it splits four towns: Greece, Gates, Chili, and Henrietta. It also inappropriately merges the Adirondacks (*e.g.*, Town of Lake George) with Central New York (*e.g.* Cities of Rome and Utica) and the Southern Tier (*e.g.*, City of Binghamton). These are regions with diverse and potentially divergent interests. At the same time, the Plan splits the homogenous Mohawk Valley into two districts (21st and 22nd Districts).

The Rose Plan also inappropriately pits two Black Majority District representatives (Congressmembers Towns and Velázquez) against each other while creating an empty Black Majority District.

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The Unity Maps

The Drayton Intervenor-Plaintiffs, Lee Intervenor-Plaintiffs, and Ramos Intervenor-Plaintiffs each appear to adopt varying versions of the Unity Map. All of these versions, however, are incomplete because they do not provide any districts north of Westchester County. Thus, these maps cannot form the basis of a comprehensive statewide redistricting.

Conclusion

In sum, the Assembly Minority Plan most closely adheres to the Court's redistricting criteria. It respects municipal boundaries better than any of the other plans. Whereas the Assembly Minority Plan keeps 45 counties whole and splits only 11 towns, the Assembly Majority Plan keeps only 43 counties whole, and splits 20 towns. The Common Cause Plan, which has little respect for municipal boundaries, keeps only 26 counties whole and splits dozens of towns.

Although political competition within districts is healthy, there is little benefit in pitting senior members of Congress, particularly minority members, against each other. Doing so can disenfranchise the voters who put and kept these individuals in office, and harm the State of New York. *See Diaz v. Silver*, 978 F. Supp. 96, 123 (E.D.N.Y. 1997) (noting the "quite legitimate concern[] about the ability of representatives to maintain relationships they had already developed with their constituents...[and] the powerful role that seniority plays in the functioning of Congress..."). For this reason, incumbency should not be neglected in developing a Congressional redistricting plan for New York.

We thank the Court for the opportunity to present these comments, and we will be prepared to address these concerns in greater detail at the hearing on Monday.

Respectfully submitted,

COUCH WHITE, LLP

/s/ Kevin M. Lang

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Enclosures

cc: All Counsel (via ECF)