

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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MARK A. FAVORS, et al.,	:	CV11-5632 (DLI)
Plaintiffs,	:	
	:	
vs.	:	ASSEMBLY MAJORITY'S
	:	RESPONSE TO PROPOSED
ANDREW M. CUOMO, as Governor of the State of	:	CONGRESSIONAL
New York, et al.,	:	<u>REDISTRICTING PLANS</u>
Defendants.	:	
	:	
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Defendants Sheldon Silver, John J. McEneny and Roman Hedges, respectfully submit the following Assembly Majority's Response to Proposed Congressional Redistricting Plans.

Dated: New York, New York
March 2, 2012

GRAUBARD MILLER

By: 
C. Daniel Chill (CC 6940)

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Assembly Majority's Response to Proposed Congressional Redistricting Plans

Comments on Senate Majority Plan

While every district in New York falls short of the required ideal population figure, all plans must give central prominence to preserving the core of existing districts designed and protected under the Voting Rights Act. By protecting those cores, the wishes of the affected communities are most clearly and directly reflected and preserved.

The principal concern regarding the proposed Senate Majority plan is that it displays little regard for the central role of preserving the existing place occupied by five of the six districts mandated by the Voting Rights Act. In each of these six districts a majority (or near majority) of a single racial or language group has demonstrated its clear choice by electing a representative of that community over a number of years, allowing each of those communities a strong voice not only at the local level but also at the national level by permitting specific individuals selected by each of those communities to rise in seniority in the House of Representatives, gain senior status within the House, and even assume a prominent role on the national stage.

Any plan that causes unnecessary disruption in the relationship between the core of each of those protected communities and the choice of each those communities does major damage to both the community and to the choices made by that community. The Senate Majority plan does exactly that for five of the six voting rights districts. Often that disruption appears to be done in the name of boosting some numerical goal of increasing a target percentage of minority population (and starts to resemble unnecessary packing). Sometimes it appears to be a simple gratuitous change that disrupts the core constituency out of a disregard for the intimate connection between the individual selected by the community repeatedly over a number of year and that very constituent community for no reason. It is also done in a political effort to make room to accomplish political objectives at the expense of disrupting the intimate linkages between protected communities and their historical electoral choices. It is widely thought that disconnecting minority communities from representatives with whom they are familiar adversely affects political participation and awareness. (See Niemi, Powell, and Bicknell, Legislative Studies Quarterly, 1986, for a discussion of some of the issues.)

Proposed CD 10 (Clarke)

The Senate Majority dramatically presses proposed CD 10 into areas presently occupied by current 10 (Townships) in Flatlands (east of E. 43rd St. and south of Beverly Road) while at the same time dramatically expanding the current 10 (Townships) into current district 11 in Park Slope (south of Fulton St. and west of Prospect Park West) and Brownsville (west of Snediker Ave.). In total proposed CD 10 takes more than 92 thousand people (92,018) from current 10 while exchanging them with almost 110 thousand people (109,679), from current 11, disconnecting more than 200 thousand people from their present districts.

Similar, but smaller, "swaps" occur with neighboring current district 12. The Gowanus/Park Slope area (north of 20th Street and east of 2nd Ave.) is added to proposed CD 10 from current district 12. At the same time the area near Greenwood Cemetery (north of 40th St. and east of the Fort Hamilton Parkway) is taken from the current district 11 and given to current district 12. Swaps between the current district 12 and current district 11 result in 16 thousand people (16,170) being added to the

proposed CD 10 while 21 thousand people are being removed (21,049), disconnecting an additional 37 thousand people.

These population swaps have two deleterious effects. First, they reduce the amount of stability of the core areas of current district 11 (proposed CD 10). Second, this facilitates and assists in the expansion of proposed district CD 08 to the south and west of existing districts 10 and 11. It must be noted that the expansion of CD 08 also precludes the expansion of existing districts 10 and 11 to the south to meet the necessary equal population target of 717,707 and forces both districts to “move” northerly to meet the population target at the expense of dramatically shifting the neighboring existing district 12.

The bottom line regarding Senate Majority proposed CD 10 is that only 63.98% of the proposed district is from its existing district 11 core because of unnecessary “swaps” between existing majority black district 10 and its two neighboring protected class districts.

Proposed CD 09 (Towns)

Just as is the case regarding neighboring proposed CD 10, proposed CD 09 is the result of substantial population swaps with its neighbors. Indeed, those involving existing district 11 were described in more detail above, but it bears repeating that existing district 10 takes 92 thousand people from existing 11 while simultaneously giving proposed CD 09 one-hundred ten thousand.

Swaps also occur between existing district 10 and existing district 12. Existing district 10 gives existing district 12 over 82 thousand people (82,347) in the City Line neighborhood (north of Glenmore Ave. and east Jerome St.) and in eastern Bushwick (north of Bushwick Ave.) while simultaneously receiving 34 thousand people (34,221) near Downtown Brooklyn (east of Cadman Plaza E.) from district 12. The net effect is that proposed CD 09 gains forty-eight thousand people.

Existing district 10 was prevented from expanding to the south and east by both the expansion of existing district 9 (proposed CD 08) and the expansion of CD 10 into areas previous occupied by existing 10. Together, these two aspects of proposed CD 09 require proposed CD 09 to “move” northerly to achieve the population target by expanding into existing district 12 under the Senate Majority proposal.

The result of the Senate Majority approach of unnecessary population swaps and restricting the population growth of proposed CD 09 to the south thereby forcing it to move northerly is that only 73.24% of the proposed district is from the core existing district 10.

Proposed CD 11 (Velazquez)

Proposed CD 10 is reduced in size in the Lower East Side of Manhattan by reducing the existing district presence in Manhattan's “Chinatown” neighborhood which contains a sizable Asian population. It retains much of the current footprint in the Sunset Park neighborhood in Brooklyn. The combined effect of reducing the population of proposed CD 11 by the northerly movement of proposed CD 10 in existing district 12 in Brooklyn, a somewhat smaller presence in Manhattan, and the need to grow by 45 thousand people forces the proposed CD 10 to expand dramatically in Queens.

The reduced presence in Manhattan cuts into one of the core elements of the current district 12. The linkage of the Manhattan “Chinatown” with the Asian community of Brooklyn was featured prominently in the court discussion of the then newly reconfigured district 12 in Diaz v. Silver and that unified community has been maintained ever since. Proposed CD 11 undermines that geographically separate but vitally linked community. Second, the dramatic expansion in Queens is accomplished by the creation of an awkward hook running from Sunnyside Gardens over to Corona by way of Jackson Heights in order to pull in a distant Latino population in order to amplify the Hispanic plurality of the proposed CD 11.

	Current	Proposed CD 11
Manhattan	106,653	48,884
Brooklyn	446,477	434,623
Queens	119,228	234,201

Taken together, the restructuring of the existing district 12 into the proposed CD 10 serves to reduce the extent to which the resultant district reflects the core of the existing district down to 62.29%.

This “trading” and northerly movement is particularly acute regarding Hispanics in proposed CD 11. Proposed CD 11 has given up over 50 thousand Hispanics to its immediate neighboring districts (existing 10 and 11) and is slated to pick up nearly 130 thousand new Hispanic residents--largely in Queens. Existing district 12 has 299,572 Hispanics according to the 2010 Census. After being reconfigured to proposed CD 11, it is proposed to have 349,380 with only 211,290 coming from the existing district 12.

Proposed CD 14 (Rangel)

The Senate Majority Congressional proposal divides the Spanish Harlem neighborhood which is the southeast border of the currently configured 15th District, moving the portion east of 5th Avenue and south of E 110th Street (43,993 people) into a Queens anchored district (proposed CD 12) and the portion above 109th Street and east of Park Avenue (52,105 people) into a Bronx anchored district (proposed CD 15). The Senate plan also expands the proposed CD 14 north into the Spuyten Duyvil and Kingsbridge neighborhoods of Bronx County and further west into Bronx County, annexing the Norwood, Fordham, Bedford Park, University Heights, Mount Hope and Belmont neighborhoods (316,254 people). This represents a swap of Manhattan’s Spanish Harlem Hispanic residents for Hispanic residents from a variety of west Bronx neighborhoods, unnecessarily diminishing a component of the currently configured 15th District’s core Hispanic constituency. While this erosion of the currently configured 15th District core is significant, it is not the entirety of it. The portion of the current district that spans Morningside Heights and Manhattan Valley is also annexed by the Queens anchored proposed CD 12 (141,678 people).

Collectively, the currently configured 15th District cedes 37.2% of its core in the Senate Majority proposal, dropping 237,776 people, fracturing the generation’s long bond forged between one third of the constituents of the existing district 15 and its Congressman, adding 316,254 new residents instead.

Only 55.93% of the proposed CD 14 derives from the existing district 15.

Proposed CD 15 (Serrano)

The Senate Majority Congressional proposal deprives Bronx County of its only wholly contained Congressional District, the currently configured 16th District, represented by a senior Latino Congressman. Instead, proposed CD 15 fractures Manhattan's Spanish Harlem neighborhood, moving 54% (52,105 people) into the proposed CD 15 anchored in the Bronx. The plan cedes the Fordham, Bedford Park, University Heights, Belmont and Mount Hope neighborhoods (316,254 people) to the adjoining proposed CD 14.

To make up for the substantial loss of population to the proposed CD14, the Senate Majority plan expands the proposed CD 15 west into the Pelham Parkway, Morris Park, Van Nest, Hunts Point, Soundview, Unionport, Castle Hill and Clason Point neighborhoods (187,016 people).

The Senate Majority plan proposed CD 15 cedes 31% of the existing 16th District core (215,232 residents) to adjoining districts, substantially disrupting the decades long relationship between Representative Serrano and his constituents. Under the Senate Majority proposal, 66.68% of proposed CD 15 derives from existing district 16.

Western New York

The Senate Majority Congressional plan divides the African-American community in Erie and Niagara counties, which are joined in the currently configured 28th District, between the proposed CD 24 and CD 25.

The Senate Majority's proposed CD 24 encompasses all of Niagara County, including the City of Niagara Falls, which the Bureau of Census reports is 23.2% Black. The proposed CD 24 does not, however, include the African-American portion of the City of Buffalo (81,852 people), which the Bureau of Census reports is 38.4% Black. Instead, the City of Buffalo is wholly contained in the CD 25, which, as proposed, is 74.2% white.

Dividing Western New York's African American community erodes its influence. Compelling testimony was offered at both Buffalo LATFOR hearings in relation to keeping the community whole. An angry protest in relation to the identical community division proposed in the maps released for the state Senate plan was evident at the February 16th hearing. The community clearly asserted its conviction that the fracturing of the nearly 82,000 African-American residents of Buffalo and the 12,587 African-American community of Niagara Falls was a deliberate effort to silence the voice, mitigate the influence and dilute the voting strength of the community.

Comments on Common Cause Plan

A major flaw of the Common Cause Congressional proposal is that it unnecessarily pairs incumbents, including minority incumbents and it disregards the New York Congressional delegation's considerable seniority; adoption of the plan would severely disadvantage New York State relative to other states.

Specifically, the proposal pairs the following incumbents:

Meeks and Turner

Towns and Velazquez
Crowley and Maloney
Rangel and Serrano
Lowey and Hayworth
Hanna and Buerkle
Hochul and Higgins

Collectively, these Members of Congress have built 200 years of seniority.

Of particular concern is the potential effect on communities protected by the Voting Rights Act. New York's Congressional delegation of color has amassed 126 years of seniority, ensuring New York State's communities of color have a voice that is loud and influential enough to be heard in both the halls and chambers of Congress. A review of the individual minority Representatives and their tenure follows:

Meeks	14 years
Towns	30 years
Velazquez	20 years
Rangel	42 years
Serrano	20 years

The special significance of both Congressman Jose Serrano and Congressman Charles Rangel must be noted. Representative Serrano is the first official of Puerto Rican descent elected to Congress. And Representative Rangel, the third African-American Congressman elected from New York has been one of the strongest, clearest and most articulate voices of New York's – indeed the nation's – African-American community.

The potential loss of one of these Representatives, who are recklessly paired in the Common Cause Congressional proposal is incomprehensible and would represent a monumental loss for all New Yorkers but especially those who identify with communities of color. Moreover, the pairing interjects unnecessary racial tension between a Black Member of Congress and a Latino Member of Congress.

A second flaw of the Common Cause Congressional proposal is its disregard of preserving the cores of existing districts, fracturing the relationships elected Representatives have forged with their constituents.

Again, special attention must be paid to the Members of Congress who represent Voting Rights districts.

Proposed CD 9 (Clarke)

The proposed 9th District, which is represented by Congresswoman Yvette Clarke is substantially short of population required to meet the equal population imperative as it is currently configured. In the Common Cause plan, it cedes considerable population in Kensington, Park Slope, Prospect Heights and Windsor Terrace to the proposed 10th District, and ceded much of the Brooklyn Heights, Cobble Hill and Carroll Gardens neighborhoods to the proposed 7th District, exacerbating the need to expand into new territory. To compensate for both the initial and supplemental population shortfall, the 9th District expands south, annexing the Manhattan Terrace, Ocean Parkway, Madison, Marine Park, Homecrest and Gravesend neighborhoods. Additionally, the proposed district expands

west into the East Flatbush, Flatlands, Georgetown and Remsen Village neighborhoods.

Just 60% of the residents populating the Common Cause proposed 9th District are currently represented by Representative Clarke, dismissing the importance of maintaining core constituencies and honoring the relationship forged between a Representative and the constituents who have become familiar with her.

Proposed CD 8 (Open)

Similarly, the proposed 8th District unnecessarily trades populations, eroding the core of the currently configured 10th District. The proposed 8th District cedes the neighborhoods of Remsen Village, East Flatbush, Flatlands and Georgetown to the proposed 9th District and annexes Kensington, Park Slope, Prospect Heights and Windsor Terrace from the proposed 9th District. In addition the proposed district absorbs the Vinegar Hill, Navy Yard and Willilamsburg neighborhoods from the proposed 7th District.

Just 72% of the population of the currently configured 10th District, currently represented by Congressman Edolphus Towns remains in the proposed 8th District. It should be noted that in addition to losing nearly 30% of the core constituency of the proposed district, Congressman Towns himself is moved to the adjoining 7th District.

Proposed CD 7 (Towns and Velazquez)

The proposed 7th District spans three counties in the City of New York as does the currently configured 12th District (New York, Kings and Queens). It swaps population between the proposed 7th District and other Voting Rights districts (proposed 8th and 9th). The net effect of the proposed 7th District swaps is the preservation of 79.3% of the currently configured 12th District core. It must be noted, however, that the Hispanic population in the proposed 7th District is 43.04%. The currently configured 12th District is 44.55% Hispanic; the proposed district erodes Hispanic influence in this Voting Rights district.

Additionally, the Common Cause proposal pairs Representatives Velazquez, who was first elected to the House of Representatives in 1992 and has built 20 years of seniority with Representative Edolphus Towns, who was first elected in 1982 and has amassed three decades of congressional seniority, and pits a Latina Member of Congress against a Black Congressman, creating unnecessary racial tension.

Proposed CD 13 (Engel)

The proposed 13th District fuses northern Manhattan with the west and north Bronx. The currently configured 15th District, which is currently represented by Congressman Charles Rangel, cedes the neighborhoods of Harlem and Spanish Harlem to the proposed 15th District and expands north and west, annexing the Bronx County neighborhoods of High Bridge, Morris Heights, University Heights and parts of Fordham, Mount Hope and Mount Eden and Bedford Park from the currently configured 16th District (represented by Congressman Jose Serrano) and the neighborhoods of Kingsbridge, Spuyten Duyvil, Riverdale, North Riverdale, Fieldston and Norwood from the currently configured 17th District (represented by Congressman Eliot Engel). Less than half of the currently

configured 15th District (represented by Congressman Charles Rangel) is left intact, disregarding the principle of maintaining core constituencies of existing districts.

Proposed CD 15 (Serrano and Rangel)

The Common Cause proposed 15th District swaps west Bronx population for northern Manhattan population, ceding the Bronx neighborhoods of High Bridge, Morris Heights, University Heights and parts of Fordham, Mount Hope, Mount Eden and Bedford Park neighborhoods to the proposed 13th District and annexes Harlem, Spanish Harlem and part of Hamilton Heights from the currently configured 15th District.

Just 62.5% of the currently configured 16th District (represented by Congressman Jose Serrano) remains in the proposed 15th District, substantially eroding the core of an existing Voting Rights district.

This proposed district pairs a Black congressman who has built 42 years of seniority with a Latino congressman who has built 20 years of seniority, unnecessarily creating racial tension. It also risks the considerable clout gained by long serving minority Members of Congress, guaranteeing that one loud, clear voice for protected communities will be silenced.