

April 30, 2022

By E-Filing and E-Mail (cervas@cmu.edu)

Jonathan Cervas, Ph.D., Special Master  
Carnegie Mellon University  
5000 Forbes Avenue  
Pittsburgh, PA 15213

Re: *Harkenrider et al. v. Hochul et al.*, Index No. E2022-0116CV

Dear Special Master Cervas:

We represent Senate Majority Leader Andrea Stewart-Cousins in this special proceeding. Together with counsel for Speaker of the Assembly Carl Heastie, Graubard Miller and Phillips Lytle LLP, we write to summarize why we believe that the proposed congressional map that we are submitting herewith is fair and merits strong consideration. Images of the map are attached as Exhibit A.

### **Overall Features of the Proposed Plan**

As confirmed by the accompanying report of Dr. Michael Barber (attached hereto as Exhibit B), who testified as an expert in this case, the Legislature's proposed congressional plan contains 26 contiguous districts that are as close to equal population as is possible. Every new district retains at least 60% of the corresponding population of the old district, with an average core retention of 81%. This is a high degree of core retention given that New York's loss of a congressional district necessitated considerable adjustment of district boundaries. The Legislature's proposed plan splits 20 counties a total of 38 different times. That is comparable to the 2012 court-drawn plan, which split 19 counties a total of 36 times. The Legislature's proposed plan has an average Polsby-Popper score of 0.303, an average Convex Hull score of 0.726, and an average Schwartzberg score of 0.538. These are comparable to the 2012 plan, which had an average Polsby-Popper score of 0.348, an average Convex Hull score of 0.757, and an average Schwartzberg score of 0.579. In the Legislature's proposed plan, there are nine districts that have a majority non-White voting age population ("VAP"). There is one majority Black district (District 5), two majority Hispanic districts (Districts 15 and 13), and one district that contains greater than 40% Asian VAP (District 6, 45.81% Asian VAP).

This is similar to the 2012 plan, which had nine majority-minority districts and two majority Hispanic districts (Districts 15 and 13).<sup>1</sup>

### **District-by-District Analysis**

#### **District 1**

Proposed District 1 is an extremely compact district that begins on the East End of Long Island. The core retention of proposed District 1 is 89%. The population that shifted reflects the removal of the Town of Smithtown from this district in response to testimony by Petitioners' expert in this litigation criticizing the fact that Smithtown had been divided in the enacted plan (Smithtown is now kept whole in District 3). Any uneven edges on the western edge of the district reflect the need to achieve population equality and the decision to keep the communities of Central Islip and Islip whole in District 2. The only town that is split in this district is Islip, which is necessary to achieve population equality.

#### **District 2**

District 2 is a South Shore district that retains 82% of its population from the 2012 plan. District 2 is bounded on its western border by District 4 and on its northern border by Jericho Turnpike, a major thoroughfare that creates a neutral, natural boundary between Districts 2 and 3. District 2 is extremely compact and has clean boundaries. In sharp contrast to Petitioners' proposed plan, which gratuitously and purposefully cracks minority communities throughout Districts 1,

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<sup>1</sup> Petitioners' expert, Sean Trende, submitted a dot plot that purported to show the absence of any partisan intent in Petitioners' proposed map. We have not done the same because the dot plot is of no probative value. As we addressed extensively in the litigation, Mr. Trende failed to consider important constitutional criteria like communities of interest, and his purported conclusions therefore lack any statistical validity. Because Mr. Trende's simulations start from a "blank page" instead of heeding the strong bipartisan consensus that the upstate districts should be drawn with four Democratic-leaning urban districts and three Republican-leaning rural districts (including a Southern Tier district and a North Country district), Mr. Trende's simulated bands are an invalid baseline for comparison with Petitioners' proposed plan or the Legislature's proposed plan. Petitioners' upstate districts appear to be within the range of Mr. Trende's simulations only because of Petitioners' nakedly partisan decision to ignore consensus decisions like uniting Onondaga County and Tompkins County in a single district. Moreover, Mr. Trende's purported analysis of Petitioners' proposal is skewed dramatically by Petitioners' proposed District 4, which supposedly is a Democratic district but in fact heavily favors Republicans in congressional races. Without the misleading lean of that district, Petitioners' dot plot would undermine their claim to neutrality. Mr. Trende's flawed methodology is not capable of shedding light on the intent behind or fairness of either Petitioners' proposal or the Legislature's, but a district-by-district analysis of both proposals shows clearly that the Legislature's proposal is fair and neutral and that Petitioners' proposal is a partisan gerrymander.

2, and 3, District 2 in the Legislature's proposed plan keeps minority communities of interest in Islip and Babylon united as they were in the 2012 plan.

### District 3

District 3 is a reasonably compact district that reaches into Westchester due to population pressure pushing west from Suffolk County through Nassau and Queens Counties. Districts 1-3 are underpopulated by a total of 123,241 people. Districts 1-3 have to move west, but the flexibility to move west is limited because Districts 5 and 6 are plurality Black and Asian districts, respectively, and cannot be significantly disturbed without raising concerns about minority voting rights or severely displacing longstanding communities of interest in and around New York City. To accommodate population needs, District 3 has to take 268,272 people from outside of Nassau and Suffolk Counties. Because it cannot take too much Asian population from District 6 in central Queens, District 3 has to move through northern Queens into the Bronx. Moving District 3 into the Bronx in turn implicates concerns about diluting minority voting strength because all of the existing districts located wholly or partially in the Bronx, Districts 13, 14, 15, and 16, were and remain districts in which minority voters have the opportunity to elect the candidate of their choice. District 3 therefore follows the eastern boundary of the Bronx and takes the remaining additional population it needs from Westchester shore communities that share significant interests with the Nassau and Suffolk communities that are in District 3. Despite the population constraints, District 3 has a strong core retention of 69%. As noted above, District 3 adds the entire Town of Smithtown, which is now kept whole. The configuration of District 3 in the Legislature's proposed map is similar to the configuration that is recommended in the Unity Coalition's proposed map.

### District 4

Proposed District 4 is nearly identical to District 4 in the enacted map and extremely similar to District 4 in the 2012 map (the core retention in this district is 100%). This district was not challenged in the litigation, and there is no reason that its boundaries should change significantly from those adopted in 2012.

### Districts 5, 6, and 7

Districts 5, 6, and 7 were not challenged in this litigation. The proposed districts are identical to the districts in the enacted plan. Each of these districts was and remains a district in which minority voters have the opportunity to elect the candidate of their choice.

## Districts 8 and 9

Districts 8 and 9 are both majority-minority districts in which minority voters have the opportunity to elect the candidate of their choice. District 8 has experienced a high level of gentrification since 2012, which had to be considered when drawing the district. The proposed districts are the same as in the enacted map, and they are substantially similar in shape to Districts 8 and 9 in the 2012 map. District 8 is now more compact than its predecessor and located wholly within Brooklyn. District 8 also unites Sheepshead Bay, Brighton Beach, Gravesend, and Manhattan Beach, Russian-speaking communities of interest that had previously been divided. District 9 unites the Orthodox Jewish communities in Midwood and Crown Heights with the Orthodox Jewish community in Ocean Parkway South.

## District 10

District 10 is very similar to its configuration during the last three redistricting cycles, including the plan drawn by the Special Master in 2012. It combines heavily Jewish Communities on the Upper West Side of Manhattan with heavily Jewish Communities in Borough Park, Brooklyn. It is the only district in New York that is represented by a Jewish Member of Congress. The main changes to this proposed district are in Brooklyn, where the proposed district unites the Chinese-American community from Chinatown in Manhattan with the Chinese-American neighborhoods in Sunset Park, Bensonhurst and Bath Beach. The Chinese-American community in Brooklyn is a fast-growing community whose members reside continuously from Sunset Park to the water. Public testimony before the Commission – including testimony cited affirmatively by Petitioners in this litigation and in connection with their proposed congressional plan – advocated for unification of this community of interest. Statement of OCA-NY by Dr. Wah Lee, 7/29/21, [https://www.nyirc.gov/storage/archive/Kings\\_Richmond\\_Redacted.pdf](https://www.nyirc.gov/storage/archive/Kings_Richmond_Redacted.pdf).

## District 11

We recognize that District 11 in the enacted plan was the subject of considerable controversy. Its detractors claimed that its shape can be explained only by partisanship. We respectfully submit that those who were quick to criticize enacted District 11 failed to recognize that, as noted above, it accommodates the unification of a fast-growing Chinese-American community that had been cracked. It does so by joining Bath Beach and Bensonhurst in District 10 with the Chinatown neighborhoods in Brooklyn and Manhattan. Uniting these neighborhoods makes it necessary for District 11 to take on more population to the north of Staten Island to avoid cracking Bath Beach from other heavily Chinese-American neighborhoods. There is precedent for this same configuration in both the 1972 and 1982 redistricting cycles. The district, as proposed, has high core retention and is compact. Moreover, declining to consider a clear community of

interest comprised of racial and language minority voters in order to favor a Republican incumbent in District 11 would be problematic. The new proposed map maintains the same configuration of Districts 10 and 11 as the enacted map. It does this not to be combative or to disregard the differences of opinion about these districts, but because the Legislature continues to believe it is the most appropriate configuration for these districts, and that the attacks lodged against the configuration in the litigation were motivated by partisan preference, as opposed to genuine criticism of the decision to unite a clear community of interest in the manner requested by that community and lauded by Petitioners' own expert.

#### Districts 12, 13, 14, and 15

None of these districts was challenged in the litigation, and the districts in the enacted map remain unchanged in this proposed map. These districts avoid unnecessary change from the 2012 plan, maintain communities of interest, and comply with federal and state constitutional requirements regarding racial and language minority voting rights.

#### District 16

District 16 as proposed is extremely similar to District 16 in Commission Plan A. It draws most of its population from the Bronx and Westchester and also includes, for population equality purposes, all of Putnam County other than Philipstown. District 16 maintains the longstanding connection between communities of interest in the north Bronx and Mount Vernon. In the enacted plan, District 16 cut into a portion of District 18, which had population on either side of District 16 in Putnam County and Westchester County. District 16 in this proposed plan is more compact and no longer includes those features. This proposal also reduces municipal splits in Westchester County relative to the enacted plan.

#### District 17

Proposed District 17 features significantly higher core retention than it did in the enacted plan or in Petitioners' proposal (89% vs. 74.9% in the enacted plan and 74.4% in Petitioners' proposed plan). In this proposal, District 17 no longer includes Sullivan County as it did in the enacted plan. This proposal also reflects the removal of parts of Westchester County from District 18, which permits District 17 to have cleaner boundaries. Within Westchester County, Districts 16 and 17 border one another such that District 16 is to the east and District 17 is to the west. Testimony before the Commission supported this configuration. Test. of Mary Jane Shimsky, 11/8/21, <https://tinyurl.com/5n8b7uay>. In addition, this proposal maintains and unites communities of interest in Westchester and Rockland Counties, whereas Petitioners' proposal divides these communities by placing

Westchester River communities such as Dobbs Ferry, Irvington, Tarrytown, and Sleepy Hollow wholly or partially in District 16.

#### District 18

Proposed District 18 is a clean, compact district. Proposed District 18 closely follows both Commission Plan A and Commission Plan B for this district. The proposed district includes Sullivan County, which is kept whole, and takes most of its population from Orange County, as it does in both Commission plans. The proposed district no longer crosses into Westchester County, and it includes only the westernmost portion of Putnam County.

#### District 19

Proposed District 19 was one of the most underpopulated districts in the 2012 plan, and it adjoins former District 22, which must be eliminated due to the loss of a district. To the extent possible given the significant population challenges in this area, the proposed district is compact and avoids county splits. Like District 19 from 2012, this proposed district unites a number of colleges and universities throughout the Hudson Valley and Mohawk Valley in Central New York. The district no longer includes Utica and no longer cuts into Albany County, as it did in the enacted plan. The proposed district keeps Otsego County whole and puts Schoharie County back into this district where it was under the 2012 plan. Broome County, which was split in the 2012 plan and the enacted plan, is kept whole.

#### District 20

Proposed District 20 remains an Albany-based district that unites Albany with other capital region cities. Albany County, Montgomery County, and Schenectady County are all kept whole in this district. The inclusion of all of Montgomery County explains the shape of the district and its extension to the west. The northern edge of the district takes in the city of Glens Falls, a capital region city that is appropriately joined with other cities, as it was in the enacted plan. Troy is no longer in District 20 in order to minimize the splitting of Rensselaer County (a small portion of Rensselaer County needed to be split solely for population equality purposes).

#### Upstate Districts

Upstate Districts 21-26 in this proposed plan are nearly identical to Commission Plan A and extremely similar to Commission Plan B. This is the region of the State in which the Commission reached a bipartisan consensus and drew the districts in a similar configuration. The enacted plan closely followed the Commission consensus, and the similarities are even stronger in this plan. The

main difference between this proposed plan and the Commission proposals is that this proposed plan includes fewer county splits in upstate districts. Commission Plan A splits 16 upstate counties 36 times, and Plan B splits 16 counties 35 times. By contrast, the Legislature's proposal splits 11 counties 23 times.

#### District 21

Proposed District 21 maintains the same general North Country configuration that it had under the 2012 plan. The southern border of the district is now cleaner than it was under the enacted plan, and more counties are made whole than were in the enacted plan. The district extends further to the west than it did in the enacted plan so that District 24 extends less far east along Lake Ontario.

#### District 22

This district corresponds to District 24 in the 2012 plan. The proposed district in this plan and both Commission plans include Onondaga County, Tompkins County, and the City of Utica in a single district and as primary population centers. This configuration closely follows the Commission consensus. Like the Commission plans, this proposed plan unites leading Central New York university communities in a single district.

#### District 23

Proposed District 23 remains a Southern Tier district. There was significant testimony before the Commission in support of this configuration. Proposed District 23 is nearly identical to the Commission proposals. The only difference between this proposal and Commission Plan A is that Plan A splits Wyoming County, and this proposal keeps Wyoming County whole. The only difference between this proposal and Commission Plan B is that Plan B splits Broome, Livingston, and Wyoming Counties, and this plan keeps those counties whole. (The Republicans on the Commission configured District 19 to make the proposed district safe for Republican candidates. That included splitting Broome County and moving Binghamton, which had been in former District 22, into District 23.) The Commission reached a consensus about nearly all of the communities of interest in this district, which this proposed plan heeds.

#### District 24

Proposed District 24 is nearly identical to Commission Plan A. It is also extremely similar to Commission Plan B, but Commission Plan B travels less far to the east along Lake Ontario. Commission Plan A splits Oswego, Wayne, and Wyoming Counties, but this plan keeps Oswego and Wayne Counties whole in this district and Wyoming County whole in District 23. Enacted District 24 was

criticized for its eastern boundary; proposed District 24 spans less territory and adopts the proposed boundary in Commission Plan A.

#### District 25

Proposed District 25 is very similar to enacted District 25 and nearly identical to both Commission proposals for this district. It preserves 100% of District 25 from the 2012 plan. This proposed district is cleaner than enacted District 25, and it removes a small portion of Ontario County that was a subject of criticism during this litigation. This is a Rochester-based district, as it was in the 2012 plan, and Monroe County is kept whole. This proposed district includes fewer county splits than Commission Plan A or Plan B. Each Commission proposal splits Wayne County and Ontario County, whereas this proposed district splits only Ontario County, which is necessary for population equality purposes.

#### District 26

Proposed District 26 is identical to enacted District 26. There were no complaints about this district in the litigation. It is nearly identical to both Commission proposals and to Petitioners' proposal. This proposed district maintains 100% of the 2012 district. The primary differences between this plan and the other referenced plans are the places where population is equalized.

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Thank you for considering this submission. We hope you will agree that the Legislature's proposed plan is neutral and fair, that it gives appropriate consideration to the maintenance of minority voting strength, and that it appropriately balances the goals of compactness and maintaining the cores of prior districts, pre-existing political subdivisions, and communities of interest. We look forward to addressing any questions or concerns that you may have on May 6, 2022.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Alex Gold', followed by a long horizontal stroke that ends in a small upward hook.

Alexander Goldenberg

cc: All Counsel of Record