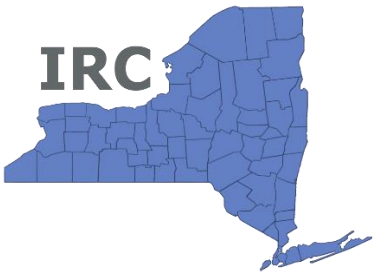


Written Submissions – Via Mail

I want to thank the commission for giving me the opportunity to testify:

My name is Susan Strassburger I am a member of the Jewish community of Central Queens. Currently, under the current maps, our community is divided between the 27th Assembly District and the 25th Assembly District. The neighborhoods of Kew Gardens Hills, Pomonok, Electchester, and Hillcrest are divided.

I am asking this commission to take into account the unification of Kew Gardens Hills, Pomonok, Electchester, and Hillcrest so that Jewish representation is not diluted in this redistricting process. When this commission redraws the Assembly district lines, please incorporate all neighborhoods mentioned into one assembly district. The aforementioned neighborhoods in the south should be connected with College Point, Northern Whitestone, and Le Havre Cooperative in the north.

Currently, the Jewish Community in Central Queens is split between 4 state senate districts. It does not allow for any conformity to representation in the State Senate. Your drafts have created a central Queens and Eastern Queens plan that incorporates parts of Kew Gardens Hills being split up again in three districts. Again, we need to be in one State Senate district. We are asking when you redraw your drafts that Kew Gardens Hills, Pomonok, Electchester, and Hillcrest be drawn into a Central Queens district with the neighborhoods of Northern Forest Hills, Middle Village, Glendale, Maspeth, and Ridgewood. Also, please consider the Eastern Queens map as well, where the neighborhoods I mentioned as a block be included with Fresh Meadows, Oakland Gardens, Little Neck Douglaston, Bayside, and Bay Terrace. Consider your guide eastward between the Long Island Expressway and the Grand Central Parkway to the County Line, before heading strictly north.

Please make every effort to keep Kew Gardens Hills, Pomonok, Electchester, and Hillcrest together in both an Assembly District as well as one State Senate district/

Susan Strassburger

THE ASSEMBLY
STATE OF NEW YORK
ALBANY

PHIL STECK
Assemblymember 110th District

CHAIR
Committee on
Alcoholism and Drug Abuse

COMMITTEES
Health
Insurance
Judiciary
Labor
Oversight, Analysis and Investigation

November 17, 2021

Independent Redistricting Commission
250 Broadway, 22nd Floor
New York, NY 10007

Dear Commissioners:

At the public hearing on Monday, November 1, 2021, I was requested to provide a letter detailing my testimony. At the hearing, I testified to the community of interest between Colonie, Niskayuna, and Schenectady.

Many Niskayuna residents are in one of the Colonie School Districts. There are Colonie residents who are in the Niskayuna School District. In contrast, there are no Colonie residents in the Guilderland School District, and vice versa. The Guilderland and Bethlehem school districts and towns overlap.

Colonie is united with Niskayuna and Schenectady by Routes 5 and 7 and the Mohawk River. Flooding of the Mohawk is a joint concern of Schenectady, Niskayuna, and Colonie. I testified at a federal hearing on the problem. The attention I brought to the matter led to State investment in addressing the flooding issue. The area of flooding is also in the area of the paved bike path (paved with Assembly SAM funds) that links Niskayuna and Colonie.

Colonie takes its drinking water directly from the Mohawk River, so environmental conditions in the Mohawk upstream (Schenectady and Niskayuna) are very important to Colonie.

Colonie and Schenectady participate in a HUD homes consortium together.

Many Colonie residents attend Schenectady County Community College, as Albany County does not have its own Community College. (Many attend Hudson Valley Community College in Rensselaer County).

The Guilderland border with Colonie is industrial. No one from Colonie goes there. Guilderland is not readily accessible from Colonie. To get to Guilderland, you generally have to go to Schenectady and out route 146 or to Albany and out route 20. Route 155 is a long and winding road that generally leads to the Albany County Airport. You can take this road as a roundabout way to get to Guilderland but it is not the normal flow of traffic, in contrast to Colonie to Niskayuna to Schenectady on Routes 5 and 7. Route 5 is nearly at the top of the list of most heavily traveled bus routes in the nation.

Watervliet and Cohoes are historically part of the community of River cities, which include Troy, and line the Hudson River. There are bridges direct from both communities to

ALBANY OFFICE: Room 627, Legislative Office Building, Albany, New York 12248 • 518-455-5931, FAX: 518-455-5840
DISTRICT OFFICE: 1609 Union Street, Schenectady, New York 12309 • 518-377-0902, FAX: 518-377-0458
EMAIL: steckp@nyassembly.gov

Troy. In fact, Watervliet was originally "West Troy." The River cities are similar demographically.

Colonie is a very diverse community. There were two African-American candidates running for town office this year. One was elected to the Town Board. An Hispanic woman was previously elected to the Town Board. Colonie has large numbers of East and South Asian immigrants. Niskayuna just elected an African-American Supervisor. Niskayuna previously had an African-American Town Board member. There are several African-American electeds in Schenectady. In contrast, Guilderland, Watervliet, and Cohoes have never elected any African-American or Hispanic town or city council members.

Glenville has no relationship to Colonie. Many Colonie residents don't even know where it is. Glenville has historically been grouped with Burnt Hills, a similar community, located in the Town of Ballston in Saratoga County. The history of communities do not always conveniently follow County lines. In contrast, to the relationship between Glenville and Burnt Hills, Schenectady and Niskayuna have always been linked. The General Electric Company factories are located in Schenectady and GE Global Research is located in Niskayuna. GE executives, managers, engineers, and scientists live in both communities. It is impossible to tell where Schenectady ends and Niskayuna begins on Union Street and in the vicinity of the Schenectady High School. Indeed, Niskayuna residents have expressed great concern about the well-being of the Schenectady school district because of the close linkage between the two communities. A prosperous Schenectady is important to Niskayuna residents.

It is inaccurate to say keeping Schenectady in only one Assembly district would enhance its influence. Schenectady has greater needs than Colonie or Niskayuna. Consequently, the Assembly has brought proportionately more SAM and budgetary projects into Schenectady than Niskayuna and Colonie, in part because Schenectady currently has two Assemblymembers. One example is Ellis Hospital, which has in recent years been far less financially secure than the two Albany hospitals. It received $2 million from the State to rebuild a portion of its facilities.

For this reason, the most sensible solution is to take 3,000 population from A.D. 110 in Schenectady (A.D. 110 currently has about 60% of the City) and give that to A.D. 111.

Finally, I should point out that under the "letters" proposal, the Albany-Schenectady-Troy area would lose one majority member. This would decrease its representation in the body even though the even though the area did not lose population.

Thank you for your consideration.

Very truly yours,

Phil Steck

ALBANY OFFICE: Room 627, Legislative Office Building, Albany, New York 12248 • 518-455-5931, FAX: 518-455-5840
DISTRICT OFFICE: 1609 Union Street, Schenectady, New York 12309 • 518-377-0902, FAX: 518-377-0458
EMAIL: steckp@nyassembly.gov

Independant Redistricting Commission
250 Broadway, 22nd Floor
New York, N.Y. 10007

Oct. 22, 2021

Chairman David Imamora, Vice Chairman Jack Martin,
Executive Directors Karen Blatt and Douglas Breakell
and distinguished members of the New York State
Independant Redistricting Committee

Thank you for giving us an opportunity to make a statement concerning this important Redistricting measure that's occuring at this Time. The Two map proposals That have been made Public are not exactly clear - boundaries, etc. Nevertheless, I believe that Montgomery County should be represented by one United States Congressman. At the present Time, the western part of our County (19Th Dist) is represented by Congressman Antonio Delgado and the eastern part (20Th Dist) is represented by Congressman Paul Tonko. According to 2019 Statistics our county breakdown of Registered Voters is: Democrat 9945 Republican 9887 Conservative 727 Working Party 119 Green party 81 Libartarian 25 Independant 1635 Blank 6792. It would be an advantage to our Citizens and Local and County entities to have one person instead of Two. Along with our present Congressmen, we have been represented by Bernard Kearney, Donald Mitchell, Sherwood Boelert, Hamilton Fish, Michael McNulty, Samuel Stratton, and John Fase. They were all highly respected in Montgomery County.

We know That your commissioners were choosen because of your open mindednest, experiences, and intellect.

Thank you for giving me the Time to express my views.

Sincerely,

Jay W. Summerson
154 Robwil Dr.
Fort Plain, N.Y. 13339

15 November 2021

NYS Independent Redistricting Commission
250 Broadway, 22nd Floor
Manhattan, NY 10007

Commissioners,

I write to you in my capacity as Chairman of the Conservative Party of Richmond County, with a membership in excess of four thousand enrolled voters. The Conservative Party was proud to play a significant role in the recent defeat of Ballot Proposition 1, which would have diminished the influence of your commission while increasing the potential for political gerrymandering of districts, along with Ballot Propositions 3 and 4, which would have substantially increased the potential for voter fraud. The citizens of New York State deserve a fair and honest election process, and not one imposed by either politicians or the courts. As such, the work of your commission is a greatly appreciated contribution to good government.

In constructing maps for Staten Island, I would respectfully remind the Commissioners that the Borough of Staten Island is unique in many ways from the rest of the City of New York. This is especially true with respect to transportation, as the only borough without a direct connection to the subway and the only borough where a toll is required for vehicular entry. In further contrast with the other boroughs, Staten Island has a much greater percentage of home-owners and a much lower population density. We also remain the only borough without a municipal hospital. These are characteristics that merit serious consideration in the design of legislative districts.

Earlier this year, the Conservative Party of Richmond County endorsed the municipal secession of Staten Island from the City of New York, the first and only political party organization in Staten Island to do so. This decision was based largely on the substantial disproportion in the ratio of revenues contributed to services provided. As such, the importance of maintaining the compactness of neighborhoods in the design of legislative districts cannot be understated. Your anticipated attention to these considerations is most appreciated as you continue your work towards producing final maps for adoption.

Respectfully,

David Mario Curcio
Chairman, Conservative Party of Richmond County

VILLAGE OF
PORT CHESTER
222 Grace Church Street, Port Chester, NY 10573

Luis A. Marino
Mayor

(914) 939-2200
Fax: (914) 937-3169
E-Mail: MayorMarino@portchesterny.gov

November 5, 2021

David Imamura, Chair
Jack Martins, Vice-Chair
Honorable Members of the New York State
Independent Redistricting Commission
250 Broadway, 22nd Floor
New York, New York 10007

Dear Chair, Vice-Chair and Honorable Commissioners:

We have learned that the Commission proposes to remove the Village of Rye Brook from the current Sound Shore Assembly District (91st Assembly District) and place it in a new assembly district with other municipalities as far north as Mt. Kisco and Bedford. On behalf of the Village of Port Chester Board of Trustees, thank you for the opportunity to participate in your process of obtaining public input and I ask that this correspondence be made part of the official record.

The Village of Port Chester joins with the Town of Rye and the Village of Rye Brook in opposition to this proposal.

The redistricting plan would have a significant impact on the relationship between the Village of Rye Brook and Port Chester which have a long history of sharing municipal services such as EMS, fire protection, library, capital improvements and equipment. The two villages have closely worked with legislative representatives to secure special state legislation and support in many of these areas. Such legislative success would not likely have been possible if the two villages were divided into two different assembly districts.

Since Rye Brook is within the Long Island watershed, all of its stormwater flows into Long Island Sound, and its sanitary sewers flow into either the Westchester County's Blind Brook or Port Chester's treatment plants. Separating Rye Brook from Port Chester and other Shore communities would undercut potential regional solutions and inter-municipal cooperative agreements to comprehensively address stormwater and sanitary sewer issues. *The* litigation by Save the Sound against the County and the Sound Shore communities reflects their common interest and the need to work together to address shared environmental matters that impact the Long Island Sound. To be successful, all such joint efforts necessarily involve state grants and common legislative representation.

Like the other Sound Shore communities, Rye Brook is served by Suez, a private water company. These communities have often required state representation on issues involving the State Public Service Commission that affect their residents, such as setting water rates, mergers, acquisitions and other environmental and inter-state impacts. Given their mutual interest, Rye Brook, Port Chester and the City of Rye have historically retained joint counsel to represent them in proceedings before the Commission.

In summation, the proposal disregards the common goals, shared identity and long-standing collaborative efforts in many areas of mutual concern among the municipalities currently located in the Sound Shore District, which includes the villages of Rye Brook, Port Chester, Mamaroneck and Larchmont and the towns of Rye and Mamaroneck and City of Rye and part of the City of New Rochelle. All of the Sound Shore communities deserve to have a single voice to represent their collective, unique and mutual interests.

The Village of Port Chester therefore strongly opposes the proposed change in the boundaries of the 91st Assembly District and urges the Commission to reconsider such proposal.

Sincerely,

Luis A. Marino
Mayor

LAM:mtv

cc: Village of Port Chester Board of Trustees
New York State Assemblyman Steve Otis
New York State Senator Shelley Mayer
Villages of Rye Brook and Mamaroneck and Town of Rye

Independent Redistricting Commission
250 Broadway
22nd Floor
New York, N.Y.

Re: NY-16

October 25, 2021

Attn: Members of I.R.C.

Followed is my testimony as a resident of New Rochelle, New York.

We have fought hard for equitable representation in New Rochelle after decades of unequal drawing of congressional district lines.

Regarding plans to segment NY-16. I am adamant that there is equity across the district and we keep communities of interest together.

We remain an example of a diverse district socio-economically and ethnically.

The optics of removing us from the district appears to minimize our impact as people of color voters in the voting process.

This would be gerrymandering!

Submitted by,

Walter W. Brown
E-Mail remingtonflyers@MSN.com

Dr. Steven Itzkowitz
50 Poplar Place
New Rochelle, New York 10805
(914) 633-7361

Independent Redistricting Commission
250 Broadway
22nd Floor
New York, New York 10007

October 27, 2021

Dear Redistricting Commission
:

As a resident of New Rochelle, I am extremely concerned that there are plans to segment NY-16. It is imperative that there is equity across the district and we keep communities of interest together. We are the example of a diverse district, socio-economically and ethnically. The optics of removing us from the district appears to minimize the black and brown voter. This is gerrymandering. Our communities are very important to stay together. Do not separate us!

I strongly believe that, for the City of New Rochelle to meet the goals of addressing disparity and moving towards true equity, you must boldly and specifically address issues of institutional racism. It is my belief that structural inequity affects all residents, not just those of color, and the integrity and future of our city. Keep redistricting from splitting and changing the Bowman and Jones districts, so that they can continue to work together, not be running against each other!!
Do not split us up!!!

Sincerely,

Dr. Steven Itzkowitz

CONEY ISLAND COMMUNITY COUNCIL, NYC INC.
"EMPOWERING COMMUNITIES THROUGH PARTNERSHIPS"
3816 Neptune Avenue, Brooklyn, NY 11224-1328 | 718-372-8683 |Email: donations@cicc.nyc

Good Afternoon Commissioners.
My name is Joseph Packer. I am a lifelong resident of Coney Island and long-time Community Organizer.
I am presently the President of the Coney Island Community Council, NYC (CICCNYC) a Community Based Organization that was formed after Superstorm Sandy to SERVE and restore resiliency to the Coney Island community. The Council (CICCNYC) works directly with elected officials, local Churches (various Clergy Organizations), Civic Groups and Community Leaders to provide residents stability and quality of life care for their families and their homes.
As a Community Activist in my personal life, I applaud the Commission for taking on this awesome task.
It is vitally important that we continue to serve those who voices we barely hear. I am a CB#13 member, Educational Administrator, and homeowner. I'm honored to be given the opportunity to lift my voice in their absence. The CENSUS has yielded the numbers. We are thankful to the IRC (Commission) for their insights and thoughtful deliberation. After viewing the stellar resumes of the Commissioners, I feel confident that the Process will bare legislative lines that will adhere to the Spirit of which the Commission was created.
I remember, in the mid '80's, the years of struggle on this little peninsula, called Coney Island. A small DISENFRANCHISED community of mostly African-Americans and Hispanics. We barely had 600 Prime Registered Voters. An elected official publicly humiliated us by calling us "HIS STEP CHILD". We took it personally and began to Register thousands of new Registered Voters throughout Coney Island and the Marlboro Houses. By the time David Dinkins decided to run for Mayor, we had over Seven Thousand New Registered Voters. That was the start of a great working relationship between two Communities. There are common social, ethnic, racial and economic interests between the Coney Island Community and the Marlboro Houses in Bensonhurst that are paramount to both areas development. I am hoping that the Commission can restore the ENTIRE Marlboro Houses Complex back to the 46th Assembly District.
It has always been an unsuccessful chore to attempt to pair Coney Island with other similar communities of color or diverse interests in the Borough. We have been BLESSED, after decades of suffering, we are now joined with other parts of Brooklyn to have the Esteem Hakeem Jeffries as Our Congressman. It has made a TREMENDOUS DIFFERENCE in the lives and aspirations of Our Community.
We were creative in drawing lines that connected us to the Northern Shore of Staten Island in the past. But I believe that we would be better served to explore the possibility of trying to work with the Commission or good government group to find a way to stay in Brooklyn.
Once again, I thank the Commission for providing me with this opportunity to provide my testimony.

Tompkins County Legislature
Governor Daniel D. Tompkins Building
Ithaca, NY 14850
www.tompkinscountyny.gov/legislature

Department: Tompkins Intergovernmental Relations Committee
Category: Redistricting
ID: 10440

ADOPTED

RESOLUTION NO. 2021-225

Response to the Draft Maps of the 2021 Independent Redistricting Commission, Supporting the "Letters" Maps that Keep Tompkins County Intact

WHEREAS, based on the 2020 Census data, New York State will redraw legislative districts for State Senate, State Assembly, and the U.S. Congress, and

WHEREAS, a state constitutional amendment approved by voters in 2014 established that a new 10-member Independent Redistricting Commission (IRC) will oversee the process this cycle, and

WHEREAS, parameters for new district lines include "…the maintenance of cores of existing districts, of pre-existing political subdivisions, including counties, cities, and towns, and of communities of interest," which would strongly suggest that Tompkins County should remain intact, and "…each district shall be as compact in form as practicable", and

WHEREAS, on June 15, 2021, the Tompkins County Legislature passed Resolution 2021-127, "Urging that New York State's 2021 Redistricting Process Follow the Borders of Tompkins County, and Place Tompkins County Completely into One Congressional District and One State Senate District," stating the county's rationale for asking that the new districts keep Tompkins County intact, and

WHEREAS, Resolution 2021-127 also articulated many reasons that Tompkins County shares a "community of interest" with Cortland County, and therefore should remain in the Assembly district with Cortland County, and if possible be combined with Cortland County for the State Senate and Congressional districts, and

WHEREAS, Legislator Martha Robertson testified at the IRC's public hearing for the Southern Tier on August 9, 2021, communicating the principles expressed in Resolution 2021-127, and

WHEREAS, on September 15, 2021, the IRC released two sets of maps for each of the three elected offices, and

WHEREAS, in the published draft IRC maps (<https://www.nyirc.gov/draft-plans>), Tompkins County is kept intact in all three "Letters" versions of the maps, while in the "Names" versions, only the State Senate map keeps Tompkins County intact, and

WHEREAS, none of the maps puts Tompkins County in a district with Cortland County, and

WHEREAS, the "Letters" Congressional map puts Tompkins County into a much more compact, accessible, and reasonable district than the "Names" map, which is almost twice the travel time east to west as the "Letters" map is end-to-end, and

WHEREAS, the IRC is accepting comment on their draft maps through October and November 2021, now therefore be it

RESOLVED, on recommendation of the Tompkins Intergovernmental Relations Committee, That the Tompkins County Legislature strongly recommends the "Letters" versions of the Congressional, Senate, and Assembly draft maps, because they keep Tompkins County intact and are more compact than the "Names" versions,

RESOLVED, further, That we urge the Independent Redistricting Commission consider amending the final maps so that Tompkins County is included in whatever districts include Cortland County, because of the shared interests, culture, and economy that link the two communities,

RESOLVED, further, That copies of this resolution be sent to the ten members of the New York State Independent Redistricting Commission (Eugene Benger, Ross Brady, Ivelisse Cuevas-Molina, John Flateau, Elaine Frazier, David Imamura, Jack Martins, Charles Nesbitt, Willis Stephens, Jr., and George Winner), Governor Kathy Hochul, Senate Majority Leader Andrea Stewart-Cousins, Assembly Speaker Carl Heastie, Senators Zellnor Myrie, James Gaughran, Rachel May, Tom O'Mara, Peter Oberacker, Pam Helming, Assemblymembers Latrice Walker, Fred Thiele, Jr., and Anna Kelles, and the New York State Association of Counties.
SEQR ACTION: TYPE II-26

RESULT:	**ADOPTED [12 TO 2]**
MOVER:	Martha Robertson, Member
SECONDER:	Deborah Dawson, Member
AYES:	Black, Champion, Dawson, Granison, John, Klein, Koreman, Lane, McBean-Clairborne, McKenna, Robertson, Schill
NAYS:	Glenn Morey, Michael Sigler

STATE OF NEW YORK)
) ss:
COUNTY OF TOMPKINS)

I hereby certify that the foregoing is a true and correct transcript of a resolution adopted by the Tompkins County Legislature on October 19, 2021.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the said Legislature at Ithaca, New York, on October 25, 2021.

Catherine Covert, Clerk
Tompkins County Legislature

CITY OF NEW YORK

MANHATTAN COMMUNITY BOARD FOUR

424 West West 33 Street, Suite #580
New York, NY 10001
tel: 212-736-4536
www.nyc.gov/mcb4

LOWELL D. KERN
Chair

JESSE R. BODINE
District Manager

October 22, 2021

Independent Redistricting Commission
250 Broadway, 22nd Floor
New York, NY 10007

Re: Redistricting Maps

Dear Chair and Commissioners:

On behalf of Manhattan Community Board 4 ("MCB4"), at a duly noticed public meeting taking place on Wednesday, October 6, 2021, by a vote of 43 approvals, 3 denials, 0 abstentions, and 0 present not eligible to vote, voted to support this letter. We provide the following observations on the preliminary district maps the Commission has issued.

The paramount issue for MCB4 in reviewing these maps is that our community district (which is bordered on the south by 14th Street, on the west by the Hudson River, on the north by 59th Street and on the east, by 6th Avenue from 14th to 26th Streets and by 8th Avenue from 26th to 59th) be kept intact, so that neighborhoods are not divided by Assembly or State Senate districts. The Commission prioritizes keeping towns in rural and suburban areas intact within single districts when new district lines are drawn. Manhattan's District 4 should receive the same treatment and be considered a Community of Interest, since our board advocates for the residents of District 4 and coordinates with city agencies on the provision of their services within our boundaries.

To this end, the Democratic version of the Assembly map comes closest to achieving our needs. The southern border of the Assembly district is pushed south (from the border of the current 75th AD) to 14th Street, matching the district line. While the eastern edge does not exactly follow the district line, tracking Broadway will keep our district whole. We would prefer that the northern edge of the Assembly district be pushed to 60th Street, both to track the community district border and to keep the entirety of Hell's Kitchen neighborhood (including the Coliseum Apartments) intact, instead of dividing the northern edge of Hell's Kitchen between Assembly districts. One other aspect of this map that is helpful is that the entirety of Hudson River Park north of 14th Street is contained in a single Assembly district.

Conversely, the Republican version of the Assembly map divides Hell's Kitchen between Assembly districts and includes portions of unrelated neighborhoods to the east within the district, including a large portion of the Midtown business district. The failure to include the northwest portion of Hell's Kitchen within the district is a fatal flaw for this plan.

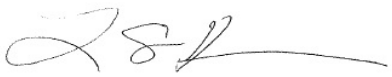
The Democratic version of the Senate map suffers from a similar flaw, dividing Chelsea in half and including Hell's Kitchen and the rest of Chelsea in an Upper West Side district, where our voices will be blunted, instead of the traditional inclusion of our neighborhoods with the Greenwich Village area. Particularly upsetting about this plan is that it divides the Mutual Redevelopment Houses (Penn South) (a group of 10 buildings that are managed as one unit) between two Senatorial districts. This must be corrected.

The Republican Senatorial map is better, in that it keeps our community district together, although the inclusion of the district with the Upper West Side causes the same concerns that the Democratic plan does. The issues that face our district have much more in common with the issues faced in the Village than on the Upper West Side.

Thus, while all of the proposed maps are flawed and need correcting, the Democratic version of the Assembly map and the Republic version of the Senate map at least keep most of our district intact, in line with the principle of a Community of Interest.

Thank you.

Sincerely,



Chair
Manhattan Community Board 4

cc: Hon. Andrea Stewart-Cousins, Majority Leader, New York State Senate
Hon. Carl E. Heastie, Speaker, New York State Assembly
Hon. Brad Hoylman, New York Senate
Hon. Robert Jackson, New York Senate
Hon. Dick Gottfried, New York Assembly
Hon. Linda B. Rosenthal, New York Assembly

School District of the City of Niagara Falls, New York

630 66th Street ◆ Niagara Falls, NY 14304 ◆ (716) 286-4211 ◆ Fax: (716) 286-4283

October 7, 2021

New York State Independent Redistricting Commission
250 Broadway, 22nd Floor
New York, NY 10007

Dear Honorable Commissioners:

As the Superintendent of the Niagara Falls City School District, I am writing to offer my views and opposition to the establishment of a so-called "earmuff" congressional district. The 2002 map that started in Niagara Falls and continued with termination in the southeastern Monroe County Town of Perinton was suboptimal for Niagara Falls.

The best congressional districts are compact, contiguous, and share common interests and concerns. A "hodgepodge district" often has divergent needs and competitive struggles for governmental resources. The proposed composition of suburban, urban, and rural areas lack core continuity and dilute advocacy and support. Recent articles and reports indicate that efforts may be again underway to recreate this type of district. I strongly urge you not to recreate this form of representation.

I sincerely believe that the cities of Buffalo and Niagara Falls have similar character and concerns. After Buffalo, Niagara Falls is the largest urban school district in Western New York facing very similar challenges. I believe other districts in Niagara County are very different in the challenges they face and the needs they have. It is my belief that Niagara Falls is best served as a school district with other large urban districts as it currently exists.

I respectfully request your consideration of rejecting a return to an "Earmuff District" and to keep the educational similarities of Niagara Falls and Buffalo coterminous in any redistricting effort.

Sincerely,

Mark Laurrie
Superintendent
Niagara Falls City School District

Cc: Hon. Carl E. Heastie, Speaker, NYS Assembly
Hon. Andrea Stewart-Cousins, Majority Leader, NYS Senate

Town of Tonawanda

Town of Tonawanda Board
2919 Delaware Ave
Kenmore, NY 14217

Marguerite Greco, Town Clerk
Telephone: (716) 877-8800

October 4, 2021

NYS Independent Redistricting Commission
250 Broadway
22nd Floor
New York, NY 10007

Dear NYS Independent Redistricting Commission:

Please be advised that the Town Board, at a meeting held on September 27, 2021 7:00 PM, considered and adopted the following legislative document(s):

Resolution RES-2021-687 **Adopted [Unanimous]**
Motion: To Oppose any Effort to Reestablish a So Called "Earmuff District" Connecting any Portion of the Town of Tonawanda to the City of Rochester, as Set Forth in the Agenda Before You.

CC: NYS Legislative Task Force on Demographic Research
Honorable Carl E. Heastie, Speaker of the New York State Assembly
Honorable Andrea Stewart-Cousins, Majority Leader of the New York State Senate
Honorable Brian Higgins, Representative, New York's 26th Congressional Dist.
Honorable Chris Jacobs, Representative, New York's 27th Congressional Dist.

Sincerely,

Marguerite Greco

Marguerite Greco
Town Clerk

Attachment(s)

town of
Tonawanda

Town of Tonawanda Board
2919 Delaware Ave
Kenmore, NY 14217
Marguerite Greco, Town Clerk
Department: Town Clerk
09/27/21 07:00 PM
DOC ID: 17873

ADOPTED
RESOLUTION 2021-687

Motion: To Oppose any Effort to Reestablish a So Called "Earmuff District" Connecting any Portion of the Town of Tonawanda to the City of Rochester, as Set Forth in the Agenda Before You.

WHEREAS, because of the federal decennial census, New York State must redraw district lines for the United States House of Representatives, and

WHEREAS, the New York State Independent Redistricting Commission is presently accepting public comment on the redrawing of congressional districts in New York State, and

WHEREAS, since 2013, all residents of the Town of Tonawanda have lived in the 26th Congressional District, which unites the cities of Niagara Falls, North Tonawanda, Tonawanda, Buffalo and Lackawanna with contiguous towns and villages, including the Town of Tonawanda, and

WHEREAS, the Town of Tonawanda's placement within this district has been wholly and entirely proper, given that the town, the city of Buffalo, and adjacent communities are integral components of the Niagara Frontier, a compact and contiguous region of New York State with an integrated economy and many shared interests, and

WHEREAS, the current 26th Congressional District, including the Town of Tonawanda, meets all of the generally accepted criteria for a good-government district, including compactness, contiguity, and preservation of communities of interest, combining voters of shared interest throughout the district; maintenance of this type of district with the town of Tonawanda included therein is essential to the growth and betterment of our city, and

WHERAS, from 2003 to 2012, the Town of Tonawanda was situated within the "Earmuff District," which rather than connecting to Buffalo instead divided the city of Buffalo and connected our Town to metropolitan and suburban Rochester more than 80 miles to the east, and

WHEREAS, the "Earmuff District" stretched from the east side of Buffalo to the Town of Tonawanda north to Niagara Falls, through Lewiston and Porter, then traversed east across the shores of Lake Ontario, through portions of 10 towns in Niagara, Orleans and Monroe counties, including the city of Rochester and additional towns to that city's southeast, and

WHEREAS, inclusion in that "Earmuff District" clearly violated the generally accepted criteria for good-government redistricting, particularly in terms of compactness and preservation of communities of interest, and

WHEREAS, draft maps have recently circulated in various publications which have suggested that - solely for partisan political purposes - the state of New York should re-establish an "Earmuff District" that would reunite the Town of Tonawanda, among other Niagara Frontier localities, with the city of Rochester, and

WHEREAS, it is incumbent upon this Town Board to make its voice heard on behalf of Town residents as critical decision-making lies ahead in terms of congressional redistricting,

NOW, THEREFORE, BE IT RESOLVED, that in the congressional redistricting process, the Town of Tonawanda does hereby encourage the town's inclusion in a congressional seat with other densely populated municipalities within the Niagara Frontier, including but not limited to the city of Buffalo, and does hereby discourage any effort to re-establish a so-called "Earmuff District" connecting any portion of the Niagara Frontier to the city of Rochester, and be it further

RESOLVED, that this Honorable Body does hereby encourage decision-making authorities, including but not limited to the New York State Independent Redistricting Commission, the New York State Legislative Task Force on Demographic Research and Reapportionment and/or the New York State Legislature to keep the town of Tonawanda in a congressional district with a similar iteration to today, united as it is with the cities of Buffalo, Lackawanna, Niagara Falls, North Tonawanda, and the towns of Tonawanda, Amherst, Cheektowaga, Grand Island, and West Seneca, and be it further

RESOLVED, that this Honorable Body does urge the aforementioned decision-making authorities to reject all efforts to re-establish a so-called "Earmuff District," or any district which seeks to similarly connect the Buffalo and Rochester metropolitan areas, and be it finally

RESOLVED, that certified copies of this resolution be sent to the New York State Independent Redistricting Commission (250 Broadway, 22nd Floor, New York, NY 10007), the New York State Legislative Task Force on Demographic Research and Reapportionment (250 Broadway, Suite 2100, New York, NY 10007), the Speaker of the New York State Assembly and the Majority Leader of the New York State Senate, and to the local offices of the Representatives in Congress in New York's 26th and 27th Congressional Districts.

RESULT:	**ADOPTED [UNANIMOUS]**
MOVER:	John Bargnesi, Councilman
SECONDER:	Shannon M. Patch, Councilwoman
AYES:	Emminger, Bargnesi, Patch, Szarek, O'Malley

I do certify that I have compared the foregoing with the original minutes of the regular meeting of the Town Board held on September 27, 2021 and that the foregoing is a true and correct transcript from said original minutes and the whole thereof, and that the resolutions duly adopted by said Town Board are on file in my office.

IN WITNESS WHEREOF, I have hereunto set my hand and seal of the said Town of Tonawanda, Erie County, New York, this 28th day of September, 2021.

Marguerite Greco

Marguerite Greco, Town Clerk
Town of Tonawanda, New York

CERTIFIED MAIL®

Town of Tonawanda

Please Recycle

Town Clerk
2919 Delaware Avenue – Room 14
Kenmore, New York 14217-2393

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ERIE COUNTY LEGISLATURE

HON. APRIL N.M. BASKIN
CHAIR OF THE LEGISLATURE
2ND DISTRICT LEGISLATOR

❑ 792 E. Delavan Ave.
Buffalo, NY 14215
716/895-1849
FAX: 716/895-1910

❑ 92 Franklin St., 4th Fl.
Buffalo, NY 14202
716/858-8869
FAX: 716/858-8895

❑ *Legislative Assistant*
Pedro Gonzalez-Ortiz
E-Mail:
Pedro.Gonzalez-Ortiz@erie.gov

October 5, 2021

David Imamura, Esq., Chair
Jack Martins, Esq., Vice Chair
Eugene Benger, Esq.
Ross Brady, Esq.
John Conway III, Esq.
Dr. Ivelisse Cuevas-Molina
Dr. John Flateau
Elaine Frazier
Charles Nesbitt
Willis H. Stephens, Jr., Esq.
New York State Independent Redistricting Commission
250 Broadway, 22nd Floor
New York, NY 10007

Re Opposing an "Earmuff" Congressional District in Western New York

Dear Members of the New York State Independent Redistricting Commission:

As you accept public comments concerning your process of re-drawing district lines for the United States House of Representatives, I am writing to urge you not to engage in any redistricting that creates a so-called "earmuff" district in Western New York, including Erie County.

As Chair of the Erie County Legislature, I familiar with the 2002 redistricting conducted by the New York State Legislative Task Force on Demographic Research and Reapportionment (LATFOR) that created the earmuff district between Buffalo and Rochester (the Rep. Louise Slaughter district). That district combined very different localities stretching from Buffalo north and then east to Rochester and then eastern Monroe County. That new district was literally an earmuff, with the thinnest of territory along the Lake Ontario shoreline connecting the western and eastern ends. In the 2002 iteration of congressional districts, the city of Buffalo was divided in two, and did not enjoy the full measure of its voting power within any one congressional district.

Since 2013, Erie County has been represented by two members of the House of Representatives, and the current 26th Congressional District, which includes the city of Buffalo and the immediate first-ring suburbs of the city, and the 27th Congressional District, which includes suburban, exurban and rural towns of Erie County, meet all of the generally accepted

criteria for a good-government district, including compactness, contiguity, and preservation of communities of interest.

Due to population growth measured by the 2020 US Census count, the metropolitan areas of Buffalo Niagara and the Greater Rochester area each individually has sufficient population to support its own congressional seat, and no need exists to combine these regions into one seat.

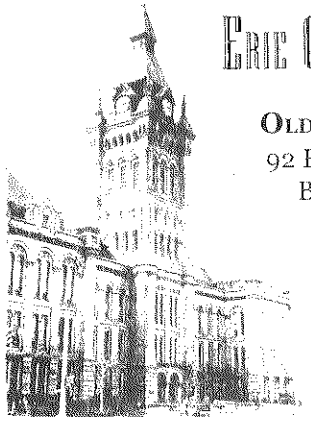
Media outlets have reported and published draft maps showing that, for partisan political purposes, the New York State Independent Redistricting Commission might or should re-establish an earmuff district that would combine many localities within the Buffalo/Niagara region with that of the city of Rochester. I urge you not to do so. The residents of Buffalo should have one Member of the US House of Representatives representing them, as has been the case for the past decade.

Thank you in advance for the opportunity to provide comments to the Commission and for your consideration.

Sincerely,

April N.M. Baskin
Chair, Erie County Legislature

cc: Speaker of the New York State Assembly
Majority Leader of the New York State Senate
US Representative Brian Higgins
US Representative Christopher Jacobs



ERIE COUNTY LEGISLATURE

OLD ERIE COUNTY HALL
92 Franklin St., 4th Floor
Buffalo, N.Y. 14202

PRESORTED FIRST CLASS

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NYS Independent Redistricting Commission
250 Broadway, 22nd Floor
New York, NY 10007

HUU-PMB 10007

City of Niagara Falls, New York

Robert M. Restaino
Mayor

September 28, 2021

New York State Independent Redistricting Commission
250 Broadway, 22nd Floor
New York, NY 10007

RE: CONGRESSIONAL REDISTRICTING AND NIAGARA FALLS

Honorable Commissioners:

As Mayor of Niagara Falls, I write to suggest best practices for redistricting as they relate to our city.

OPPOSITION TO RE-ESTABLISHMENT OF SO-CALLED "EARMUFF" DISTRICT

In 2002, mapmakers in Albany created a district for Western New York that combined the City of Niagara Falls with portions of the cities of Buffalo and Rochester. To accomplish this, they connected these heavily populated urban areas by means of a contiguous stretch of land traveling north from Buffalo through portions of Niagara County including the city of Niagara Falls, then due east along the shores of Lake Ontario in Niagara and Orleans Counties, south through the city of Rochester and terminating in the southeastern Monroe County town of Perinton. It quickly became known as the "Earmuff District." Plainly stated, that experience was suboptimal for Niagara Falls.

The best congressional districts are compact and contiguous, combining residents of shared interests and communities of concern. The 2002 "Earmuff District," resulted in a hodgepodge district that unnecessarily combined communities which have historically been competitors for governmental resources and who have, in many respects, divergent governmental interests. In this district, one Member of Congress was required to service the divergent needs of upstate New York's premier natural attraction along with its two largest metropolitan communities, in addition to a string of very different municipalities connected in a district whose driving distance spanned more than 130 miles from one end to the other. Its composition forced the inclusion of many suburban, exurban, and rural areas into the "Earmuff District" that lacked substantial commonality with the Rochester metropolitan area which served as the district's core.

It has been reported that there may be efforts underway to convince mapmakers of the advisability of re-creating the "Earmuff District;" to connect the city of Rochester once again to

City Hall 745 Main Street, P.O. Box 69 Niagara Falls, NY 14302-0069
email: robert.restaino@niagarafallsny.gov · Telephone: 716-286-4310 · Fax: 716-286-4349

areas more than 100 miles to its west in Niagara and Erie Counties. I want to urge you in the strongest possible terms **NOT** to re-create the "Earmuff District."

SUPPORT FOR INCLUSION OF NIAGARA FALLS IN AN URBAN NIAGARA FRONTIER DISTRICT

In two sets of maps released by commissioners on September 15, 2021, Niagara Falls was removed from a district that also included the city of Buffalo. Niagara Falls and Buffalo are communities of similar concern and character. We believe it critically important that because of their proximity and similar character these two localities should remain in the same district, as they have since 2013. As indicated above in detail, we oppose moving Niagara Falls into a district centered in Rochester, but at the same time believe that combining Niagara Falls as you have in these draft maps moves an urban city into a substantially rural environment. We do not believe this best serves the people of our city.

The re-creation of an "Earmuff District" or any similar district which seeks to put Niagara Falls and Buffalo into the same district as Rochester would be an unfortunate decision that would serve to undermine the interests of both areas. We encourage you to reject any such consideration thereof. Moreover, we believe it similarly important that Niagara Falls remain situated in an urban district and encourage that change in future draft maps that are considered. Thank you.

Sincerely,

Robert M. Restaino
Mayor
City of Niagara Falls

cc: Hon. Carl Heastie, Speaker, NYS Assembly (NYS Capitol, Albany, NY 12248)
Hon. Andrea Stewart Cousins, Maj Leader, NYS Senate (NYS Capitol, Albany, NY 12248)
Legislative Task Force on Redistricting, (250 Broadway, Ste. 2100, New York, NY 10007)

Office of the Mayor
City Hall
745 Main Street
Niagara Falls, NY 14302

BUFFALO NY 140
29 SEP 2021 PM 5 L

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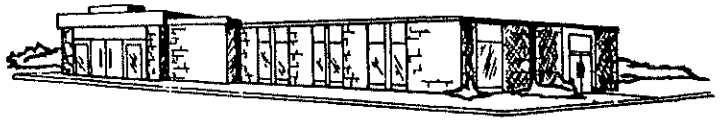
$000.53⁹

ZIP 14301

New York State Independent Redistricting
Commission
250 Broadway - 22nd Floor
New York NY 10007

10007-251699



TOWN OF LEWISTON
Donna R. Garfinkel, Town Clerk
P.O. Box 330
1375 Ridge Road
Lewiston, NY 14092

New York State Independent Redistricting
Commission
250 Broadway, 22nd Floor
New York, NY 10007

TOWN OF LEWISTON
RESOLUTION 2021-020

NO "EARMUFF" CONGRESSIONAL DISTRICT FOR WESTERN NEW YORK

WHEREAS, because of the federal decennial census, New York State must redraw district lines for the United States House of Representatives, and

WHEREAS, the New York State Independent Redistricting Commission is presently accepting public comment on the redrawing of congressional districts in New York State, and

WHEREAS, since 2013, all residents of the town of Lewiston have lived in the 27th Congressional District, and

WHEREAS, the town of Lewiston's placement within this district has been wholly and entirely proper, given that the town contains a mix of suburban and rural areas with many shared interests, and

WHEREAS, from 2003 to 2012, the town of Lewiston was situated within the "Earmuff District," which connected our town to metropolitan and suburban Rochester nearly 80 miles to the east, and

WHEREAS, the "Earmuff District" stretched from the east side of Buffalo, north through the town and city of Tonawanda north to Niagara Falls, through Niagara, Lewiston and Porter, then east across the shores of Lake Ontario, through portions of 10 towns in Niagara, Orleans and Monroe counties, including the city of Rochester and additional towns to that city's southeast, and

WHEREAS, inclusion in the "Earmuff District" clearly violated the generally accepted criteria for good-government redistricting, particularly in terms of compactness and preservation of communities of interest, and

WHEREAS, draft maps have recently circulated in various publications which have suggested that – solely for partisan political purposes – the state of New York should re-establish an "Earmuff District" that would reunite the town of Lewiston, among other Niagara Frontier localities, with the city of Rochester, and

WHEREAS, it is incumbent upon this Town Board to make its voice heard on behalf of town residents as critical decision-making lies ahead in terms of congressional redistricting.

NOW, THEREFORE, BE IT RESOLVED, that in the congressional redistricting process, the Town of Lewiston does hereby discourage any effort to re-establish a so-called "Earmuff District" connecting any portion of the Niagara Frontier to the city of Rochester.

BE IT FURTHER RESOLVED, that this Honorable Body does hereby encourage decision-making authorities, including but not limited to the New York State Independent Redistricting Commission, the New York State Legislative Task Force on Demographic Research and Reapportionment and/or the New York State Legislature to reject all efforts to re-establish a so-called "Earmuff District," or any district which seeks to similarly connect the Buffalo and Rochester metropolitan areas.

FINALLY BE RESOLVED, that certified copies of this resolution be sent to the New York State Independent Redistricting Commission (250 Broadway, 22nd Floor, New York, NY 10007), the New York State Legislative Task Force on Demographic Research and Reapportionment (250 Broadway, Suite 2100,

New York, NY 10007), the Speaker of the New York State Assembly and the Majority Leader of the New York State Senate, and to the local offices of the Representatives in Congress in New York's 26th and 27th Congressional Districts.

Adopted 9/28/2021

Town of Lewiston

SEAL

Donna R. Garfinkel, Town Clerk

Town of Lewiston
1375 Ridge Road
Lewiston, New York 14092

Cc:
New York State Independent Redistricting Commission
250 Broadway, 22nd Floor
New York, NY 10007

NYS Legislative Task Force on Demographic
Research and Reapportionment
250 Broadway, Suite 2100
New York, NY 10007

Speaker of the New York State Assembly
Assemblyman Carl E. Heastie
LOB 932
Albany, New York 12248

Majority Leader of the New York State Senate
Senator Andrea Stewart-Cousins
188 State Street – Room 907
Albany, New York 12247

New York's 26th Congressional Representative
Congressman Brian Higgins
Larkin at Exchange
726 Exchange Street – Suite 601
Buffalo, New York 14210

New York's 27th Congressional Representative
Congressman Chris Jacobs
8203 Main Street – Suite 2
Williamsville, New York 14221

I hereby certify that the following Resolution was adopted at a Meeting of the City Council held on September 29, 2021:

RESOLUTION No. 2021-45

RELATIVE TO EXPRESSING SUPPORT FOR COMPACT, CONTIGUOUS, AND INTEGRATED CONGRESSIONAL DISTRICTS

BY:
Council Chairman Kenny Tompkins
Council Member William Kennedy
Council Member Frank Soda
Council Member John Spanbauer

WHEREAS, because of the federal decennial census, New York State must redraw district lines for the United States House of Representatives; and

WHEREAS, the New York State Independent Redistricting Commission is presently accepting public comment on the redrawing of congressional districts in New York State; and

WHEREAS, since 2013, nearly all residents of the City of Niagara Falls have lived in the 26th Congressional District, which unites the cities of Niagara Falls, North Tonawanda, Tonawanda, Buffalo and Lackawanna with contiguous towns and villages; and

WHEREAS, Niagara Falls' placement within this district has been wholly and entirely proper, given that the City of Niagara Falls and the City of Buffalo and the adjacent communities are integral components of the Niagara Frontier, a compact and contiguous region of New York State with an integrated economy and many shared interests; and

WHEREAS, the current 26th Congressional District, including the City of Niagara Falls, meets all of the generally accepted criteria for a good-government district, including compactness, contiguity, and preservation of communities of interest, as well as combining residents of shared interest throughout the district; the maintenance of this type of district with Niagara Falls included therein is essential to the growth and betterment of our City; and

WHERAS, from 2003 to 2012, the City of Niagara Falls was situated within the so-called "Earmuff District," which rather than connecting Niagara Falls to Buffalo instead connected our community to metropolitan and suburban Rochester more than 80 miles to the east; and

WHEREAS, the so-called "Earmuff District" stretched from Niagara Falls north to Porter and Youngstown, then traversed across the shores of Lake Ontario, through portions of 10 towns in Niagara, Orleans and Monroe counties, including the City of Rochester and additional towns to that city's southeast; and

WHEREAS, inclusion in the so-called "Earmuff District" clearly violated the generally accepted criteria for good-government redistricting, particularly in terms of compactness and preservation of communities of interest; and

WHEREAS, draft maps have recently circulated in various publications which have suggested that - solely for partisan political purposes - the State of New York should re-establish an "Earmuff District" that would reunite the City of Niagara Falls, among other Niagara Frontier localities, with the City of Rochester; and

WHEREAS, the New York State Independent Redistricting Commission recently released two sets of maps, both of which removed Niagara Falls from being paired up with Buffalo in the same congressional district; and

WHEREAS, adoption of one of these maps drafted by the Independent Redistricting Commission would result in the first instance in decades wherein Niagara Falls is decoupled from Buffalo in a congressional district; and

WHEREAS, given the many similarities shared by Niagara Falls and Buffalo, it is unwise to place these two localities in different congressional districts; and

WHEREAS, it is incumbent upon the City Council of the City of Niagara Falls, New York to make its voice heard on behalf of City residents as critical decision-making lies ahead in terms of congressional redistricting; and

NOW, THEREFORE, BE IT RESOLVED, that in the congressional redistricting process, the City Council of the City of Niagara Falls, New York does hereby encourage the City's inclusion in a congressional district with other densely populated municipalities within the Niagara Frontier, including, but not limited to the City of Buffalo, and does hereby discourage any effort to re-establish a so-called "Earmuff District" connecting any portion of the Niagara Frontier to the City of Rochester; and

BE IT FURTHER RESOLVED, that this City Council does hereby encourage the decision-making authorities, including, but not limited to the New York State Independent Redistricting Commission, the New York State Legislative Task Force on Demographic Research and Reapportionment and/or the New York State Legislature to couple the City of Niagara Falls with the City of Buffalo, and to reject all efforts to re-establish a so-called "Earmuff District," or any district which seeks to similarly connect the Buffalo and Rochester metropolitan areas; and

BE IT FURTHER RESOLVED, that this City Council does hereby encourage the decision-making authorities, including, but not limited to the New York State Independent Redistricting Commission, the New York State Legislative Task Force on Demographic Research and Reapportionment and/or the New York State Legislature, to adhere to the *New York State Constitution, Article III, Section 1, Paragraphs 3 and 4* with regard to the requirement for the preservation of cores of prior districts when engaging in the congressional redistricting process; and be it further

RESOLVED, that certified copies of this Resolution be sent to the New York State Independent Redistricting Commission (250 Broadway, 22nd Floor, New York, NY 10007), the New York State Legislative Task Force on Demographic Research and Reapportionment (250 Broadway, Suite 2100, New York, NY 10007), the Speaker of the New York State Assembly and the Majority Leader of the New York State Senate, and to the local offices of the Representatives in Congress in New York's 26th and 27th Congressional Districts.

Witness my Hand and Seal this
30th day of September 2021

Kathleen M. Ligammari
City Clerk

COUNTY OF ERIE

MARK C. POLONCARZ
COUNTY EXECUTIVE

October 1, 2021

New York State Independent Redistricting Commission
250 Broadway, 22nd Floor
New York, NY 10007

RE: CONGRESSIONAL REDISTRICTING AND ERIE COUNTY

Honorable Commissioners:

As Erie County Executive, the issue of congressional representation for our county is of critical importance. In addition to the service members provide in terms of direct voting representation to the more than 950,000 residents of our county, Members of the House serve an important role on behalf of county and local governments, bridging the divides that exist between ours and the federal government and providing much-needed assistance to the local level.

In 2002, mapmakers in Albany created a congressional district for Western New York that combined portions of the city of Buffalo as well as the city of Tonawanda and the towns of Grand Island and Tonawanda with portions of the city of Rochester. To accomplish this, they connected these areas by means of a contiguous stretch of land traveling north from Buffalo's east side through northern Erie County through Niagara County, then due east along the shores of Lake Ontario in Niagara and Orleans Counties, south through the city of Rochester and terminating in the southeastern Monroe County town of Perinton. Owing to its very strange shape, this district quickly became known as the "Earmuff District."

This attempt at congressional gerrymandering was suboptimal for Erie County. It resulted in a hodgepodge district that unnecessarily combined communities which have historically been competitors for governmental resources and who have, in many respects, divergent governmental interests. In this district, one Member of Congress was required to service the divergent needs of the most densely urban portions of upstate New York's two largest metropolitan communities, in addition to a string of very different rural municipalities connected in a district whose driving distance spanned more than 130 miles from one end to the other. Its composition forced the inclusion of many suburban, exurban, and rural areas into

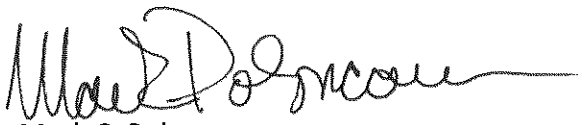
the "Earmuff District" that lacked substantial commonality with the Rochester metropolitan area which served as the district's core.

It has been reported that there may be efforts underway to convince mapmakers of the advisability of re-creating the "Earmuff District;" to again connect the city of Rochester to areas more than 100 miles to its west in Erie County. As Erie County Executive, I urge you in the strongest possible terms not to re-create the "Earmuff District."

The present iteration of districts representing Erie County, in my view, correctly apportions residents and communities in the respective 26th and 27th Districts, with the former comprised of a substantially dense and urban population, and the latter more suburban and rural communities. While I leave it to commissioners to draw the fine details of each district, inasmuch as population shifts and the loss of a congressional seat statewide will make some changes inevitable, I am very much of the opinion that the general character of these districts as they currently are serves to represent the county well.

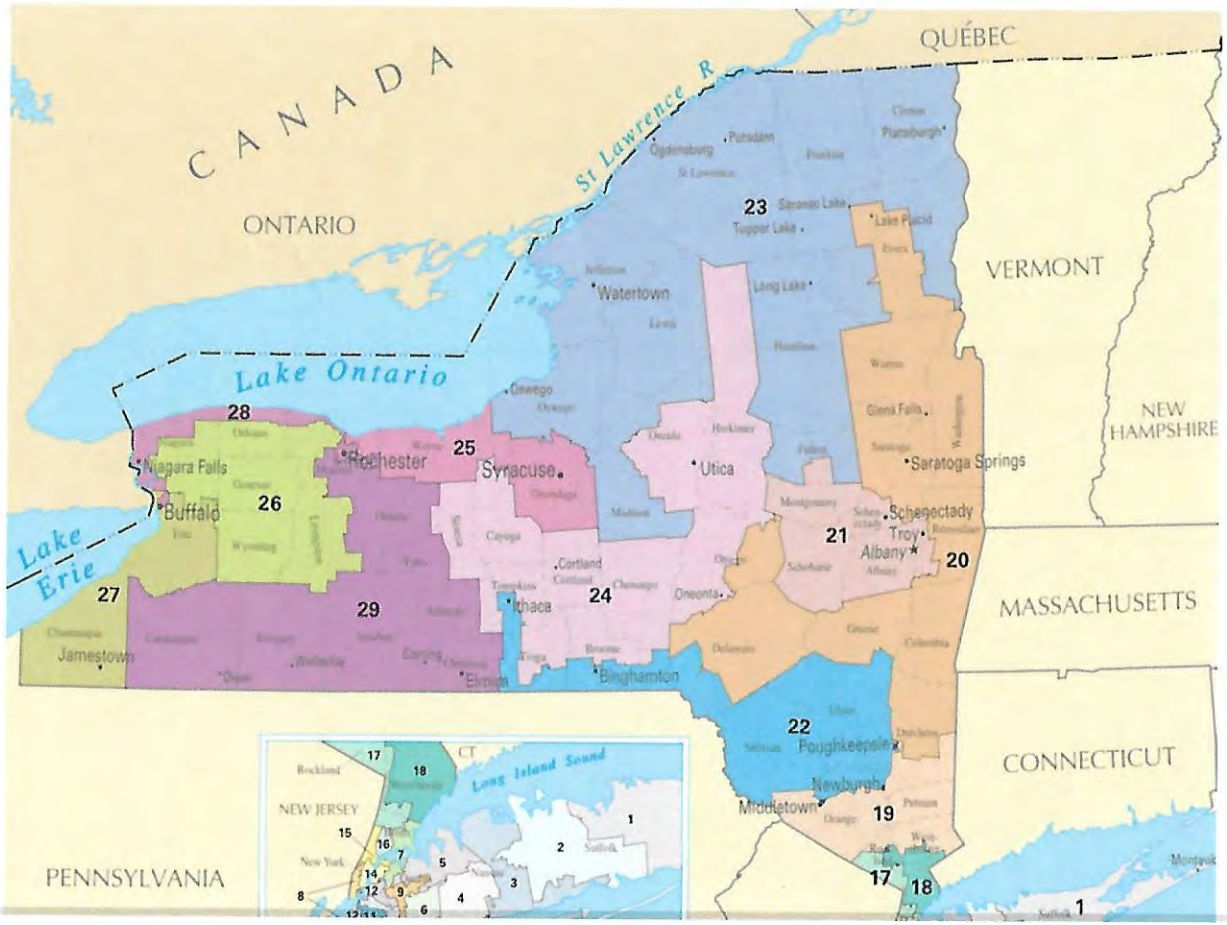
In closing, let me reiterate that the re-creation of an "Earmuff District" or any similar district which seeks to put any portion of Erie County into the same district as areas in the Rochester metropolitan area would be an unfortunate decision that would serve to undermine the interests of both Erie and Monroe counties and the citizens therein. I encourage you to reject any such consideration thereof. Thank you.

Sincerely,



Mark C. Poloncarz
Erie County Executive

cc: Hon. Carl Heastie, Speaker, NYS Assembly (NYS Capitol, Albany, NY 12248)
Hon. Andrea Stewart Cousins, Maj Leader, NYS Senate (NYS Capitol, Albany, NY 12248)
Legislative Task Force on Redistricting, (250 Broadway, Ste. 2100, New York, NY 10007)



New York congressional districts from 2003 to 2013

More details

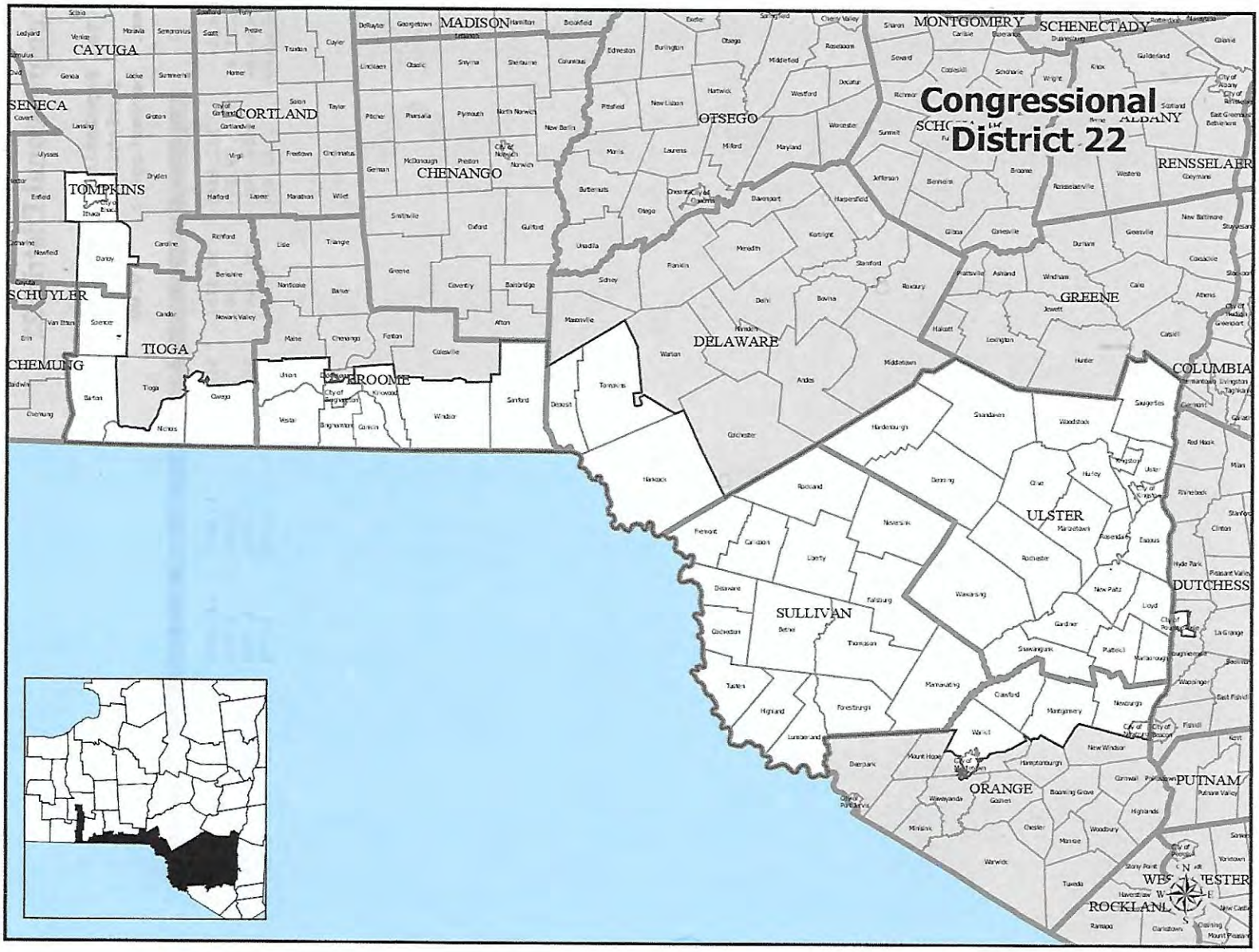
United States Department of the Interior - Printable maps: New York. *National Atlas of the United States*. United States Department of the Interior. Retrieved on 2009-09-06.

Map of New York's congressional districts from 2003 to present.

Public Domain

File: NY Congressional Districts 110th Congress.png

Created: 1 January 2007

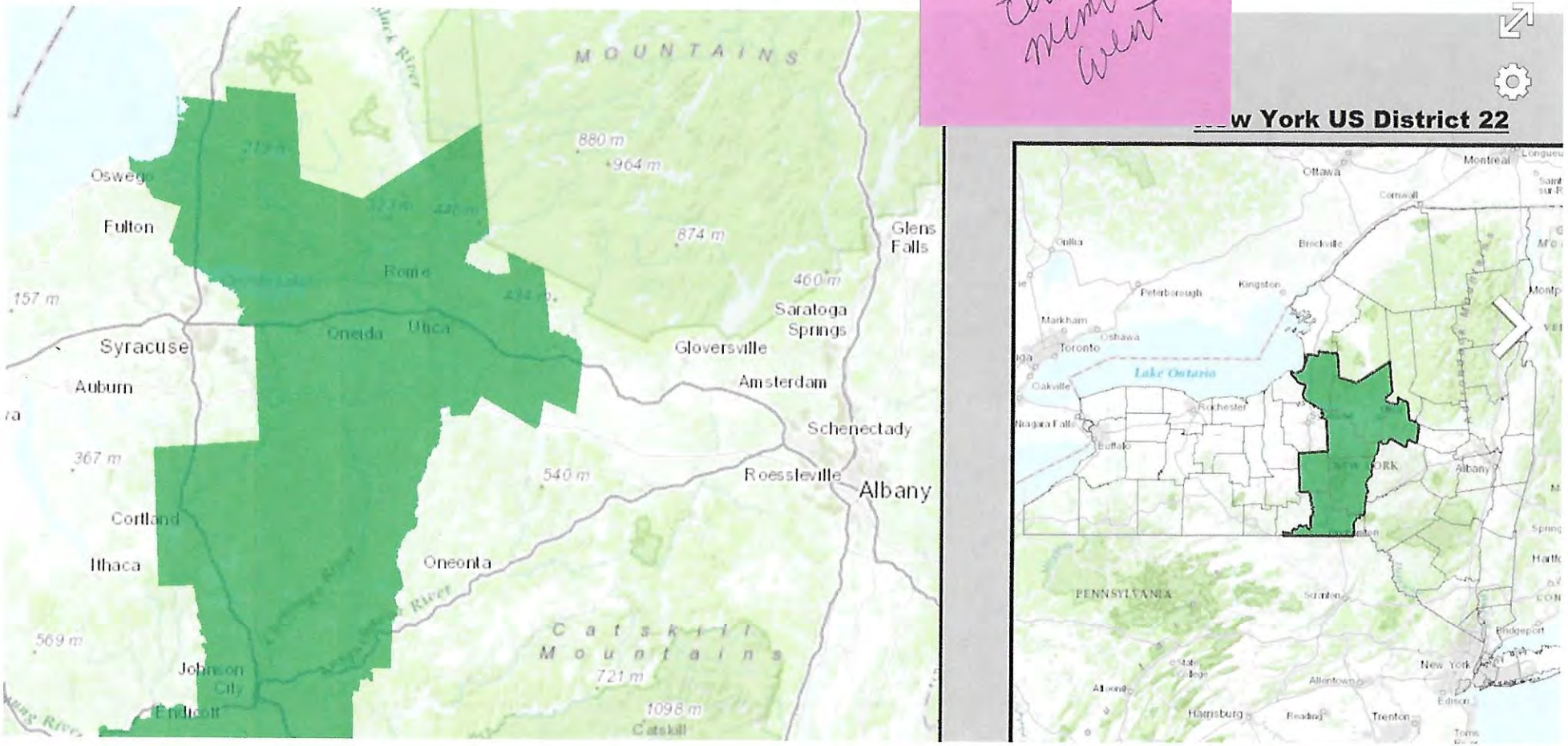

Congressional
District 22
CAYUGA
SENECA
CORTLAND
TOMPKINS
MADISON
CHENANGO
OTSEGO
MONTGOMERY
SCHENECTADY
RENSSELAER
SCHUYLER
TIOGA
CHEMUNG
BROOME
DELAWARE
GREENE
COLUMBIA
ULSTER
SULLIVAN
DUTCHESS
ORANGE
PUTNAM
ROCKLAND
WESTCHESTER

Congressional District 22

Total Population : 654,361
Deviation : 1
Dev. Percentage : 0.00

	NH White	NH Black	Hispanic	NH Amer Ind	NH Asian	NH Multi	NH Other
Total	522,666	50,375	51,037	1,361	16,635	10,874	1,413
Total %	79.87	7.70	7.80	0.21	2.54	1.66	0.22
Total18+	409,292	34,244	33,310	1,031	13,790	6,094	874
Total18%	82.08	6.87	6.68	0.21	2.77	1.22	0.18

where the member 22 went



Boundaries for New York's 22nd United States Federal Congressional District.

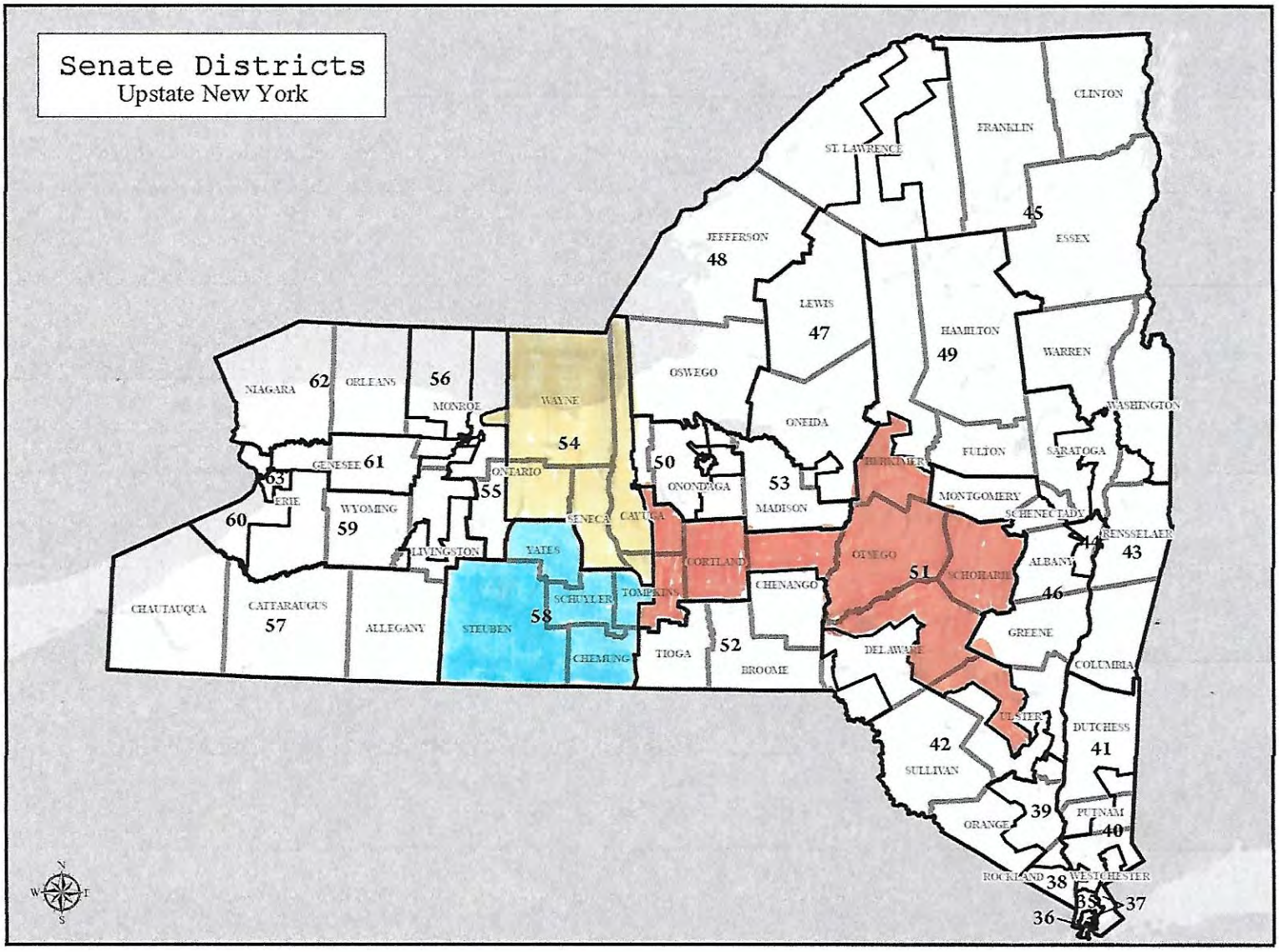
More details

1: GIS (congressional districts, 2013) shapefile data was created by the United States Department of the Interior. 2: Data was rendered using ArcGIS® software by Esri. 3: File developed for use on Wikipedia and elsewhere by 7partparadigm. - GIS shapefile data created by the United States Department of the Interior, as part of the "1 Million Scale" geospatial data project. Retrieved from: http://nationalatlas.gov/atlasftp-1m.html?openChapters=#chpbound

Public Domain

File: New York US Congressional District 22 (since 2013).tif

Created: 29 March 2014


Senate Districts
Upstate New York
CLINTON
FRANKLIN
ST. LAWRENCE
45
ESSEX
JEFFERSON
48
LEWIS
47
HAMILTON
49
WARREN
WASHINGTON
OSWEGO
ONEIDA
FULTON
SARATOGA
NIAGARA
62
ORLEANS
56
MONROE
WAYNE
54
50
ONONDAGA
53
MADISON
HERKIMER
MONTGOMERY
SCHENECTADY
RENSSELAER
43
44
ALBANY
46
63
ERIE
60
WYOMING
59
GENESEE
61
ONTARIO
55
LIVINGSTON
SENECA
CAYUGA
YATES
CORTLAND
OTSEGO
51
SCHOHARIE
CHENANGO
TOMPKINS
SCHUYLER
58
CHAUTAUQUA
CATTARAUGUS
57
ALLEGANY
STEUBEN
CHEMUNG
TIOGA
52
BROOME
DELAWARE
GREENE
COLUMBIA
ULSTER
DUTCHESS
41
42
SULLIVAN
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ORANGE
PUTNAM
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ROCKLAND
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WESTCHESTER
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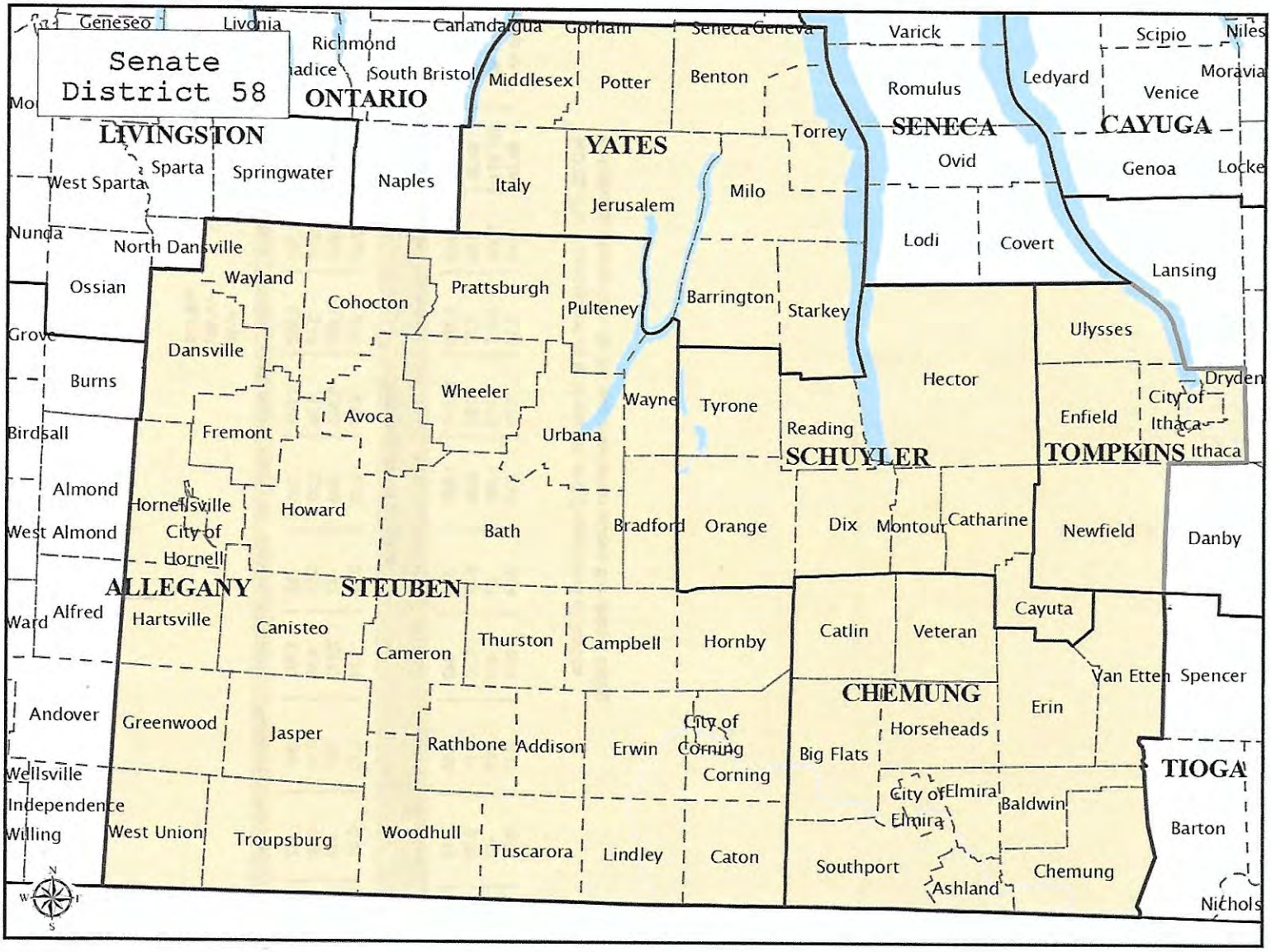

Senate
District 58
Geneseo
Livonia
Richmond
South Bristol
ONTARIO
Middlesex
Potter
Benton
Varick
Scipio
Niles
Moravia
Venice
Romulus
Ledyard
LIVINGSTON
Sparta
West Sparta
Springwater
Naples
Italy
YATES
Jerusalem
Milo
Torrey
SENECA
Ovid
CAYUGA
Genoa
Locke
Nunda
North Dansville
Ossian
Wayland
Cohocton
Prattsburgh
Pulteney
Barrington
Starkey
Lodi
Covert
Lansing
Ulysses
Grove
Dansville
Burns
Wheeler
Wayne
Tyrone
Hector
Dryden
City of Ithaca
Enfield
Birdsall
Avoca
Fremont
Urbana
Reading
SCHUYLER
TOMPKINS
Ithaca
Almond
Hornellsville
Howard
Bath
Bradford
Orange
Dix
Montour
Catharine
Newfield
Danby
West Almond
City of Hornell
ALLEGANY
STEUBEN
Ward
Alfred
Hartsville
Canisteo
Cameron
Thurston
Campbell
Hornby
Catlin
Veteran
Cayuta
Van Etten
Spencer
Andover
Greenwood
Jasper
Rathbone
Addison
Erwin
City of Corning
Corning
CHEMUNG
Horseheads
Erin
Big Flats
Wellsville
Independence
Willing
West Union
Troupsburg
Woodhull
Tuscarora
Lindley
Caton
City of Elmira
Elmira
Baldwin
TIOGA
Barton
Southport
Ashland
Chemung
Nichols

Senate District 58

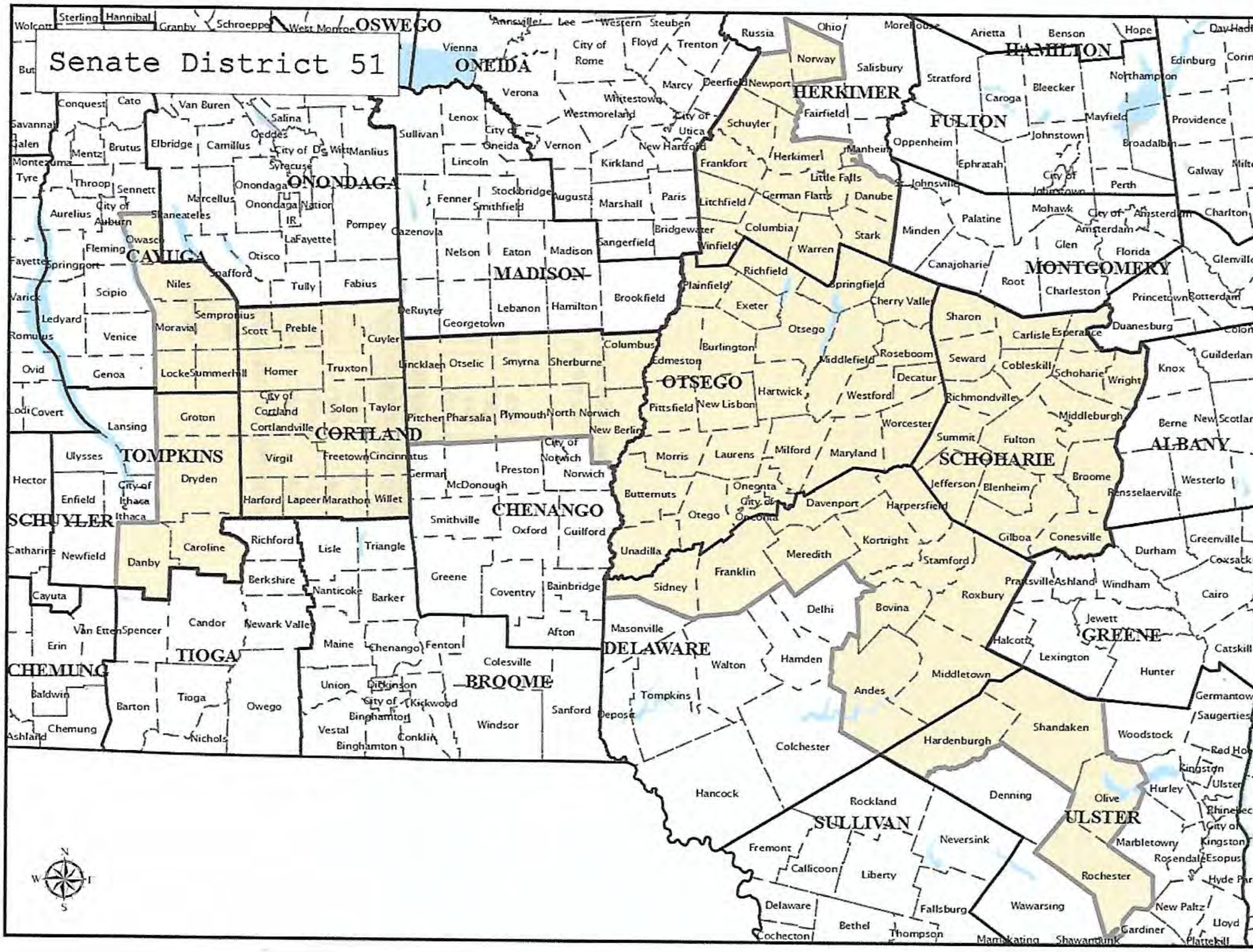
Adjusted Total Population : 292,933
Deviation : -14,423
Deviation Percentage : -4.69

	NH White	NH Black	Hispanic	NH Asian	NH Amind	NH Hwn	NH Multi	NH Other	Unknown
Total	260,988	8,762	6,950	9,503	641	58	5,702	341	-12
% of Total	89.09	2.99	2.37	3.24	0.22	0.02	1.95	0.12	0.00
Total 18+	207,971	6,600	4,857	8,343	524	47	2,872	227	-12
% of 18+	89.86	2.85	2.10	3.60	0.23	0.02	1.24	0.10	-0.01

Department Of Justice

	NH White	NH Black	Hispanic	NH Asian	NH Amind	NH Hwn	NH Multi	NH Other	Unknown
Total	260,988	11,313	6,950	10,615	1,903	119	642	415	-12
% of Total	89.09	3.86	2.37	3.62	0.65	0.04	0.22	0.14	0.00
Total 18+	207,971	7,306	4,857	9,015	1,496	97	424	275	-12
% of 18+	89.86	3.16	2.10	3.90	0.65	0.04	0.18	0.12	-0.01

NOTE: For a description of field names and Department of Justice definitions, please refer to the documentation above the district listing.


Senate District 51
OSWEGO
ONEIDA
HERKIMER
HAMILTON
FULTON
ONONDAGA
MADISON
MONTGOMERY
CAYUGA
CORTLAND
OTSEGO
SCHOHARIE
ALBANY
TOMPKINS
CHENANGO
SCHUYLER
TIOGA
CHEMUNG
BROOME
DELAWARE
GREENE
ULSTER
SULLIVAN

Senate District 51

Adjusted Total Population : 292,344
Deviation : -15,012
Deviation Percentage : -4.88

	NH White	NH Black	Hispanic	NH Asian	NH AmInd	NH Hwn	NH Multi	NH Other	Unknown
Total	273,790	3,881	7,412	2,437	630	46	3,918	232	-2
% of Total	93.65	1.33	2.54	0.83	0.22	0.02	1.34	0.08	0.00
Total 18+	219,216	2,979	5,006	1,909	502	43	2,065	137	-2
% of 18+	94.55	1.28	2.16	0.82	0.22	0.02	0.89	0.06	0.00

Department Of Justice

	NH White	NH Black	Hispanic	NH Asian	NH AmInd	NH Hwn	NH Multi	NH Other	Unknown
Total	273,790	5,281	7,412	3,080	1,878	100	472	333	-2
% of Total	93.65	1.81	2.54	1.05	0.64	0.03	0.16	0.11	0.00
Total 18+	219,216	3,381	5,006	2,204	1,457	81	296	216	-2
% of 18+	94.55	1.46	2.16	0.95	0.63	0.03	0.13	0.09	0.00

NOTE: For a description of field names and Department of Justice definitions, please refer to the documentation above the district listing.


Senate District 54
City of Oswego
Scriba
Oswego
Minetto
OSWEGO
Hannibal
Granby
Sterling
MONROE
Webster
Ontario
Williamson
WAYNE
Sodus
Huron
Wolcott
Victory
Ira
Penfield
Walworth
Marion
Rose
Butler
Lysander
Brighton
City of East Rochester
Conquest
Cato
Pittsford
Perinton
Macedon
Palmyra
Arcadia
Lyons
Galen
Savannah
Mentz
Brutus
Elbridge
Mendon
Victor
Farmington
Manchester
Montezuma
Junius
Tyre
Throop
Sennett
Phelps
CAYUGA
Canandaigua
City of Auburn
Skaneateles
East Bloomfield
City of Canandaigua
Hopewell
Waterloo
Seneca Falls
Aurelius
Owasco
ONTARIO
City of Geneva
Fleming
Springport
Seneca
City of Geneva
Fayette
Bristol
Gorham
Geneva
Niles
Richmond
Scipio
Varick
SENECA
Ledyard
Canadice
South Bristol
Middlesex
Potter
Benton
Romulus
Venice
Moravia
Torrey
YATES
Ovid
Genoa
Locke
Naples
Italy
Jerusalem
Milo
Lodi
Covert
Groton
Lansing
Wayland
Prattsburgh
Cohocton
Pulteney
Barrington
Starkey
STEUBEN
SCHUYLER
Hector
Ulysses
TOMPKINS
Dryden
Wheeler
Avoca
Urbana
Wayne
Tyrone
Reading
Enfield
City of Ithaca
Howard
Bath
Ithaca

Senate District 54

Adjusted Total Population : 292,445
Deviation : -14,911
Deviation Percentage : -4.85

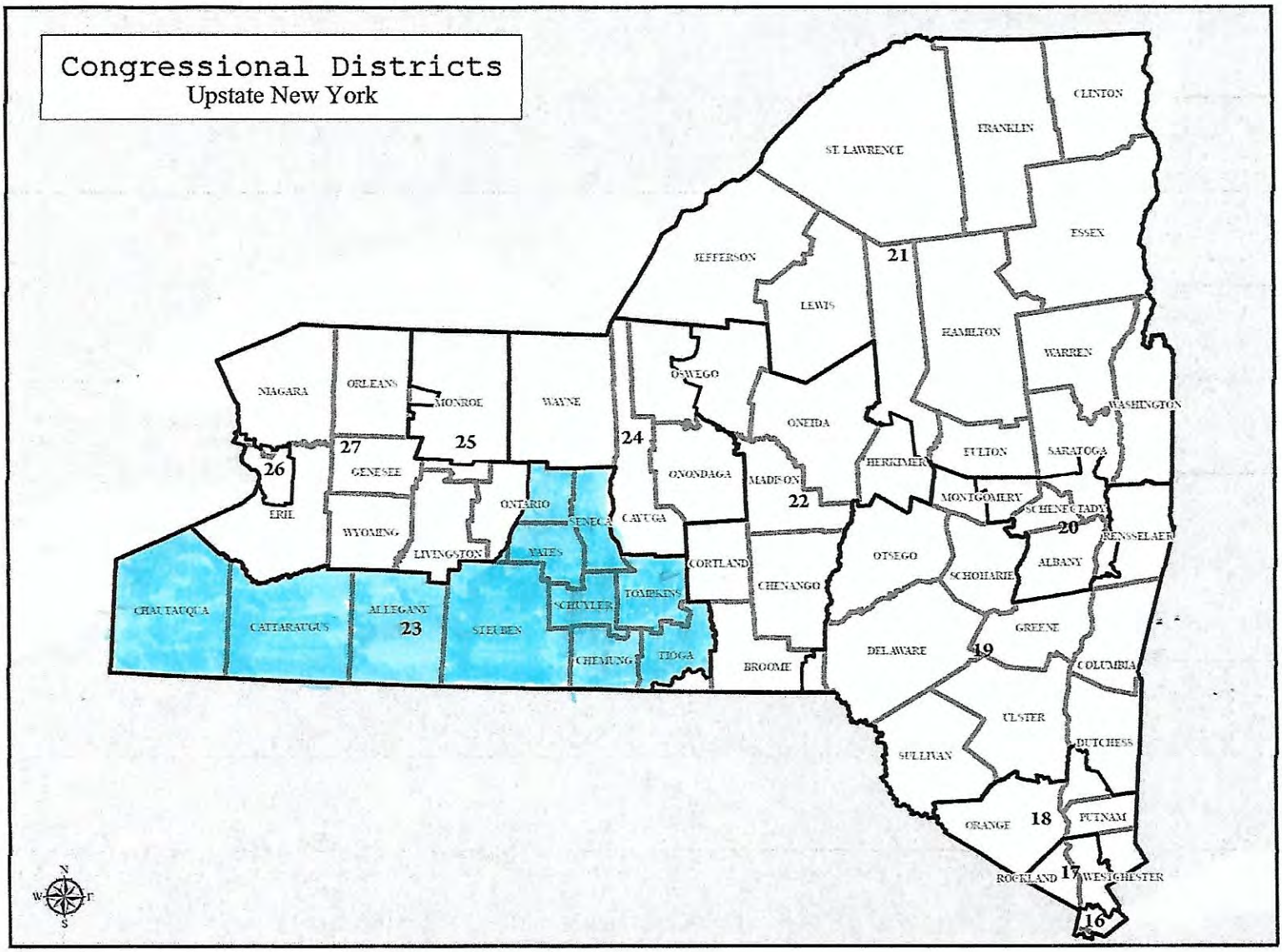
	NH White	NH Black	Hispanic	NH Asian	NH Amind	NH Hwn	NH Multi	NH Other	Unknown
Total	266,828	6,980	9,622	3,890	626	66	4,206	242	-15
% of Total	91.24	2.39	3.29	1.33	0.21	0.02	1.44	0.08	-0.01
Total 18+	209,487	4,936	5,832	2,902	475	47	1,812	137	-15
% of 18+	92.85	2.19	2.58	1.29	0.21	0.02	0.80	0.06	-0.01

Department Of Justice

	NH White	NH Black	Hispanic	NH Asian	NH Amind	NH Hwn	NH Multi	NH Other	Unknown
Total	266,828	8,939	9,622	4,574	1,646	114	428	309	-15
% of Total	91.24	3.06	3.29	1.56	0.56	0.04	0.15	0.11	-0.01
Total 18+	209,487	5,402	5,832	3,186	1,207	68	255	191	-15
% of 18+	92.85	2.39	2.58	1.41	0.53	0.03	0.11	0.08	-0.01

NOTE: For a description of field names and Department of Justice definitions, please refer to the documentation above the district listing.

Congressional Map



On a motion made by Trustee Epstein and seconded by Trustee Klein the following resolution was adopted.

RESOLUTION

OPPOSING THE ASSEMBLY REDISTRICTRING PLAN PROPOSED BY THE INDEPENDENT REDISTRICTING COMMISSION THAT WOULD RESULT IN RYE BROOK CHANGING NYS ASSEMBLY DISTRICTS

WHEREAS, a NYS Independent Redistricting Commission (the "Commission") was created to provide recommendations for re-drawing NYS district boundaries after the 2020 Census; and

WHEREAS, the Commission has proposed to remove the Village of Rye Brook from the current Sound Shore Assembly District (91st Assembly District) and splitting the Village from the Town of Rye; and

WHEREAS, this action would cause disastrous effects on the regional common goals shared among the municipalities currently located within the Sound Shore District including the Villages of Rye Brook, Port Chester, Mamaroneck, and Larchmont, and the Towns of Rye and Mamaroneck, and part of the City of New Rochelle; and

WHEREAS, the removal of the Village of Rye Brook from the Sound Shore District would separate Rye Brook from its partner Village of Port Chester, which is also located within the Town of Rye; and

WHEREAS, the removal of the Village of Rye Brook from the Sound Shore District would separate both Port Chester and Rye Brook residents who are served by the Town of Rye including its municipal court, whose judges would then represent residents in two different Assembly districts; and

WHEREAS, the removal of the Village of Rye Brook from the Sound Shore District would also separate Rye Brook residents from the Town of Rye Assessment and Tax Collection services who would serve town residents in two different Assembly districts; and

WHEREAS, since the Port Chester High School and the Port Chester Middle School are both physically located within the Village of Rye Brook, and 1/3 of the properties in Rye Brook are located in the Port Chester School District, the removal of the Village of Rye Brook from the Sound Shore District would result in homeowners in the same school district being represented by two different Assembly districts thereby weakening their state representation on issues of shared concern; and

WHEREAS, since the Village of Rye Brook has primarily collaborated and shared services with the other Sound Shore municipalities, including shared EMS, fire service, library services, capital improvements, and shared equipment, these commonalities of interests, which often involve support from state representatives, would be divided if Rye Brook was removed from the Sound Shore District; and

WHEREAS, since Rye Brook is within the Long Island watershed, and all stormwater in the municipality flows into the Long Island Sound, the Village of Rye Brook has the common interest of regional planning with other municipalities in the current Sound Shore District for items such as stormwater and flooding concerns, so separating Rye Brook from the other Long Island Watershed municipalities is counter to the goal of effective regional planning, which often includes state grants and legislative representation; and

WHEREAS, since all of the Rye Brook sanitary sewers flow into either the Port Chester sanitary sewer treatment plant in the Port Chester Sewer District, or the Blind Brook sanitary sewer treatment plant (in Rye City) in the Blind Brook Sewer District, separating Rye Brook from the municipalities in these two sewer districts is counter to the goal of effective regional planning, since these issues often includes state grants and legislative representation, and

WHEREAS, Rye Brook is served by a private water company (Suez) that also serves the municipalities in the current Sound Shore District, and often involves the need for state representation on issues involving the NYS Public Service Commission, establishing water rates, and other issues such as water company mergers, acquisitions, and other environmental and inter-state impacts, so separating Rye Brook from the other municipalities served by the same private water company would be counter-productive to efficiently and effectively address these concerns; and

WHEREAS, the proposed new assembly district would place Rye Brook with other municipalities as far north as Mt. Kisco and Bedford, which have very little shared common interests in the important areas identified in this resolution, and would result in weaker state representation for those areas which are very important to the residents and municipal officials in Village of Rye Brook.

NOW THEREFORE BE IT RESOLVED, that the Village of Rye Brook Board of Trustees hereby strongly and emphatically opposes any removal of the Village of Rye Brook from the other municipalities currently located within the Sound Shore District since we have many common interests with those municipalities which often result in the need for uniform and clear state representation; and be it

FURTHER RESOLVED, that for the reasons stated in this resolution that the Village of Rye Brook Board of Trustees hereby strongly and emphatically opposes the splitting of Rye Brook from the Town of Rye in the redistricting of State Senate and Congressional Districts; and be it

FURTHER RESOLVED, that if Rye Brook is removed from the Sound Shore District, our state representation, as well as the state representation of the residents in the newly divided Town of Rye, would be significantly marginalized regarding our areas of common interest; and be it

FURTHER RESOLVED, that the Village of Rye Brook Board of Trustees urges the NYS Independent Redistricting Commission to reconsider their proposal to remove the Village of Rye Brook from the current Sound Shore District based upon the additional information provided in this resolution; and be it

FURTHER RESOLVED, that this duly adopted resolution of the Village of Rye Brook be forwarded to the NYS Independent Redistricting Commission, NYS Assemblyman Steve Otis, NYS Senator Shelley Mayer, Congressman Mondaire Jones and the Town of Rye Town Council.

TRUSTEE EPSTEIN	**AYE**
TRUSTEE FISCHER	**ABSENT**
TRUSTEE HEISER	**AYE**
TRUSTEE KLEIN	**AYE**
MAYOR ROSENBERG	**AYE**

State of New York
County of Westchester } ss:
Village of Rye Brook

I hereby certify that this is the Resolution adopted by the Board of Trustees of the Village of Rye Brook which was duly passed by said Board on November 2, 2021

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Seal of the Village of Rye Brook, this 3rd day of November, 2021

Village Clerk

VILLAGE OF
PORT CHESTER
222 Grace Church Street, Port Chester, NY 10573

Luis A. Marino
Mayor

(914) 939-2200
Fax: (914) 937-3169
E-Mail: MayorMarino@portchesterny.gov

November 5, 2021

David Imamura, Chair
Jack Martins, Vice-Chair
Honorable Members of the New York State
Independent Redistricting Commission
250 Broadway, 22nd Floor
New York, New York 10007

Dear Chair, Vice-Chair and Honorable Commissioners:

We have learned that the Commission proposes to remove the Village of Rye Brook from the current Sound Shore Assembly District (91st Assembly District) and place it in a new assembly district with other municipalities as far north as Mt. Kisco and Bedford. On behalf of the Village of Port Chester Board of Trustees, thank you for the opportunity to participate in your process of obtaining public input and I ask that this correspondence be made part of the official record.

The Village of Port Chester joins with the Town of Rye and the Village of Rye Brook in opposition to this proposal.

The redistricting plan would have a significant impact on the relationship between the Village of Rye Brook and Port Chester which have a long history of sharing municipal services such as EMS, fire protection, library, capital improvements and equipment. The two villages have closely worked with legislative representatives to secure special state legislation and support in many of these areas. Such legislative success would not likely have been possible if the two villages were divided into two different assembly districts.

Since Rye Brook is within the Long Island watershed, all of its stormwater flows into Long Island Sound, and its sanitary sewers flow into either the Westchester County's Blind Brook or Port Chester's treatment plants. Separating Rye Brook from Port Chester and other Shore communities would undercut potential regional solutions and inter-municipal cooperative agreements to comprehensively address stormwater and sanitary sewer issues. *The* litigation by Save the Sound against the County and the Sound Shore communities reflects their common interest and the need to work together to address shared environmental matters that impact the Long Island Sound. To be successful, all such joint efforts necessarily involve state grants and common legislative representation.

Like the other Sound Shore communities, Rye Brook is served by Suez, a private water company. These communities have often required state representation on issues involving the State Public Service Commission that affect their residents, such as setting water rates, mergers, acquisitions and other environmental and inter-state impacts. Given their mutual interest, Rye Brook, Port Chester and the City of Rye have historically retained joint counsel to represent them in proceedings before the Commission.

In summation, the proposal disregards the common goals, shared identity and long-standing collaborative efforts in many areas of mutual concern among the municipalities currently located in the Sound Shore District, which includes the villages of Rye Brook, Port Chester, Mamaroneck and Larchmont and the towns of Rye and Mamaroneck and City of Rye and part of the City of New Rochelle. All of the Sound Shore communities deserve to have a single voice to represent their collective, unique and mutual interests.

The Village of Port Chester therefore strongly opposes the proposed change in the boundaries of the 91st Assembly District and urges the Commission to reconsider such proposal.

Sincerely,

Luis A. Marino
Mayor

LAM:mtv

cc: Village of Port Chester Board of Trustees
New York State Assemblyman Steve Otis
New York State Senator Shelley Mayer
Villages of Rye Brook and Mamaroneck and Town of Rye

School District of the City of Niagara Falls, New York

630 66th Street ◆ Niagara Falls, NY 14304 ◆ (716) 286-4211 ◆ Fax: (716) 286-4283

October 7, 2021

New York State Independent Redistricting Commission
250 Broadway, 22nd Floor
New York, NY 10007

Dear Honorable Commissioners:

As the Superintendent of the Niagara Falls City School District, I am writing to offer my views and opposition to the establishment of a so-called "earmuff" congressional district. The 2002 map that started in Niagara Falls and continued with termination in the southeastern Monroe County Town of Perinton was suboptimal for Niagara Falls.

The best congressional districts are compact, contiguous, and share common interests and concerns. A "hodgepodge district" often has divergent needs and competitive struggles for governmental resources. The proposed composition of suburban, urban, and rural areas lack core continuity and dilute advocacy and support. Recent articles and reports indicate that efforts may be again underway to recreate this type of district. I strongly urge you not to recreate this form of representation.

I sincerely believe that the cities of Buffalo and Niagara Falls have similar character and concerns. After Buffalo, Niagara Falls is the largest urban school district in Western New York facing very similar challenges. I believe other districts in Niagara County are very different in the challenges they face and the needs they have. It is my belief that Niagara Falls is best served as a school district with other large urban districts as it currently exists.

I respectfully request your consideration of rejecting a return to an "Earmuff District" and to keep the educational similarities of Niagara Falls and Buffalo coterminous in any redistricting effort.

Sincerely,

Mark Laurrie
Superintendent
Niagara Falls City School District

Cc: Hon. Carl E. Heastie, Speaker, NYS Assembly
Hon. Andrea Stewart-Cousins, Majority Leader, NYS Senate

Independant Redistricting Commission
250 Broadway, 22nd Floor
New York, N.Y. 10007

Dec 1, 2021

Chairman David Imamura, Vice-chairman Jack Martin
Executive Directors Karen Blatt and Douglas Breakell
and distinguished members of the New York State
Independant Redistricting Committee

As I have previously indicated to your Commissioners in October, our main goal has been to have all of Montgomery County in 2022 in one Congressional District. As a resident residing in the 19th Congressional District, Our County and residents seem to have more in common with our Northern County neighbors in the Present 21st Congressional District. With Fulton County we share the Fulton-Montgomery Community College with its operation and Financial Contributions. Many of us shop in Johnstown and Gloversville, which are close to us, instead of going South - Oneonta, Cobleskill, & Cooperstown in our 19th District. Also, Amsterdam is only a half hour Away from Saratoga Springs and Clifton Park. In the Adirondack foothills we have recreational spots which we are attracted To: Campsites East Canoga, North Hampton on the Great Sacandaga lake in Fulton County. Also, Moffits Beach, Lewey Lake, and Indian Lake in Hamilton County. Many from Montgomery County have private lakeside cabins on these bodies of Water.

In This proposal the Tri-City area remains the core of the 20th Congressional District. The 21st District is basically the same but expanding by absorbing Montgomery County.

Pluses To plan
1. Montgomery and Rensselaer Counties will Be represented By one Congressman
2. Towns of Manheim, Stillwater, and Schodack will Be represented By one Congressman
3. Continuity of District boundary Lines Seems stable

Minuses
1. Approximately 75,000 population Taken from the 19th Congressional District - probably going South to pick up people
2. proposed 21st District 8482 below 776,991 ideal Threshold
   proposed 20st District 15,312 below Threshold

This new proposed 20th and 21st Congressional District will probably continue to grow in population due to fast growing Saratoga County with Global Foundaries and also Town of Schodack because of its new Amazon facility Recently, Gov. Hochal is seeking to develope a Chip Center in Albany.

Interested people know that your redistricting Task is not easy. Your Committee results will not please everyone. Nevertheless, it is necessary for you to find some common ground and compromise To find one plan for our state

Sincerely,

Jay Summerson
154 Robwil Dr.
Fort Plain N.Y. 13339

Proposed
20th Congressional NY District

Population 725,669

− 33,576 - Montgomery County - part of 20th

642 043

+ 65 566 Rensselaer City part of 19th

757 659

+ 4000 Rest of Town of Stillwater

761659

776,971 - District goal

761. 659

- 15,312

Proposed
21st Congressional Ny. District

Population 717,707

+ 49,532 montgomery County

767 239

− 4000 - Town of Stillwater

763,239

+ 750 - rest of Town of Manheim

763, 989

+ 4500 - Town of Newport Fairfield, Norway

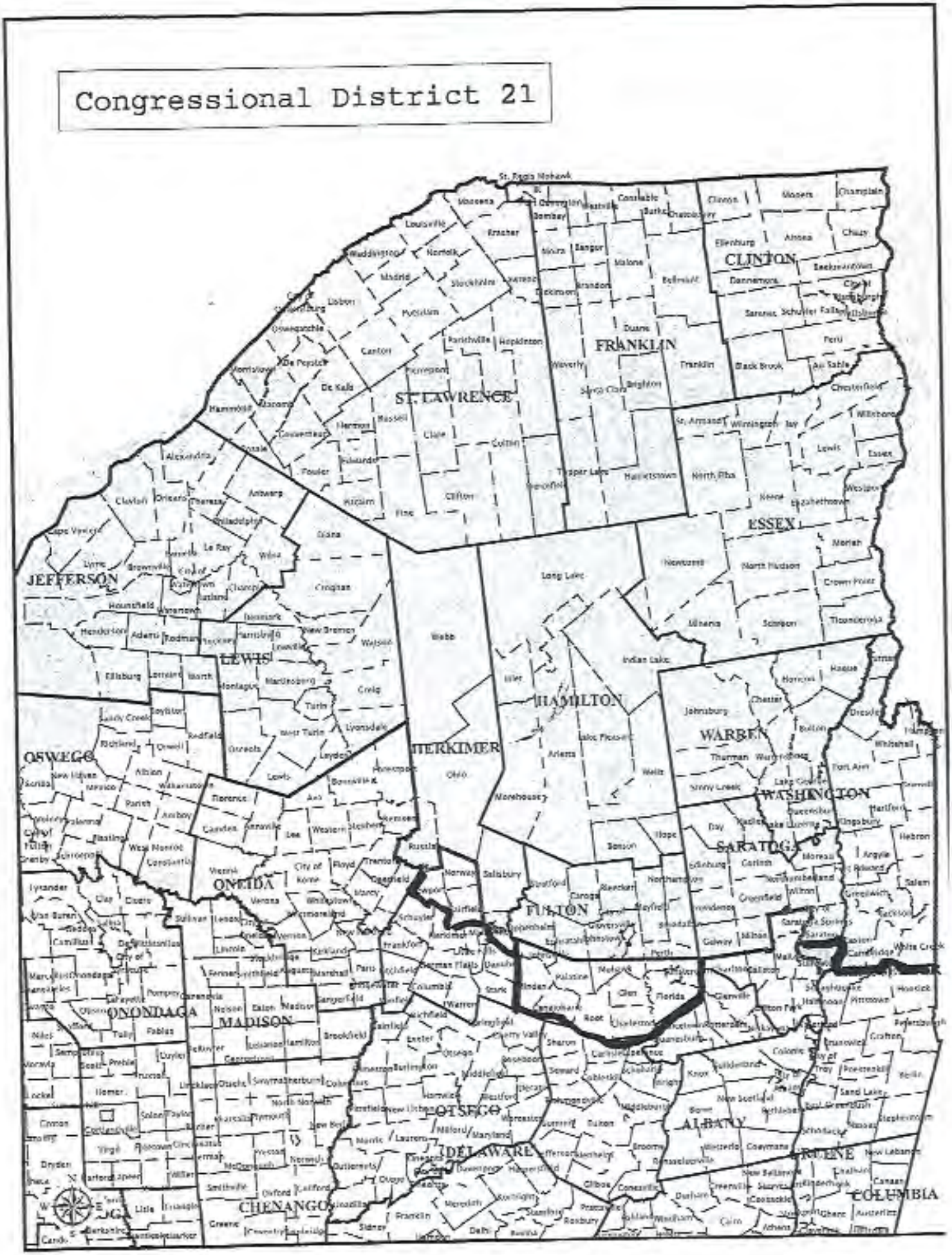
768,489

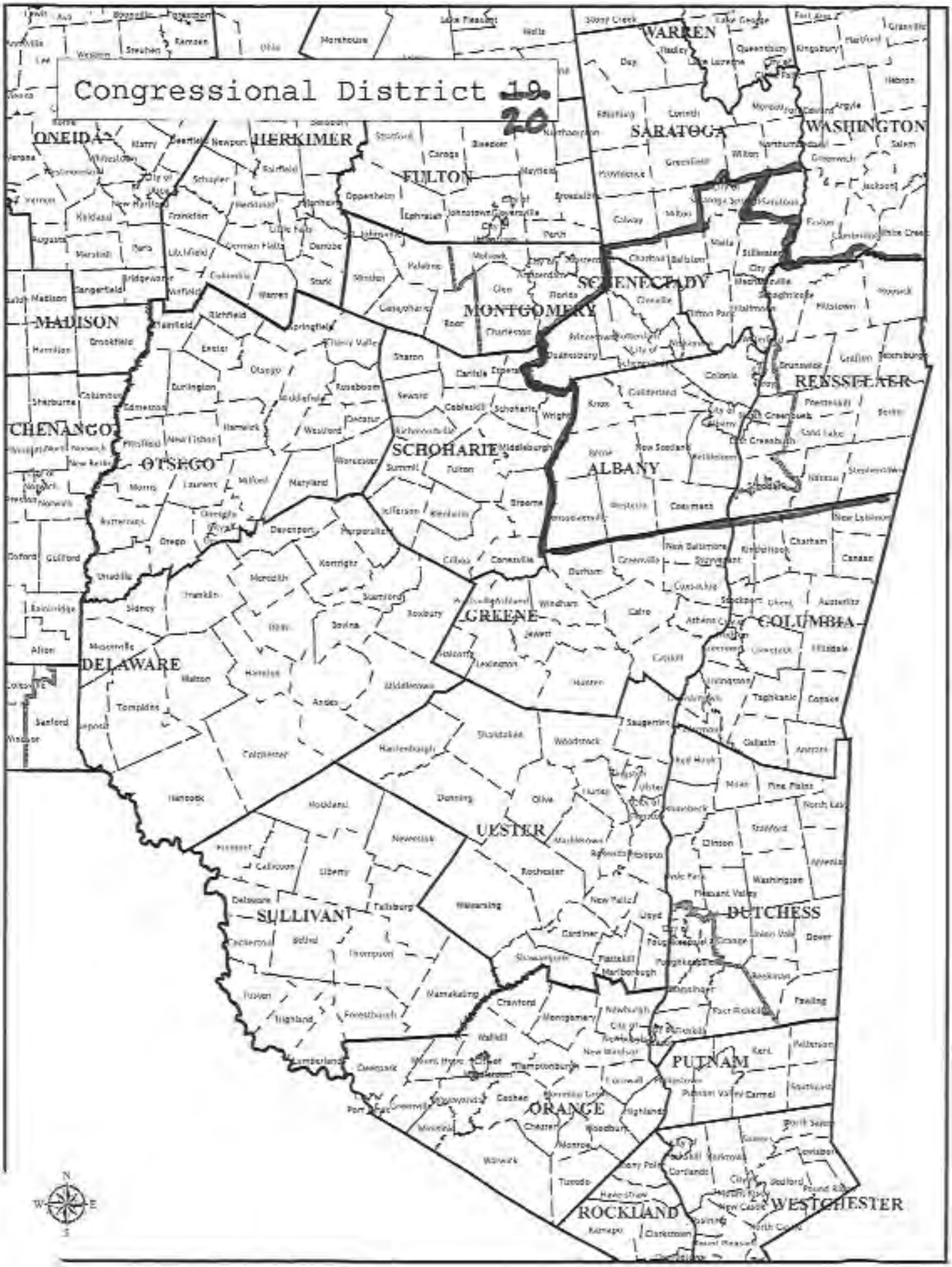
776,971 District Goal

768,489

- 8,482

Congressional District 21




Congressional District ~~19~~ 20
WARREN
SARATOGA
WASHINGTON
ONEIDA
HERKIMER
FULTON
SCHENECTADY
MONTGOMERY
MADISON
RENSSELAER
CHENANGO
OTSEGO
SCHOHARIE
ALBANY
GREENE
COLUMBIA
DELAWARE
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SULLIVAN
DUTCHESS
PUTNAM
ORANGE
ROCKLAND
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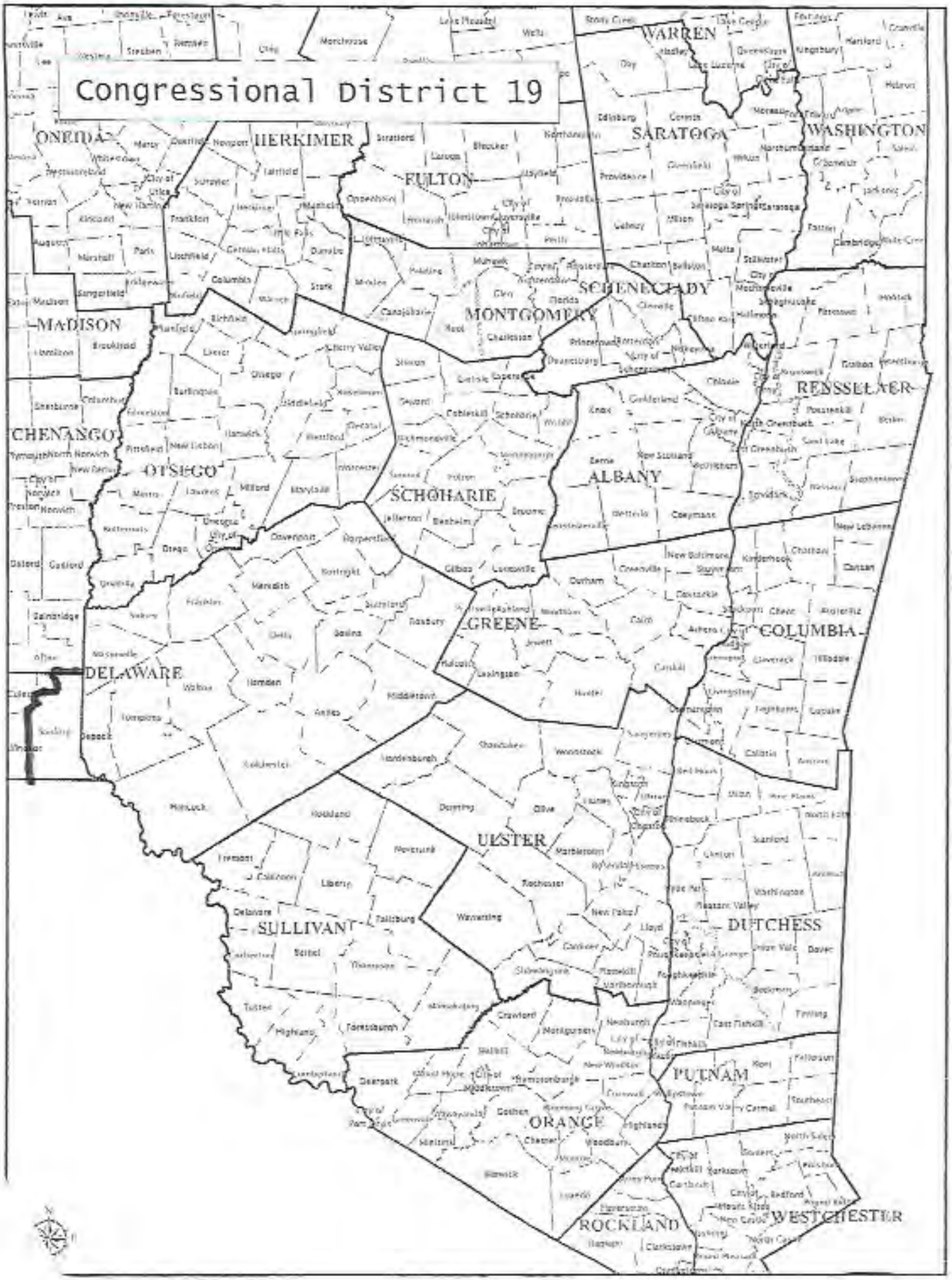
Congressional District 19
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FULTON
WARREN
SARATOGA
WASHINGTON
SCHENECTADY
MONTGOMERY
MADISON
RENSSELAER
CHENANGO
OTSEGO
SCHOHARIE
ALBANY
GREENE
COLUMBIA
DELAWARE
ULSTER
SULLIVAN
DUTCHESS
PUTNAM
ORANGE
ROCKLAND
WESTCHESTER

Jay V Summerson
154 Roowf Dr
Fort Plain, NY 13339-4770

1000

10007

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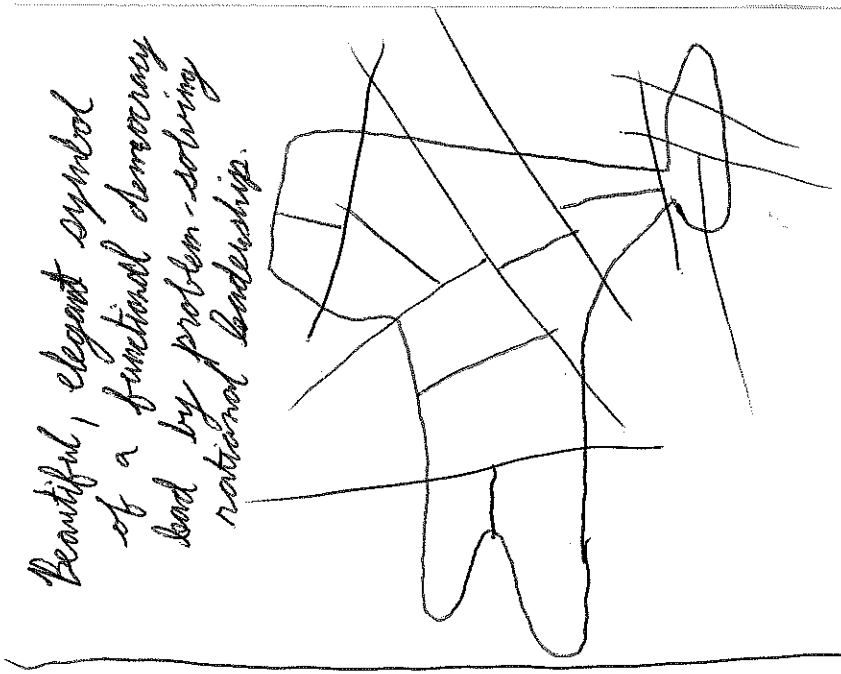
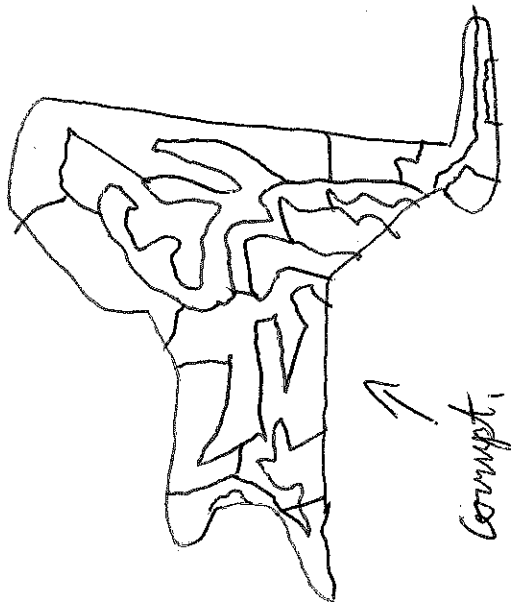
Independant Redistricting Commission
250 Broadway, 22nd Floor
New York, N.Y. 10007

1st Class



Beautiful, elegant symbol of a functional democracy lead by problem-solving national leadership.



Corrupt, embarrassing nonsense designed by feckless partisans

Hi folks,

So I read you're having trouble with some maps. Two are put forward, one that benefits Democrats & one that benefits Republicans. What a surprise that the benefits to parties would be designed by party heads in an "independent" commission, eh?

The answer is shortest-line algorithmic redistricting. Be a national leader & conscientious organizers of non-partisan democracy today & throw all partisan maps in the trash. Bisect the population of New York State into 26 smooth, simple polygons w/ a computer & nobody has a complaint to stand on.

See sample maps @ RangeVoting.org & choose rational, simple, non-corrupt solutions today.

Best regards,
-Dave Berko
11103

Dane Benko
42-13 28th Ave, B5
Astoria, NY 11103

NEW YORK NY 100
22 SEP 2021 PM 9 L

Independent Redistricting Commission
250 Broadway, 22nd Floor
New York, NY 10007

10007-253422

Independent Redistricting Commission
250 Broadway, 22nd Floor
New York, NY 10007

November 4, 2021

To Whom It May Concern:

This is my testimony as a constituent of NY-16, I do not want my vote gerrymandered. The Northeast Bronx, Mt. Vernon, New Rochelle, and Yonkers have similar interests including but not limited to healthcare, infrastructure, education, after-school, and community safety. We have been the "forgotten" areas and unheard voices which and now being silenced. Our voices matter.

Kindly,

Ashley Jackson
914-204-4836

VILLAGE OF WILSON
375 Lake Street
P.O. Box 596
Wilson, NY 14172-0596

Arthur Lawson, Mayor
Carey L. O'Connor, Clerk-Treasurer
(716)751-6764 Fax (716)751-6787

www.villageofwilson.org

NO "EARMUFF" CONGRESSSIONAL DISTRICT FOR WESTERN NEW YORK

WHEREAS, because of the federal decennial census, New York State must redraw district lines for the United States House of Representatives, and

WHEREAS, the New York State Independent Redistricting Commission is presently accepting public comment on the redrawing of congressional districts in New York State, and

WHEREAS, since 2013, all residents of The Village of Wilson have lived in the 27th Congressional District, and

WHEREAS, The Village of Wilson's placement within this district has been wholly and entirely proper, given that the district contains a mix of village and rural areas with many shared interests, and

WHEREAS, from 2003 to 2012, The Village of Wilson was situated within the "Earmuff District" which connected our town to metropolitan and suburban Rochester more than 80 miles to the east, and

WHEREAS, the "Earmuff District" stretched from the east side of Buffalo, north through the town and city of Tonawanda north to Niagara Falls, through Niagara, Lewiston, Wilson and Porter, then east across the shores of Lake Ontario, through portions of 10 towns in Niagara, Orleans and Monroe counties, including the city of Rochester and additional towns to the city's southeast, and

WHEREAS, inclusion in the "Earmuff District" clearly violated the generally accepted criteria for good-government redistricting, particularly in terms of compactness and preservation of communities of interest, and

WHEREAS, draft maps have recently circulated in various publications which have suggested that – solely for partisan political purposes—the state of New York should re-establish and "Earmuff District" that would reunite The Village of Wilson, among other Niagara Frontier localities, with the city of Rochester, and

WHEREAS, it is incumbent upon this village Board to make its voice heard on behalf of town residents as critical decision-making lies head in terms of congressional redistricting,

NOW, THEREFORE, BE IT

RESOLVED, that in the congressional redistricting process, The Village of Wilson does herby discourage any effort to re-establish a so-called "Earmuff District," connecting any portion of the Niagara Frontier to the city of Rochester, and be it further

RESOLVED, that this Honorable Body does hereby encourage decision-making authorities, including but not limited to the New York State Independent Redistricting Commission, the New York State Legislative Task Force on Demographic Research and Reapportionment and/or the New York State Legislature to reject all efforts to re-establish a so-called "Earmuff District," or any district which seeks to similarly connect the Buffalo and Rochester metropolitan areas, and be it finally

RESOLVED, that certified copies of this resolution be sent to the New York State Independent Redistricting Commission (250 Broadway, 22nd Floor, New York, NY 10007), the New York State Legislative Task Force on Demographic Research and Reapportionment (250 Broadway, Suite 2100, New York, NY 10007), the Speaker of the New York State Assembly and the Majority Leader of the New York State Senate, and the local offices of the Representatives in Congress in New York's 26th and 27th Congressional Districts.

ADOPTION: November 18, 2021
Resolution: 21-2021

CERTIFICATION OF CLERK
Carey L. O'Connor
Carey L. O'Connor

ROLL CALL:

Arthur Lawson, Mayor	(YES)	NO
Phil Russell, Trustee	(YES)	NO
Brad Simpson, Trustee	(YES)	NO

Testimony to the Independent Redistricting Commission
Submitted on Behalf of: *Timothy Jenny, Superintendent of the Remsen Central School District*

November 23, 2021

Hello, my name is Timothy Jenny and I am submitting testimony on behalf of the Remsen Central School District.

This school district represents approximately 437 students that includes the village and town of Remsen in addition to the towns of Boonville, Forestport, Ohio, Trenton, Russia, and Steuben.

I write today to participate in New York's newly implemented independent redistricting process and the effects redistricting will have on our community.

As a community of interest we are focused on providing a solid public education to the students of our region. Maintaining the Remsen Central School District within a single legislative district would ensure our elected leaders understand our issues and are focused on advocating for them at the state and federal level. The continuity of this legislative district is critical to the ability of our school board of education and me to provide services or receive assistance from our current representatives and would more broadly impact our ability to effectively lobby and advocate for decisions and policies that shape our public education system.

Our community represents a diverse district, yet its residents share common interests. If our community was to be split up into different districts, our representation would be diminished and would hinder the community's ability to come together. We believe that our current representation is fully committed to listening to community/group concerns.

Thank you to the Independent Redistricting Commission for allowing me to submit testimony. I again ask that you consider the needs of our community so that there may continue to be adequate and fair representation.

Respectfully,

Timothy Jenny
Superintendent of Schools
Remsen Central School District
9733 Main Street
Remsen, NY 13438

National Association for the
Advancement of Colored People

NIAGARA FALLS BRANCH

PO BOX OFFICE 529, BRIDGE STATION
NIAGARA FALLS, NEW YORK 14305

October 7, 2021

New York State Independent Redistricting Commission
250 Broadway, 22nd Floor
New York, NY 10007

RE: CONGRESSIONAL REDISTRICTING FOR NIAGARA FALLS, NY

Honorable Commissioners:

My name is Shirley Hamilton and I serve as President of the Niagara Falls Branch of the NAACP (National Association for the Advancement of Colored People). The current proposed Congressional Redistricting mapping dilutes African American voices and votes. I write to urge the following as it relates to Congressional redistricting for the city of Niagara Falls:

1. Strong opposition to any re-establishment of a district connecting Niagara Falls to the city of Rochester and/or its surrounding communities,and;
2. Strong support for Niagara Falls to remain included within a district with the city of Buffalo.

In 2002, mapmakers in Albany created a district for Western New York that combined the City of Niagara Falls with portions of the cities of Buffalo and Rochester. To accomplish this, they connected these heavily populated urban areas by means of a contiguous stretch of land traveling north from Buffalo through portions of Niagara County including the city of Niagara Falls, then due east along the shores of Lake Ontario in Niagara and Orleans Counties, south through the city of Rochester and terminating in the southeastern Monroe County town of Perinton. It quickly became known as the "Earmuff District."

As you know, the best congressional districts are compact and contiguous, combining residents of shared interests and communities of concern. The "Earmuff District," by its very nature, violated these tenets, and due to its size and iteration resulted in a hodgepodge district that unnecessarily combined communities which have historically been competitors for governmental resources and who have, in many respects, divergent governmental interests.

In this district, one Member of Congress was required to service the divergent needs of upstate New York's two largest metropolitan communities and a string of very different municipalities whose driving distance spanned more than 130 miles from one end to the other. Its composition forced the inclusion of many suburban, exurban, and rural areas into the district that lacked substantial commonality with the Rochester metropolitan area, which served as the district's core.

This is relevant to the current process because it has been reported that there may be efforts underway to convince mapmakers of the advisability of re-creating the "Earmuff District;" to connect the city of Rochester once again to areas more than 130 miles to its west in Niagara and Erie Counties. Plainly, we want to urge you in the strongest possible terms **NOT** to re-create the "Earmuff District."

Simply put, the current congressional district where the vast majority (in fact, all but 12 residents) of the city of Niagara Falls currently reside is a compact, contiguous district that unites our region's communities of concern and communities of color into one district. The Niagara Falls Branch of the NAACP cannot support any congressional map that divides our communities.

New York State was the only northern state named in the Voting Rights Act that was subject to pre-clearance. The National Conference of State Legislatures, Redistricting Criteria, third paragraph,states:

> **"In addition to population equality, Section 2 of the Voting Rights Act of 1965 prohibits plans that intentionally or inadvertently discriminate on the basis of race, which could dilute the minority vote."** (https://www.ncsl.org/research/redistricting/redistricting-criteria.aspx; **accessed 10/7/2021**)

In the two sets of maps released by commissioners on September 15, 2021, Niagara Falls was removed from a district that also included the city of Buffalo. We believe this is a mistake. Niagara Falls and Buffalo are communities of similar concern and character. We believe it critically important that because of their proximity and similar character these two localities should remain in the same district, as they have since 2013. As indicated above in detail, we oppose moving Niagara Falls into a district centered in Rochester, and at the same time believe that combining Niagara Falls as you have in these draft maps moves an urban city into a substantially rural environment that dilutes the African American votes from the current 17.6% of the voters to only a 2% African American vote for the 26th Congressional District. We do not believe this best serves the people of our city and violates Article 2 of the Voting Rights Act.

It is our opinion that the re-creation of an "Earmuff District" or any similar district which seeks to put Niagara Falls and Buffalo into the same district as Rochester would be an unfortunate decision that would serve to undermine the interests of both areas. We encourage you to reject any such consideration thereof. Moreover, we believe it similarly important that Niagara Falls remain situated in a

single urban district and encourage that change to be incorporated in future draft maps that are considered. Thank you.

Sincerely,

Shirley J. Hamilton
President
Niagara Falls Branch NAACP

cc: Hon. Carl Heastie, Speaker, NYS Assembly (NYS Capitol, Albany, NY 12248)
Hon. Andrea Stewart Cousins, Maj Leader, NYS Senate (NYS Capitol, Albany, NY 12248)
Legislative Task Force on Redistricting, (250 Broadway, Ste. 2100, New York, NY 10007)

BOARD OF EDUCATION

65 Niagara Square • Room 801 City Hall
Buffalo, New York 14202
Phone: (716) 816-3570 • Fax: (716) 851-3937

DR. KRINER CASH
Superintendent of Schools

November 19, 2021

Via e-mail (submissions@nyirc.gov) and Certified Mail

New York State
Independent Redistricting Commission
250 Broadway, 22nd Floor
New York, NY 10007

Re: 2022 Congressional Redistricting

Dear Sir or Madam:

Enclosed please find a Resolution in the above-referenced matter.

This Resolution passed unanimously by the Buffalo Board of Education at their Regular Business Meeting on November 17, 2021.

I am sending this Resolution to you on behalf of Board President Louis J. Petrucci.

Very truly yours,

Lisa M. Keane

Lisa M. Keane
Administrative Secretary

LMK:pc
Enclosure

2 Lea

Board of Education
APPROVED

NOV 17 2021

Board Office

2022 Congressional Redistricting Resolution

Proposed by President Lou Petrucci

WHEREAS, because of the federal decennial census, New York State must redraw district lines for the United States House of Representatives, and;

WHEREAS, the New York State Independent Redistricting Commission is presently accepting public comment on the redrawing of congressional districts in New York State, and;

WHEREAS, since 2013, all residents of the city of Buffalo have lived in the 26th Congressional District, which unites the cities of Buffalo, Niagara Falls, North Tonawanda, Tonawanda, and Lackawanna with contiguous towns and villages, and;

WHEREAS, as the hub of the Buffalo/Niagara and Niagara Frontier regions, the city of Buffalo is a main population center for the region, a city which experienced population growth for the first time in many decades, and;

WHEREAS, the current 26th Congressional District, including the city of Buffalo, meets all of the generally accepted criteria for a good-government district, including compactness, contiguity, and preservation of communities of interest, combining voters of shared interest throughout the district, and;

WHEREAS, maintenance of this type of district with the city of Buffalo included therein is essential to the growth and betterment of our city and its schools, and;

WHERAS, from 2003 to 2012, a portion of the city of Buffalo was situated within the "Earmuff District," which divided the city in half and connected to metropolitan and suburban Rochester more than 80 miles to the east, and;

WHEREAS, the "Earmuff District" stretched from the east side of the city of Buffalo north through the town of Tonawanda to Niagara Falls, through Lewiston and Porter, then traversed east across the shores of Lake Ontario, through portions of 10 towns in Niagara, Orleans and Monroe counties, including the city of Rochester and additional towns to that city's southeast, and;

WHEREAS, the "Earmuff District" unnecessarily divided the city of Buffalo into two congressional districts, thereby forcing each representative to additionally be burdened by the needs of additional communities, many of which were completely different in character from the city, including one member whose district's core was the next-largest upstate urban municipality with substantial needs at a level similar to Buffalo's own, and

WHEREAS, the "Earmuff District" quite distinctly did not meet generally accepted criteria for a good-government district; it was not compact, it unnecessarily combined urban, suburban and rural communities and through the city's division into two districts communities of interest and voters with shared interests had their voting strength diluted, and;

WHEREAS, draft maps have recently circulated in various publications which have suggested that – solely for partisan political purposes – the state of New York should re-establish an "Earmuff District" that would possibly reunite the city of Buffalo, among other Niagara Frontier localities, with the city of Rochester, and;

WHEREAS, the New York State Independent Redistricting Commission recently released two sets of maps, both of which removed Niagara Falls from being paired with Buffalo in the same congressional district, and;

WHEREAS, adoption of one of these maps drafted by the Independent Redistricting Commission would result in the first instance in at least half a century where Niagara Falls is decoupled from Buffalo in a congressional district, and;

WHEREAS, given the many similarities shared by Niagara Falls and Buffalo, it is unwise to place these two localities in different congressional districts, and

WHEREAS, the current iteration of the district in which the city of Buffalo rests includes the city of Niagara Falls but not the substantially larger city of Rochester, thereby allowing for better representation from the member and better interaction with congressional offices and staff as the district's needs dictate, and;

WHEREAS, it is incumbent upon this School Board to make its voice heard on behalf of city residents as critical decision-making lies ahead in terms of congressional redistricting,

THEREFORE, BE IT RESOLVED, that in the congressional redistricting process, the City of Buffalo Board of Education does hereby encourage maintenance of the city of Buffalo as a component part of one congressional district, and;

BE IT FURTHER RESOLVED, that this Honorable Body does hereby encourage the city's inclusion in a congressional seat with other densely populated municipalities within the Niagara Frontier, including but not limited to the cities of Lackawanna, Niagara Falls, North Tonawanda and Tonawanda, and the towns of Amherst, Cheektowaga, Grand Island, Tonawanda and West Seneca, and does hereby discourage any effort to re-establish a so-called "Earmuff District" connecting any portion of the Niagara Frontier to the city of Rochester, and;

BE FINALLY RESOLVED, that this Honorable Body does hereby encourage decision-making authorities, including but not limited to the New York State Independent Redistricting Commission, the New York State Legislative Task Force on Demographic Research and Reapportionment and/or the New York State Legislature to reject all efforts to re-establish a so-called "Earmuff District," or any district which seeks to similarly connect the Buffalo and Rochester metropolitan areas.

176. By Councilmember Rautenstrauch seconded by Councilmember Mileham

WHEREAS, because of the federal decennial census, New York State must redraw district lines for the United States House of Representatives, and

WHEREAS, the New York State Independent Redistricting Commission is presently accepting public comment on the redrawing of congressional districts in New York State, and

WHEREAS, since 2013, all residents of the city of Tonawanda have lived in the 26th Congressional District, which unites the cities of Niagara Falls, North Tonawanda, Tonawanda, Buffalo and Lackawanna with contiguous towns and villages, and

WHEREAS, Tonawanda's placement within this district has been wholly and entirely proper, given that the city of Tonawanda and the city of Buffalo and the adjacent communities are integral components of the Niagara Frontier, a compact and contiguous region of New York State with an integrated economy and many shared interests, and

WHEREAS, the current 26th Congressional District, including the city of Tonawanda, meets all of the generally accepted criteria for a good-government district, including compactness, contiguity, and preservation of communities of interest, combining voters of shared interest throughout the district; maintenance of this type of district with the city of Tonawanda included therein is essential to the growth and betterment of our city, and

WHEREAS, from 2003 to 2012, the city of Tonawanda was situated within the "Earmuff District," which rather than connecting Tonawanda to Buffalo instead connected our city to metropolitan and suburban Rochester more than 80 miles to the east, and

WHEREAS, the "Earmuff District" stretched from Tonawanda north through Niagara Falls to Porter and Youngstown, then traversed east across the shores of Lake Ontario, through portions of 10 towns in Niagara, Orleans and Monroe counties, including the city of Rochester and towns to that city's southeast, and

WHEREAS, inclusion in that "Earmuff District" clearly violated the generally accepted criteria for good-government redistricting, particularly in terms of compactness and preservation of communities of interest, and

WHEREAS, draft maps have recently circulated in various publications which have suggested that – solely for partisan political purposes – the state of New York should re-establish an "Earmuff District" that would reunite the city of Tonawanda, among other Niagara Frontier municipalities, with the city of Rochester, and

WHEREAS, it is incumbent upon this City Council to make its voice heard on behalf of city residents as critical decision-making lies ahead in terms of congressional redistricting,

NOW, THEREFORE, BE IT RESOLVED, that in the congressional redistricting process, the City of Tonawanda does hereby encourage the city's inclusion in a congressional seat with other densely populated municipalities within the Niagara Frontier, including but not limited to the cities of Buffalo, Niagara Falls, North Tonawanda, and Lackawanna, and the towns of Amherst, Tonawanda, Cheektowaga and West Seneca, and does hereby discourage any effort to re-establish a so-called "Earmuff District" connecting any portion of the Niagara Frontier to the city of Rochester, and be it further

RESOLVED, that this Honorable Body does hereby encourage decision-making authorities, including but not limited to the New York State Independent Redistricting Commission, the New York State Legislative Task Force on Demographic Research and Reapportionment and/or the New York State Legislature to keep the city of Tonawanda in a congressional district with a similar iteration to today, united as it is with the cities of Buffalo,

Lackawanna, Niagara Falls, North Tonawanda, and the towns of Tonawanda, Amherst, Cheektowaga, Grand Island, and West Seneca, and be it further

RESOLVED, that this Honorable Body does urge the aforementioned decision-making authorities to reject all efforts to re-establish a so-called "Earmuff District," or any district which seeks to similarly connect the Buffalo and Rochester metropolitan areas, and be it finally

RESOLVED, that certified copies of this resolution be sent to the New York State Independent Redistricting Commission (250 Broadway, 22nd Floor, New York, NY 10007), the New York State Legislative Task Force on Demographic Research and Reapportionment (250 Broadway, Suite 2100, New York, NY 10007), the Speaker of the New York State Assembly and the Majority Leader of the New York State Senate, and to the local offices of the Representatives in Congress in New York's 26th and 27th Congressional Districts.

Ayes: Kammerdeiner, Rautenstrauch, Mileham, Koch
Nays: None
Abstained: Newman

Resolution declared adopted

Dr. Brian K. Bellair
Superintendent of Schools
bbellair@wboro.org
Telephone: 315.266.3303
Fax: 315.768.9723

Mr. David Russo
Assistant Superintendent for Learning and Accountability

Mr. Joseph T. Muller II
Assistant Superintendent for Business

Whitesboro Central School District

Office of the Superintendent
65 Oriskany Boulevard • Whitesboro, NY 13492
www.wboro.org

Testimony to the Independent Redistricting Commission

Submitted on Behalf of: *Brian K. Bellair, Superintendent of the Whitesboro Central School District*

November 23, 2021

Hello, my name is Brian Bellair and I am submitting testimony on behalf of the Whitesboro Central School District.

This school district represents approximately 3,300students and covers Whitesboro, Marcy, Deerfield Whitestown and parts of Schuyler. I write today to participate in New York's newly implemented independent redistricting process and the effects redistricting will have on our community.

As a community of interest we are focused on providing a sound public education to the students of our region. Maintaining the Whitesboro Central School District within a single legislative district would ensure our elected leaders understand our issues and are focused on advocating for them at the state and federal level. The continuity of this legislative district is critical to the ability of our school board of education and me to provide services or receive assistance from our current representatives and would more broadly impact our ability to effectively lobby and advocate for decisions and policies that shape our public education system.

My community represents a diverse district, yet its residents share common interests. If my community was to be divided into different districts, our representation would be diminished and this would hinder the community's ability to come together. We believe that our current representation is fully committed to listening to my community's/group's concerns.

Thank you to the Independent Redistricting Commission for allowing me to submit testimony. I again ask that you consider the needs of my community so that there may continue to be adequate and fair representation.

Respectfully,

Brian K. Bellair

Brian K. Bellair, Ph.D.
Superintendent of Schools
Whitesboro Central School District
65 Oriskany Blvd.
Suite #1
Whitesboro, NY 13492
315-266-3301

NYS Independent Redistricting Commission
250 Broadway
NYC 10007

My name is Greg Lambert and I have lived in New York City for most of my life. I believe very strongly that it makes perfect sense to keep the East Side of Manhattan in a district that is separate from the West Side..

Manhattan is aligned along the north/south access – subway and bus lines go north to south. It is much harder to go from east to west. It can take I much longer to go from Riverside Drive to East End Avenue than it would to go from 96th Street to Houston, a much longer distance. **As a result of this natural alignment, institutions and communities have developed with an orientation that is north to south**.

The clearest example of the North/South orientation is the East Side Medical Corridor with nearly 20 major hospitals, medical schools and research facilities arrayed from 14th Street to the upper 70s . As a former VP of the Bellevue Hospital Day care center, I know fist hand how important cooperation among these hospitals is and I hope this Commission will not harm that. Additionally, museum mile, along 5th Avenue, has 10 major institutions from the Museum of African Art to the Metropolitan Museum from 105th to 82nd Street. Similarly, on the West Side, the theaters are aligned along Broadway.

Historically the East and West Sides have had very different temperaments and expectations, and they have wanted different things from their elected officials. For decades, it was recognized these different areas should have two strong two strong Representatives and do we have them. Anything that will weaken either Representative Nadler or Maloney will be recognized as an attempt to suppress progressive voices, and no one wants that.

To preserve this delicate balance, I strongly urge this Commission to continue the decade long practice of treating the East and West side as distinct units. If it is not broke, why change? The interests of these two diverse communities would be hurt if they were put together in the same Congressional district, and they would create unnecessary conflict

Thank you for your consideration of this. If you need any have any question, I can be reached at wedernyc@aol.com or 703-608-3770.

Greg Lambert

f Porter
eek Road
, NY 14174

Kara Hibbard
Town Clerk
716-745-3730
TownofPorter.Net

2021-88

Meeting: 11/08/21 07:00 PM

Opposition to th ARMUFF" Congressional District for the Town of Porter

RE: OPPOSITION TO THE FF" CONGRESSIONAL DISTRICT FOR THE TOWN OF PORTER

WHEREAS, because of the fed nial census, New York State must redraw district lines for the United States House of Representativ

WHEREAS, the New York State dent Redistricting Commission is presently accepting public comment on the redrawing of congressio cts in New York State, and

WHEREAS, since 2013, all resid rter have lived in the 27th Congressional District, and

WHEREAS, Porter's placement s district has been wholly and entirely proper, given that the county contains a mix of village and rur with many shared interests, and

WHEREAS, from 2003 to 2012, s situated within the "Earmuff District," which connected our town to metropolitan and suburban R more than 80 miles to the east, and

WHEREAS, the "Earmuff District d from the east side of Buffalo, north through the town and city of Tonawanda north to Niagara Fal n Niagara, Lewiston, and Porter, then east across the shores of Lake Ontario, through portions of 10 Niagara, Orleans and Monroe counties, including the city of Rochester and additional towns y's southeast, and

WHEREAS, inclusion in the "Earm ct" clearly violated the generally accepted criteria for good-government redistricting, particu rms of compactness and preservation of communities of interest, and

WHEREAS, draft maps have recen ted in various publications which have suggested that - solely for partisan political purposes - the st w York should re-establish an "Earmuff District" that would reunite the town of Porter, among agara Frontier localities, with the city of Rochester, and

WHEREAS, it is incumbent upon t Board to make its voice heard on behalf of town residents as critical decision-making lies ahead of congressional redistricting,

NOW, THEREFORE, BE IT

RESOLVED, that in the congressio icting process, the Town of Porter does hereby discourage any effort to re-establish a so-called "E strict" connecting any portion of the Niagara Frontier to the city of Rochester, and be it further

RESOLVED, that this Honorable Bo reby encourage decision-making authorities, including but not limited to the New York State Indepe districting Commission, the New York State Legislative Task Force on Demographic Research and Reappo nt and/or the New York State Legislature to reject all efforts to re-establish a so-called "Earmuff Distri district which seeks to similarly connect the Buffalo and Rochester metropolitan areas, and b

RESOLVED, that certified copies of t tion be sent to the New York State Independent Redistricting

Town of Porter
3265 Creek Road
Youngstown, NY 14174

Kara Hibbard
Town Clerk
716-745-3730
TownofPorter.Net

2021-88

Meeting: 11/08/21 07:00 PM

Opposition to the "EARMUFF" Congressional District for the Town of Porter

RE: OPPOSITION TO THE "EARMUFF" CONGRESSIONAL DISTRICT FOR THE TOWN OF PORTER

WHEREAS, because of the federal decennial census, New York State must redraw district lines for the United States House of Representatives, and

WHEREAS, the New York State Independent Redistricting Commission is presently accepting public comment on the redrawing of congressional districts in New York State, and

WHEREAS, since 2013, all residents of Porter have lived in the 27th Congressional District, and

WHEREAS, Porter's placement within this district has been wholly and entirely proper, given that the county contains a mix of village and rural areas with many shared interests, and

WHEREAS, from 2003 to 2012, Porter was situated within the "Earmuff District," which connected our town to metropolitan and suburban Rochester more than 80 miles to the east, and

WHEREAS, the "Earmuff District" stretched from the east side of Buffalo, north through the town and city of Tonawanda north to Niagara Falls, through Niagara, Lewiston, and Porter, then east across the shores of Lake Ontario, through portions of 10 towns in Niagara, Orleans and Monroe counties, including the city of Rochester and additional towns to that city's southeast, and

WHEREAS, inclusion in the "Earmuff District" clearly violated the generally accepted criteria for good-government redistricting, particularly in terms of compactness and preservation of communities of interest, and

WHEREAS, draft maps have recently circulated in various publications which have suggested that - solely for partisan political purposes - the state of New York should re-establish an "Earmuff District" that would reunite the town of Porter, among other Niagara Frontier localities, with the city of Rochester, and

WHEREAS, it is incumbent upon this Town Board to make its voice heard on behalf of town residents as critical decision-making lies ahead in terms of congressional redistricting,

NOW, THEREFORE, BE **IT**

RESOLVED, that in the congressional redistricting process, the Town of Porter does hereby discourage any effort to re-establish a so-called "Earmuff District" connecting any portion of the Niagara Frontier to the city of Rochester, and be it further

RESOLVED, that this Honorable Body does hereby encourage decision-making authorities, including but not limited to the New York State Independent Redistricting Commission, the New York State Legislative Task Force on Demographic Research and Reapportionment and/or the New York State Legislature to reject all efforts to re-establish a so-called "Earmuff District," or any district which seeks to similarly connect the Buffalo and Rochester metropolitan areas, and be it finally

RESOLVED, that certified copies of this resolution be sent to the New York State Independent Redistricting

Commission (250 Broadway, 22nd Floor, New York, NY 10007), the New York State Legislative Task Force on Demographic Research and Reapportionment (250 Broadway, Suite 2100, New York, NY 10007), the Speaker of the New York State Assembly and the Majority Leader of the New York State Senate, and to the local offices of the Representatives in Congress in New York's 26th and 27th Congressional Districts.

Motion was made by Councilman Adamson and seconded by Deputy Supervisor Baker.

Roll call: Supervisor Johnston, yes; Deputy Supervisor Baker, yes; Councilman Adamson, yes; Councilman white, absent; Councilman Ortiz, yes.

✓ Vote Record - Resolution RES-2021-88

☑ Adopted
☐ Adopted as Amended
☐ Defeated
☐ Tabled
☐ Withdrawn

		Yes/Aye	No/Nay	Abstain	Absent
Jipp Ortiz	Voter	☑	☐	☐	☐
J. Duffy Johnston	Voter	☑	☐	☐	☐
Jeff Baker	Seconder	☑	☐	☐	☐
Larry White	Voter	☐	☐	☐	☑
Tim Adamson	Mover	☑	☐	☐	☐

On a motion made by Trustee Epstein and seconded by Trustee Klein the following resolution was adopted.

RESOLUTION

OPPOSING THE ASSEMBLY REDISTRICTRING PLAN PROPOSED BY THE INDEPENDENT REDISTRICTING COMMISSION THAT WOULD RESULT IN RYE BROOK CHANGING NYS ASSEMBLY DISTRICTS

WHEREAS, a NYS Independent Redistricting Commission (the "Commission") was created to provide recommendations for re-drawing NYS district boundaries after the 2020 Census; and

WHEREAS, the Commission has proposed to remove the Village of Rye Brook from the current Sound Shore Assembly District (91st Assembly District) and splitting the Village from the Town of Rye; and

WHEREAS, this action would cause disastrous effects on the regional common goals shared among the municipalities currently located within the Sound Shore District including the Villages of Rye Brook, Port Chester, Mamaroneck, and Larchmont, and the Towns of Rye and Mamaroneck, and part of the City of New Rochelle; and

WHEREAS, the removal of the Village of Rye Brook from the Sound Shore District would separate Rye Brook from its partner Village of Port Chester, which is also located within the Town of Rye; and

WHEREAS, the removal of the Village of Rye Brook from the Sound Shore District would separate both Port Chester and Rye Brook residents who are served by the Town of Rye including its municipal court, whose judges would then represent residents in two different Assembly districts; and

WHEREAS, the removal of the Village of Rye Brook from the Sound Shore District would also separate Rye Brook residents from the Town of Rye Assessment and Tax Collection services who would serve town residents in two different Assembly districts; and

WHEREAS, since the Port Chester High School and the Port Chester Middle School are both physically located within the Village of Rye Brook, and 1/3 of the properties in Rye Brook are located in the Port Chester School District, the removal of the Village of Rye Brook from the Sound Shore District would result in homeowners in the same school district being represented by two different Assembly districts thereby weakening their state representation on issues of shared concern; and

WHEREAS, since the Village of Rye Brook has primarily collaborated and shared services with the other Sound Shore municipalities, including shared EMS, fire service, library services, capital improvements, and shared equipment, these commonalities of interests, which often involve support from state representatives, would be divided if Rye Brook was removed from the Sound Shore District; and

WHEREAS, since Rye Brook is within the Long Island watershed, and all stormwater in the municipality flows into the Long Island Sound, the Village of Rye Brook has the common interest of regional planning with other municipalities in the current Sound Shore District for items such as stormwater and flooding concerns, so separating Rye Brook from the other Long Island Watershed municipalities is counter to the goal of effective regional planning, which often includes state grants and legislative representation; and

WHEREAS, since all of the Rye Brook sanitary sewers flow into either the Port Chester sanitary sewer treatment plant in the Port Chester Sewer District, or the Blind Brook sanitary sewer treatment plant (in Rye City) in the Blind Brook Sewer District, separating Rye Brook from the municipalities in these two sewer districts is counter to the goal of effective regional planning, since these issues often includes state grants and legislative representation, and

WHEREAS, Rye Brook is served by a private water company (Suez) that also serves the municipalities in the current Sound Shore District, and often involves the need for state representation on issues involving the NYS Public Service Commission, establishing water rates, and other issues such as water company mergers, acquisitions, and other environmental and inter-state impacts, so separating Rye Brook from the other municipalities served by the same private water company would be counter-productive to efficiently and effectively address these concerns; and

WHEREAS, the proposed new assembly district would place Rye Brook with other municipalities as far north as Mt. Kisco and Bedford, which have very little shared common interests in the important areas identified in this resolution, and would result in weaker state representation for those areas which are very important to the residents and municipal officials in Village of Rye Brook.

NOW THEREFORE BE IT RESOLVED, that the Village of Rye Brook Board of Trustees hereby strongly and emphatically opposes any removal of the Village of Rye Brook from the other municipalities currently located within the Sound Shore District since we have many common interests with those municipalities which often result in the need for uniform and clear state representation; and be it

FURTHER RESOLVED, that for the reasons stated in this resolution that the Village of Rye Brook Board of Trustees hereby strongly and emphatically opposes the splitting of Rye Brook from the Town of Rye in the redistricting of State Senate and Congressional Districts; and be it

FURTHER RESOLVED, that if Rye Brook is removed from the Sound Shore District, our state representation, as well as the state representation of the residents in the newly divided Town of Rye, would be significantly marginalized regarding our areas of common interest; and be it

FURTHER RESOLVED, that the Village of Rye Brook Board of Trustees urges the NYS Independent Redistricting Commission to reconsider their proposal to remove the Village of Rye Brook from the current Sound Shore District based upon the additional information provided in this resolution; and be it

FURTHER RESOLVED, that this duly adopted resolution of the Village of Rye Brook be forwarded to the NYS Independent Redistricting Commission, NYS Assemblyman Steve Otis, NYS Senator Shelley Mayer, Congressman Mondaire Jones and the Town of Rye Town Council.

TRUSTEE EPSTEIN	**AYE**
TRUSTEE FISCHER	**ABSENT**
TRUSTEE HEISER	**AYE**
TRUSTEE KLEIN	**AYE**
MAYOR ROSENBERG	**AYE**

State of New York
County of Westchester } ss:
Village of Rye Brook

I hereby certify that this is the Resolution adopted by the Board of Trustees of the Village of Rye Brook which was duly passed by said Board on November 2, 2021

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Seal of the Village of Rye Brook, this 3rd day of November, 2021

Village Clerk

RENAE KIMBLE
3302 Hyde Park Boulevard
Niagara Falls, New York 14305
sonnyk788@gmail.com

October 12, 2021

New York State Independent Redistricting Commission
250 Broadway, 22nd Floor
New York, NY 10007

RE: CONGRESSIONAL REDISTRICTING FOR NIAGARA FALLS, NY

Honorable Commissioners:

As Chairwoman of the Legal Redress Committee for the Niagara Falls Branch # 2164 of the NAACP, I write to urge the following as it relates to Congressional redistricting for the city of Niagara Falls:

1. Strongly opposition to any re-establishment of a district connecting Niagara Falls to the city of Rochester and/or its surrounding communities (known in its 2003-2012 iteration as the "Earmuff" district); and
2. Strong support for Niagara Falls to remain included within in a district with the city of Buffalo.
3. Strongly oppose dilution of the minority vote in violation of Section 2 of the Voting Rights Act.

In 2002, mapmakers in Albany created a district for Western New York that combined the City of Niagara Falls with portions of the cities of Buffalo and Rochester. To accomplish this, they connected these heavily populated urban areas by means of a contiguous stretch of land traveling north from Buffalo through portions of Niagara County including the city of Niagara Falls, then due east along the shores of Lake Ontario in Niagara and Orleans Counties, south through the city of Rochester and terminating in the southeastern Monroe County town of Perinton. It quickly became known as the "Earmuff District."

As you know, the best congressional districts are compact and contiguous, combining residents of shared interests and communities of concern. The "Earmuff District," by its very nature, violated these tenets, and due to its size and iteration resulted in a hodgepodge district that unnecessarily combined communities which have historically been competitors for governmental resources and who have, in many respects, divergent governmental interests.

In this district, one Member of Congress was required to service the divergent needs of upstate New York's two largest metropolitan communities and a string of very different municipalities connected in a district whose driving distance spanned more than 130 miles from one end to the other. Its composition forced the inclusion of many suburban, exurban, and rural areas into the "Earmuff District" that lacked substantial commonality with the Rochester metropolitan area which served as the district's core.

This is relevant to the current process because it has been reported that there may be efforts underway to convince mapmakers of the advisability of re-creating the "Earmuff District;" to connect the city of Rochester once again to areas more than 130 miles to its west in Niagara and Erie Counties. Plainly, we want to urge you in the strongest possible terms **NOT** to re-create the "Earmuff District."

Simply put, the current congressional district where the vast majority (in fact, all but 12 residents) of the city of Niagara Falls currently reside is a compact, contiguous district that unites our region's communities of concern and communities of color into one district. The Niagara Falls Branch of the NAACP cannot support any congressional map that divides our communities. This region is known as the Buffalo/Niagara Region and is marketed as such throughout the world due to the commonality and connection between the two municipalities as evidenced by the following: The Buffalo Niagara International Airport, the Buffalo Niagara Convention Center and the Buffalo Niagara Partnership – Chamber of Commerce, just to name a few.

Additionally, in two sets of maps released by commissioners on September 15, 2021, Niagara Falls was removed from a district that also included the city of Buffalo. We believe this is a mistake. Niagara Falls and Buffalo are communities of similar concern and character. We believe it critically important that because of their proximity and similar character these two localities should remain in the same district, as they have since 2013. As indicated above in detail, we oppose moving Niagara Falls into a district centered in Rochester, but at the same time believe that combining Niagara Falls as you have in these draft maps moves an urban city into a substantially rural environment. We do not believe this best serves the people of our city.

Lastly, in accordance to the redistricting criteria that I received it states that all states must comply with the federal constitutional requirements. "In addition to population equality, Section 2 of the Voting Rights Act of 1965 prohibits plans that intentionally or inadvertently discriminate on the basis of race, which could dilute the minority vote. The current congressional district has a minority population of 17.6% of the district in accordance with the 2010 U.S. Census data. The proposed "Earmuff District" would put the minority population of the City of Niagara Falls in a district which would encompass only 2% of the population, which totally dilutes the voting strength of the minority community in the City of Niagara Falls, which would be a violation of Section 2 of the 1965 Voting Rights Act.

It is my opinion that the re-creation of an "Earmuff District" or any similar district which seeks to put Niagara Falls and Buffalo into the same district as Rochester would be an

unfortunate decision that would serve to undermine the interests of both areas. We encourage you to reject any such consideration thereof. Moreover, I believe it similarly important that Niagara Falls remain situated in a single urban district and encourage that change in future draft maps that are considered.

Thank you.

Sincerely,

Renae Kimble

Renae Kimble
Chairwoman of the Legal Redress Committee
Niagara Falls Branch # 2164
NAACP
(Former member of the Niagara County Legislature 1994-2011)

cc: Hon. Carl Heastie, Speaker, NYS Assembly (NYS Capitol, Albany, NY 12248)
Hon. Andrea Stewart Cousins, Majority Leader, NYS Senate (NYS Capitol, Albany, NY 12248)
Legislative Task Force on Redistricting, (250 Broadway, Ste. 2100, New York, NY 10007)

HISPANIC HERITAGE COUNCIL of Western New York, Inc.

Dedicated to preserving the history of Hispanics in Western New York for future generations.

P.O. Box 361 : Buffalo, NY 14201 : 716-402-1HHC (1442)

October 21, 2021

New York State Independent Redistricting Commission
250 Broadway, 22nd Floor
New York, NY 10007

RE: CONGRESSIONAL REDISTRICTING FOR BUFFALO/NIAGARA REGION

Honorable Commissioners:

The Hispanic Heritage Council of Western New York Inc. mission is to foster and inspire awareness, understanding, and appreciation of past, present, and future contributions of the Hispanic community in Western New York.

As officers of the Hispanic Heritage Council of WNY, we write to urge the following as it relates to Congressional redistricting for the Buffalo/Niagara Region:

1. Strongly opposition to any re-establishment of a district connecting any municipality within the Buffalo/Niagara Region to the city of Rochester and/or its surrounding communities (known in its 2003-2012 iteration as the "Earmuff" district); and
2. Strong support for uniting Hispanic residents in one congressional district by ensuring that Buffalo, Lackawanna and Niagara Falls, as well as the other municipalities currently within New York's 26th Congressional district, remain united within in a single congressional district.

In 2002, mapmakers in Albany created a district for Western New York that combined portions of the city of Buffalo with the city of Rochester. To accomplish this, they connected these heavily populated urban areas by means of a contiguous stretch of land traveling north from Buffalo through portions of Niagara County including the city of Niagara Falls, then due east along the shores of Lake Ontario in Niagara and Orleans Counties, south through the city of Rochester and terminating in the southeastern Monroe County town of Perinton. It quickly became known as the "Earmuff District." The results were suboptimal for our region.

As you know, the best congressional districts are compact and contiguous, combining residents of shared interests and communities of concern. The "Earmuff District," by its very nature, violated these tenets, and due to its size and iteration resulted in a hodgepodge district that unnecessarily combined communities which have historically been competitors for governmental resources and who have, in many respects, divergent governmental interests.
strength.

The re-creation of an "Earmuff District" or any similar district would through its creation necessarily divide the current 26th Congressional district and would undermine the objectives of the Buffalo/Niagara region's substantial Hispanic community by diluting the voting strength of our citizens. It would be an unfortunate decision that would serve to undermine the interests of citizens in both areas. We encourage you to reject any such consideration thereof and keep as much of the current 26th District united as possible. Thank you.

Sincerely,

Esmeralda Sierra
President

cc: Hon. Carl Heastie, Speaker, NYS Assembly (NYS Capitol, Albany, NY 12248)
Hon. Andrea Stewart Cousins, Maj Leader, NYS Senate (NYS Capitol, Albany, NY 12248)
Legislative Task Force on Redistricting, (250 Broadway, Ste. 2100, New York, NY 10007)
Board of Directors, Hispanic Heritage Council of Western New York Inc.

100 Co-Op City Blvd

Apt 18F

Bronx, N.Y. 10475

Independent Redistricting Commission

250 Broadway 22nd Floor

New York, N.Y. 10007

Dear Sir/Madame:

Followed is my testimony as a resident of Co-Op City, I am extremely concerned that there are plans to segment NY-16. It is imperative that there is equity across the district and we keep communities of interest together. We are the example of a diverse district, socio-economically & ethnically. The optics of removing us from the district appears to minimize the black and brown voter. This is gerrymandering.

Sincerely,

Geraldine Williams

November 8, 2021

Independent Redistricting
250 Broadway 22nd floor
New York, New York 10007

Re: Redistricting

Dear Sir/Madam:

This is my testimony as a resident of Co-op City. I am extremely concerned that there are plans to segment NY-16. It is imperative that there is equity across the district and we keep communities of interest together. We are the example of a diverse district, socio-economically and ethnically. The optics of removing us from the district appears to minimize the black and brown voter, this is gerrymandering,

Sincerely

Hattie Robinson

Hattie Robinson
140 Carver Loop Apt #4F
Bronx, New York 10475

We are residents of Bensonhurst, Brooklyn.

There has always been a close relationship between the Bensonhurst neighborhood and the 47th Assembly district. Many of our residents regularly go to that Assembly District's community office, whenever help is needed with any problem or concern.

We are very upset to learn that your Preliminary Redistricting Plan wants to remove the area west of McDonald Avenue (McDonald Ave to West 7th Street, from Avenue O to Avenue U) and the area on both sides of Cropsey Avenue, roughly between 26th Avenue and 19th Avenue, from the Bensonhurst Assembly District and place us in a district which we have no common interest.
We have always been involved with the Bensonhurst community and its specific issues and concerns and with those governmental bodies which the Bensonhurst 47th Assembly District heavily encompasses, including Community Board #11, the NYPD 62nd Precinct, and the CEC #21 and the Bensonhurst 47th Assembly District which also mostly coincides with these same agencies while the predominate government agencies in the proposed district to which they are attached to is not.

We urge you to restore the area west of McDonald Avenue (McDonald Ave to West 7th Street, from Avenue O to Avenue U) and the area on both sides of Cropsey Avenue, roughly between 26th Avenue and 19th Avenue, back into the proposed labelled Bensonhurst District in your final map to be proposed.

November 11 ,2021

Signed respectfully yours,

Ruyin C residing at 2345 81th st Brooklyn. NY 11214

(Name) (Address)

_____ residing at _____

(Name) (Address)

We are residents of Bensonhurst, Brooklyn.

There has always been a close relationship between the Bensonhurst neighborhood and the 47th Assembly district. Many of our residents regularly go to that Assembly District's community office, whenever help is needed with any problem or concern.

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November 11 ,2021

Signed respectfully yours,

L. CHAN residing at 8620 Bay 16 ST Brooklyn 11214
(Name) (Address)

Yan Ping Ling residing at 1070 Ovington Ave Brooklyn NY 11219
(Name) (Address)

We are residents of Bensonhurst, Brooklyn.

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November 11 ,2021

Signed respectfully yours,

Dong chun zhong Jun residing at 1954 64ST - 11204

(Name) (Address)

Ngan Yee Leung residing at 1524-83 ST Brooklyn

(Name) (Address)

We are residents of Bensonhurst, Brooklyn.

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November 11 ,2021

Signed respectfully yours,

NGMEI YONG residing at 59 Bay 31th st Brooklyn NY 11214

(Name) (Address)

[illegible] residing at 186 Bay 32th st Brooklyn NY 11214

(Name) (Address)

We are residents of Bensonhurst, Brooklyn.

There has always been a close relationship between the Bensonhurst neighborhood and the 47th Assembly district. Many of our residents regularly go to that Assembly District's community office, whenever help is needed with any problem or concern.

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November 11 ,2021

Signed respectfully yours,

[illegible] residing at 159 B 35th st Brooklyn NY 11214

(Name) Jin Ma Zhu (Address)

[illegible] residing at 8616 B 20th st Brooklyn NY 11214

(Name) (Address)

We are residents of Bensonhurst, Brooklyn.

There has always been a close relationship between the Bensonhurst neighborhood and the 47th Assembly district. Many of our residents regularly go to that Assembly District's community office, whenever help is needed with any problem or concern.

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November 11 ,2021

Signed respectfully yours,

11218

Hui chang chen residing at 4035 18 AV Brooklyn NY
(Name) (Address)

Ann Mei ou residing at 139 Bay 38th St Brooklyn 11214
(Name) (Address)

We are residents of Bensonhurst, Brooklyn.

There has always been a close relationship between the Bensonhurst neighborhood and the 47th Assembly district. Many of our residents regularly go to that Assembly District's community office, whenever help is needed with any problem or concern.

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November 11 ,2021

Signed respectfully yours,

Xiu-wei Li residing at 2074 E24ST 1F Brooklyn NY 11229
(Name) (Address)

Yanqing Zhang residing at _____
(Name) (Address)

We are residents of Bensonhurst, Brooklyn.

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November 11 ,2021

Signed respectfully yours,

[illegible] residing at 199 Bay 40 ST. 11214

(Name) (Address)

_____ residing at _____

(Name) (Address)

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November 11 ,2021

Signed respectfully yours,

Wong Kong Ging residing at 8669 26 AVE 11214

(Name) (Address)

_____ residing at _____

(Name) (Address)

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November 11 ,2021

Signed respectfully yours,

Sindy H Lee residing at 2330 83rd St Brooklyn NY

(Name) (Address)

Albert Lee residing at 11214

(Name) (Address)

We are residents of Bensonhurst, Brooklyn.

There has always been a close relationship between the Bensonhurst neighborhood and the 47th Assembly district. Many of our residents regularly go to that Assembly District's community office, whenever help is needed with any problem or concern.

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November 11 ,2021

Signed respectfully yours,

[signature] residing at 2138 82nd St.

(Name) (Address)

_____ residing at _____

(Name) (Address)

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November 11 ,2021

Signed respectfully yours,

Hon Kin Leung residing at 147 Bay 17TH ST 2/F Brooklyn, N.Y. 11214
(Name) (Address)

Kwan Ha Leung residing at 147 Bay 17th ST 2/Fl Brooklyn, N.Y. 11214
(Name) (Address)

We are residents of Bensonhurst, Brooklyn.

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November 11 ,2021

Signed respectfully yours,

[signature] residing at 8001 20th Ave Brooklyn NY 1121

(Name) (Address)

_____ residing at _____

(Name) (Address)

We are residents of Bensonhurst, Brooklyn.

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November 11 ,2021

Signed respectfully yours,

[signature] residing at 2165 CROPSEY AVE Brooklyn N.Y 11214

(Name) (Address)

_____ residing at _____

(Name) (Address)

We are residents of Bensonhurst, Brooklyn.

There has always been a close relationship between the Bensonhurst neighborhood and the 47th Assembly district. Many of our residents regularly go to that Assembly District's community office, whenever help is needed with any problem or concern.

We are very upset to learn that your Preliminary Redistricting Plan wants to remove the area west of McDonald Avenue (McDonald Ave to West 7th Street, from Avenue O to Avenue U) and the area on both sides of Cropsey Avenue, roughly between 26th Avenue and 19th Avenue, from the Bensonhurst Assembly District and place us in a district which we have no common interest.
We have always been involved with the Bensonhurst community and its specific issues and concerns and with those governmental bodies which the Bensonhurst 47th Assembly District heavily encompasses, including Community Board #11, the NYPD 62nd Precinct, and the CEC #21 and the Bensonhurst 47th Assembly District which also mostly coincides with these same agencies while the predominate government agencies in the proposed district to which they are attached to is not.

We urge you to restore the area west of McDonald Avenue (McDonald Ave to West 7th Street, from Avenue O to Avenue U) and the area on both sides of Cropsey Avenue, roughly between 26th Avenue and 19th Avenue, back into the proposed labelled Bensonhurst District in your final map to be proposed.

November 11 ,2021

Signed respectfully yours,

Guiping Lin residing at 2165 Cropsey Ave Brooklyn NY 11214

(Name) (Address)

_____ residing at _____

(Name) (Address)

We are residents of Bensonhurst, Brooklyn.

There has always been a close relationship between the Bensonhurst neighborhood and the 47th Assembly district. Many of our residents regularly go to that Assembly District's community office, whenever help is needed with any problem or concern.

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November 11,2021

Signed respectfully yours,

Amy LAI residing at Bay Parkway 7608 7H

(Name) (Address)

_____ residing at _____

(Name) (Address)

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November 11 ,2021

Signed respectfully yours,

YIN LAI residing at 2138 82ND ST. Brooklyn, NY

(Name) (Address)

_____ residing at _____

(Name) (Address)

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November 11,2021

Signed respectfully yours,

Giuseppe Cacciola residing at 9 bay 34 St, Brooklyn, NY 112

(Name) (Address)

_____ residing at _____

(Name) (Address)

We are residents of Bensonhurst, Brooklyn.

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November 11 ,2021

Signed respectfully yours,

JOY KAM TAM residing at 6816 16AVE BROOKLYN 11204
(Name) (Address)

LAW, Sheung Fung residing at 1925 85 ST Brooklyn 11214
(Name) (Address)

We have received 64 copies of the following petition.

I am a resident of the Regina Pacis Senior Housing Corporation building. I reside at 2424 Cropsey Avenue, Brooklyn NY 11214 which is a 19-story building.

Since the creation of Regina Pacis Housing, we have always been closely related to the Bensonhurst neighborhood and to the 47th Assembly District. Many of our residents regularly go to that Assembly District community office, whenever we need help with any problem or concern.

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We urge you to restore the area on both sides of Cropsey Avenue, roughly between 26th Avenue and 19th Avenue, back into the proposed Bensonhurst District.

We urge you to keep the area on both sides of Cropsey Avenue, roughly between 26th Avenue and 19th Avenue, in the labeled Bensonhurst District in your final map to be proposed.

November 7, 2021

Signed respectfully yours,

Shlevnovich residing at 2424 Cropsey Avenue Brooklyn NY 11214
apt 15F

_____ residing at 2424 Cropsey Avenue Brooklyn NY 11214

*AFTER YOU SIGN THIS, PLEASE PUT IT UNDER THE DOOR OF MARYANA MELMAN IN APARTMENT 14K

Я проживаю в доме Regina Pacis Housing Corporation. Я живу по адресу 2424 Cropsey Avenue, Brooklyn NY 11214, это 19-этажное здание.

С момента создания Regina Pacis Housing мы всегда были тесно связаны с 47-м округом Ассамблеи в районе Бенсонхерст. Многие из наших жителей регулярно ходят в офис этого законодательного округа, когда нам нужна помощь в решении каких-либо проблем.

Мы очень расстрились, узнав о том,что в соответствии с вашим предварительным планом перераспределения округов вы хотите удалить нас из 47 округа Ассамблеи в Бенсонхерсте и поместить в округ, который нам абсолютно не знаком. Мы всегда были тесно связаны с 47 округом в Бенсонхерст и его конкретными проблемами, а также с теми правительственными органами, которые широко входят в состав 47-го законодательного округа в Бенсонхерст, включая Совет сообщества № 11, 62-й участок полиции Нью-Йорка, CEC № 21 и 47-й округ Ассамблеи, который также находится в районе этих агенств.

Мы настоятельно просим вас восстановить все территории по обе стороны Кропси Авеню, примерно между 26-й и 19-й авеню, обратно в 47-й округ ассамблеи в районе Бенсонхерст на вашей окончательной карте.

7 ноября 2021 г.

С уважением,

Shlagmovich проживает по адресу 2424 Cropsey Avenue Brooklyn NY 11214 apt 15F

_____ проживает по адресу 2424 Cropsey Avenue Brooklyn NY 11214

* ПОСЛЕ ПОДПИСАНИЯ, ПОЖАЛУЙСТА ОСТАВЬТЕ ПИСЬМО ПОД ДВЕРЬЮ МАРЬЯНЫ МЕЛМАН В КВАРТИРЕ 14К

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We urge you to restore the area on both sides of Cropsey Avenue, roughly between 26th Avenue and 19th Avenue, back into the proposed Bensonhurst District.

We urge you to keep the area on both sides of Cropsey Avenue, roughly between 26th Avenue and 19th Avenue, in the labeled Bensonhurst District in your final map to be proposed.

November _____, 2021

Signed respectfully yours,

_____ residing at 2424 Cropsey Avenue Brooklyn NY 11214

_____ residing at 2424 Cropsey Avenue Brooklyn NY 11214

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Мы настоятельно просим вас восстановить все территории по обе стороны Кропси Авеню, примерно между 26-й и 19-й авеню, обратно в 47-й округ ассамблеи в районе Бенсонхерст на вашей окончательной карте.

_____ ноября 2021 г.

С уважением,

Bella Shpigel проживает по адресу 2424 Cropsey Avenue Brooklyn NY 11214

25

_____проживает по адресу 2424 Cropsey Avenue Brooklyn NY 11214

* ПОСЛЕ ПОДПИСАНИЯ, ПОЖАЛУЙСТА ОСТАВЬТЕ ПИСЬМО ПОД ДВЕРЬЮ МАРЬЯНЫ МЕЛМАН В КВАРТИРЕ 14К

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We urge you to restore the area on both sides of Cropsey Avenue, roughly between 26th Avenue and 19th Avenue, back into the proposed Bensonhurst District.

We urge you to keep the area on both sides of Cropsey Avenue, roughly between 26th Avenue and 19th Avenue, in the labeled Bensonhurst District in your final map to be proposed.

November 07, 2021

Signed respectfully yours,

Klavdiya Lilanovskaya apt 12A residing at 2424 Cropsey Avenue Brooklyn NY 11214

Klavdiya Lilanovskaya apt 12A residing at 2424 Cropsey Avenue Brooklyn NY 11214

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03 ноября 2021 г.

С уважением,

KLAUDIYA ILLANOVSKAYA ap 12A проживает по адресу 2424 Cropsey Avenue Brooklyn NY 11214

KLAUDIYA ILLANOVSKAYA ap 12A проживает по адресу 2424 Cropsey Avenue Brooklyn NY 11214

* ПОСЛЕ ПОДПИСАНИЯ, ПОЖАЛУЙСТА ОСТАВЬТЕ ПИСЬМО ПОД ДВЕРЬЮ МАРЬЯНЫ МЕЛМАН В КВАРТИРЕ 14К

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We urge you to keep the area on both sides of Cropsey Avenue, roughly between 26th Avenue and 19th Avenue, in the labeled Bensonhurst District in your final map to be proposed.

November 1, 2021

Signed respectfully yours,

Vito Del Giorno residing at 2424 Cropsey Avenue Brooklyn NY 11214

Vito Del Giorno residing at 2424 Cropsey Avenue Brooklyn NY 11214

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_____ ноября 2021 г.

С уважением,

_____ проживает по адресу 2424 Cropsey Avenue Brooklyn NY 11214

_____проживает по адресу 2424 Cropsey Avenue Brooklyn NY 11214

* ПОСЛЕ ПОДПИСАНИЯ, ПОЖАЛУЙСТА ОСТАВЬТЕ ПИСЬМО ПОД ДВЕРЬЮ МАРЬЯНЫ МЕЛМАН В КВАРТИРЕ 14К

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8 ноября 2021 г.

С уважением,

Inna Shapiro проживает по адресу 2424 Cropsey Avenue Brooklyn NY 11214 кв. 10С

Инна Шапиро проживает по адресу 2424 Cropsey Avenue Brooklyn NY 11214 кв. 10С

* ПОСЛЕ ПОДПИСАНИЯ, ПОЖАЛУЙСТА ОСТАВЬТЕ ПИСЬМО ПОД ДВЕРЬЮ МАРЬЯНЫ МЕЛМАН В КВАРТИРЕ 14К

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November _____, 2021

Signed respectfully yours,

_____ residing at 2424 Cropsey Avenue Brooklyn NY 11214

_____ residing at 2424 Cropsey Avenue Brooklyn NY 11214

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7 ноября 2021 г.

С уважением,

Reykhtman Arnold проживает по адресу 2424 Cropsey Avenue Brooklyn NY 11214

_____ проживает по адресу 2424 Cropsey Avenue Brooklyn NY 11214

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November _____, 2021

Signed respectfully yours,

_____ residing at 2424 Cropsey Avenue Brooklyn NY 11214

_____ residing at 2424 Cropsey Avenue Brooklyn NY 11214

*AFTER YOU SIGN THIS, PLEASE PUT IT UNDER THE DOOR OF MARYANA MELMAN IN APARTMENT 14K

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8 ноября 2021 г.

С уважением,

Sofia Shtifman проживает по адресу 2424 Cropsey Avenue Brooklyn NY 11214

_____ проживает по адресу 2424 Cropsey Avenue Brooklyn NY 11214

* ПОСЛЕ ПОДПИСАНИЯ, ПОЖАЛУЙСТА ОСТАВЬТЕ ПИСЬМО ПОД ДВЕРЬЮ МАРЬЯНЫ МЕЛМАН В КВАРТИРЕ 14К

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November _____, 2021

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___ ноября 2021 г.

С уважением,

_____ проживает по адресу 2424 Cropsey Avenue Brooklyn NY 11214

_____ проживает по адресу 2424 Cropsey Avenue Brooklyn NY 11214

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08 ноября 2021 г.

С уважением,

_____ проживает по адресу 2424 Cropsey Avenue Brooklyn NY 11214

_____ проживает по адресу 2424 Cropsey Avenue Brooklyn NY 11214

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November 08, 2021

Signed respectfully yours,

_____ residing at 2424 Cropsey Avenue Brooklyn NY 11214

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_____ ноября 2021 г.

С уважением,

_____ проживает по адресу 2424 Cropsey Avenue Brooklyn NY 11214

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November _____, 2021

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November 7, 2021

Signed respectfully yours,

Charles residing at 2424 Cropsey Avenue Brooklyn NY 11214

_____ residing at 2424 Cropsey Avenue Brooklyn NY 11214

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7 ноября 2021 г.

С уважением,

Chernova проживает по адресу 2424 Cropsey Avenue Brooklyn NY 11214

_____ проживает по адресу 2424 Cropsey Avenue Brooklyn NY 11214

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7 ноября 2021 г.

С уважением,

L. Rabinovich проживает по адресу 2424 Cropsey Avenue Brooklyn NY 11214

_____ проживает по адресу 2424 Cropsey Avenue Brooklyn NY 11214

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November _____, 2021

Signed respectfully yours,

_____ residing at 2424 Cropsey Avenue Brooklyn NY 11214

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November 6, 2021

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6 ноября 2021 г.

С уважением,

Яковлев проживает по адресу 2424 Cropsey Avenue Brooklyn NY 11214 кв 5 этаж

проживает по адресу 2424 Cropsey Avenue Brooklyn NY 11214

проживает по адресу 2424 Cropsey Avenue Brooklyn NY 11214

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Мы очень расстрились, узнав о том,что в соответствии с вашим предварительным планом перераспределения округов вы хотите удалить нас из 47 округа Ассамблеи в Бенсонхерсте и поместить в округ, который нам абсолютно не знаком. Мы всегда были тесно связаны с 47 округом в Бенсонхерст и его конкретными проблемами, а также с теми правительственными органами, которые широко входят в состав 47-го законодательного округа в Бенсонхерст, включая Совет сообщества № 11, 62-й участок полиции Нью-Йорка, CEC № 21 и 47-й округ Ассамблеи, который также находится в районе этих агенств.

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6 ноября 2021 г.

С уважением,

Anna Koutays проживает по адресу 2424 Cropsey Avenue Brooklyn NY 11214

_____ проживает по адресу 2424 Cropsey Avenue Brooklyn NY 11214

* ПОСЛЕ ПОДПИСАНИЯ, ПОЖАЛУЙСТА ОСТАВЬТЕ ПИСЬМО ПОД ДВЕРЬЮ МАРЬЯНЫ МЕЛМАН В КВАРТИРЕ 14К

I am a resident of the Regina Pacis Senior Housing Corporation building. I reside at 2424 Cropsey Avenue, Brooklyn NY 11214 which is a 19-story building.

Since the creation of Regina Pacis Housing, we have always been closely related to the Bensonhurst neighborhood and to the 47th Assembly District. Many of our residents regularly go to that Assembly District community office, whenever we need help with any problem or concern.

We are very upset to learn that your Preliminary Redistricting Plan wants to remove us from the Bensonhurst Assembly District and place us in a district in which we have no common interest. We have always been involved with the Bensonhurst community and its specific issues and concerns and with those governmental bodies which the Bensonhurst 47th Assembly District heavily encompasses, including Community Board #11, the NYPD 62nd Precinct, CEC #21, and the 47th Assembly District which also mostly coincides with these same agencies.

We urge you to restore the area on both sides of Cropsey Avenue, roughly between 26th Avenue and 19th Avenue, back into the proposed Bensonhurst District.

We urge you to keep the area on both sides of Cropsey Avenue, roughly between 26th Avenue and 19th Avenue, in the labeled Bensonhurst District in your final map to be proposed.

November _____, 2021

Signed respectfully yours,

_____ residing at 2424 Cropsey Avenue Brooklyn NY 11214

_____ residing at 2424 Cropsey Avenue Brooklyn NY 11214

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November 6, 2021

Signed respectfully yours,

Faina Gertslinger residing at 2424 Cropsey Avenue Brooklyn NY 11214
#2-J

_____ residing at 2424 Cropsey Avenue Brooklyn NY 11214

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6 ноября 2021 г.

С уважением,

Faina Gertslinger проживает по адресу 2424 Cropsey Avenue Brooklyn NY 11214 Apt 2-J

_____ проживает по адресу 2424 Cropsey Avenue Brooklyn NY 11214

* ПОСЛЕ ПОДПИСАНИЯ, ПОЖАЛУЙСТА ОСТАВЬТЕ ПИСЬМО ПОД ДВЕРЬЮ МАРЬЯНЫ МЕЛМАН В КВАРТИРЕ 14К

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November 5, 2021

Signed respectfully yours,

Sofia Miloslavskaya residing at 2424 Cropsey Avenue Brooklyn NY 11214

_____ residing at 2424 Cropsey Avenue Brooklyn NY 11214

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5 ноября 2021 г.

С уважением,

Sofia Miloslavskaya проживает по адресу 2424 Cropsey Avenue Brooklyn NY 11214

_____ проживает по адресу 2424 Cropsey Avenue Brooklyn NY 11214

* ПОСЛЕ ПОДПИСАНИЯ, ПОЖАЛУЙСТА ОСТАВЬТЕ ПИСЬМО ПОД ДВЕРЬЮ МАРЬЯНЫ МЕЛМАН В КВАРТИРЕ 14К

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November 6, 2021

Signed respectfully yours,

John Leangrande residing at 2424 Cropsey Avenue Brooklyn NY 11214

John Leangrande residing at 2424 Cropsey Avenue Brooklyn NY 11214

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_____ ноября 2021 г.

С уважением,

_____ проживает по адресу 2424 Cropsey Avenue Brooklyn NY 11214

_____проживает по адресу 2424 Cropsey Avenue Brooklyn NY 11214

* ПОСЛЕ ПОДПИСАНИЯ, ПОЖАЛУЙСТА ОСТАВЬТЕ ПИСЬМО ПОД ДВЕРЬЮ МАРЬЯНЫ МЕЛМАН В КВАРТИРЕ 14К

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November 5, 2021

Signed respectfully yours,

Howard E. Steinberg residing at 2424 Cropsey Avenue Brooklyn NY 11214

Marie Shulman residing at 2424 Cropsey Avenue Brooklyn NY 11214

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_____ ноября 2021 г.

С уважением,

_____ проживает по адресу 2424 Cropsey Avenue Brooklyn NY 11214

_____проживает по адресу 2424 Cropsey Avenue Brooklyn NY 11214

* ПОСЛЕ ПОДПИСАНИЯ, ПОЖАЛУЙСТА ОСТАВЬТЕ ПИСЬМО ПОД ДВЕРЬЮ МАРЬЯНЫ МЕЛМАН В КВАРТИРЕ 14К

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6 ноября 2021 г.

С уважением,

Faina Panina проживает по адресу 2424 Cropsey Avenue Brooklyn NY 11214

_____ проживает по адресу 2424 Cropsey Avenue Brooklyn NY 11214

* ПОСЛЕ ПОДПИСАНИЯ, ПОЖАЛУЙСТА ОСТАВЬТЕ ПИСЬМО ПОД ДВЕРЬЮ МАРЬЯНЫ МЕЛМАН В КВАРТИРЕ 14К

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November _____, 2021

Signed respectfully yours,

_____ residing at 2424 Cropsey Avenue Brooklyn NY 11214

_____ residing at 2424 Cropsey Avenue Brooklyn NY 11214

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_____ ноября 2021 г.

С уважением,

Katinskaya Maria Kate, проживает по адресу 2424 Cropsey Avenue Brooklyn NY 11214 apt 7N

_____проживает по адресу 2424 Cropsey Avenue Brooklyn NY 11214

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November _____, 2021

Signed respectfully yours,

_____ residing at 2424 Cropsey Avenue Brooklyn NY 11214

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5 ноября 2021 г.

С уважением,

Kalinina Lidiya проживает по адресу 2424 Cropsey Avenue Brooklyn NY 11214

_____проживает по адресу 2424 Cropsey Avenue Brooklyn NY 11214

* ПОСЛЕ ПОДПИСАНИЯ, ПОЖАЛУЙСТА ОСТАВЬТЕ ПИСЬМО ПОД ДВЕРЬЮ МАРЬЯНЫ МЕЛМАН В КВАРТИРЕ 14К

I am a resident of the Regina Pacis Senior Housing Corporation building. I reside at 2424 Cropsey Avenue, Brooklyn NY 11214 which is a 19-story building.

Since the creation of Regina Pacis Housing, we have always been closely related to the Bensonhurst neighborhood and to the 47th Assembly District. Many of our residents regularly go to that Assembly District community office, whenever we need help with any problem or concern.

We are very upset to learn that your Preliminary Redistricting Plan wants to remove us from the Bensonhurst Assembly District and place us in a district in which we have no common interest. We have always been involved with the Bensonhurst community and its specific issues and concerns and with those governmental bodies which the Bensonhurst 47th Assembly District heavily encompasses, including Community Board #11, the NYPD 62nd Precinct, CEC #21, and the 47th Assembly District which also mostly coincides with these same agencies.

We urge you to restore the area on both sides of Cropsey Avenue, roughly between 26th Avenue and 19th Avenue, back into the proposed Bensonhurst District.

We urge you to keep the area on both sides of Cropsey Avenue, roughly between 26th Avenue and 19th Avenue, in the labeled Bensonhurst District in your final map to be proposed.

November _____, 2021

Signed respectfully yours,

_____ residing at 2424 Cropsey Avenue Brooklyn NY 11214

_____ residing at 2424 Cropsey Avenue Brooklyn NY 11214

*AFTER YOU SIGN THIS, PLEASE PUT IT UNDER THE DOOR OF MARYANA MELMAN IN APARTMENT 14K

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November 5, 2021

Signed respectfully yours,

Lev Berik residing at 2424 Cropsey Avenue Brooklyn NY 11214

Larisa Ozeryanskaya residing at 2424 Cropsey Avenue Brooklyn NY 11214

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_____ ноября 2021 г.

С уважением,

_____ проживает по адресу 2424 Cropsey Avenue Brooklyn NY 11214

_____проживает по адресу 2424 Cropsey Avenue Brooklyn NY 11214

* ПОСЛЕ ПОДПИСАНИЯ, ПОЖАЛУЙСТА ОСТАВЬТЕ ПИСЬМО ПОД ДВЕРЬЮ МАРЬЯНЫ МЕЛМАН В КВАРТИРЕ 14К

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06 ноября 2021 г.

С уважением, Rita Kenigsberg

Rita Kenigsberg проживает по адресу 2424 Cropsey Avenue Brooklyn NY 11214 Apt. 8D

Petr Kenigsberg проживает по адресу 2424 Cropsey Avenue Brooklyn NY 11214 Apt. 8D

* ПОСЛЕ ПОДПИСАНИЯ, ПОЖАЛУЙСТА ОСТАВЬТЕ ПИСЬМО ПОД ДВЕРЬЮ МАРЬЯНЫ МЕЛМАН В КВАРТИРЕ 14К

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November _____, 2021

Signed respectfully yours,

_____ residing at 2424 Cropsey Avenue Brooklyn NY 11214

_____ residing at 2424 Cropsey Avenue Brooklyn NY 11214

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5 ноября 2021 г.

С уважением,

Arkadiy Mekhal проживает по адресу 2424 Cropsey Avenue Brooklyn NY 11214

_____ проживает по адресу 2424 Cropsey Avenue Brooklyn NY 11214

* ПОСЛЕ ПОДПИСАНИЯ, ПОЖАЛУЙСТА ОСТАВЬТЕ ПИСЬМО ПОД ДВЕРЬЮ МАРЬЯНЫ МЕЛМАН В КВАРТИРЕ 14К

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November _____, 2021

Signed respectfully yours,

_____ residing at 2424 Cropsey Avenue Brooklyn NY 11214

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November 6, 2021

Signed respectfully yours,

Lyudmila Batyukova residing at 2424 Cropsey Avenue Brooklyn NY 11214

_____ residing at 2424 Cropsey Avenue Brooklyn NY 11214

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Мы настоятельно просим вас восстановить все территории по обе стороны Кропси Авеню, примерно между 26-й и 19-й авеню, обратно в 47-й округ ассамблеи в районе Бенсонхерст на вашей окончательной карте.

_____ ноября 2021 г.

С уважением,

_____ проживает по адресу 2424 Cropsey Avenue Brooklyn NY 11214

_____проживает по адресу 2424 Cropsey Avenue Brooklyn NY 11214

* ПОСЛЕ ПОДПИСАНИЯ, ПОЖАЛУЙСТА ОСТАВЬТЕ ПИСЬМО ПОД ДВЕРЬЮ МАРЬЯНЫ МЕЛМАН В КВАРТИРЕ 14К

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6 ноября 2021 г.

С уважением,

Ефим Закон проживает по адресу 2424 Cropsey Avenue Brooklyn NY 11214

Татьяна Танова проживает по адресу 2424 Cropsey Avenue Brooklyn NY 11214

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November 6, 2021

Signed respectfully yours,

Yefim Zakon residing at 2424 Cropsey Avenue Brooklyn NY 11214

Tamara Manova residing at 2424 Cropsey Avenue Brooklyn NY 11214

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November 10, 2021

Signed respectfully yours,

_____ residing at 2424 Cropsey Avenue Brooklyn NY 11214

_____ residing at 2424 Cropsey Avenue Brooklyn NY 11214

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_____ ноября 2021 г.

С уважением,

_____ проживает по адресу 2424 Cropsey Avenue Brooklyn NY 11214

_____проживает по адресу 2424 Cropsey Avenue Brooklyn NY 11214

* ПОСЛЕ ПОДПИСАНИЯ, ПОЖАЛУЙСТА ОСТАВЬТЕ ПИСЬМО ПОД ДВЕРЬЮ МАРЬЯНЫ МЕЛМАН В КВАРТИРЕ 14К

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November 06, 2021

Signed respectfully yours, Nadezhda Borsheheva residing at 2424 Cropsey Avenue Brooklyn NY 11214

_____ residing at 2424 Cropsey Avenue Brooklyn NY 11214

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06 ноября 2021 г.

С уважением, Надежда Борисова, Фэд

Надежда Борисова, Фэд проживает по адресу 2424 Cropsey Avenue Brooklyn NY 11214

_____ проживает по адресу 2424 Cropsey Avenue Brooklyn NY 11214

* ПОСЛЕ ПОДПИСАНИЯ, ПОЖАЛУЙСТА ОСТАВЬТЕ ПИСЬМО ПОД ДВЕРЬЮ МАРЬЯНЫ МЕЛМАН В КВАРТИРЕ 14К

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6 ноября 2021 г.

С уважением,

Yuriy Berezin проживает по адресу 2424 Cropsey Avenue Brooklyn NY 11214

Valentina Berezin проживает по адресу 2424 Cropsey Avenue Brooklyn NY 11214

* ПОСЛЕ ПОДПИСАНИЯ, ПОЖАЛУЙСТА ОСТАВЬТЕ ПИСЬМО ПОД ДВЕРЬЮ МАРЬЯНЫ МЕЛМАН В КВАРТИРЕ 14К

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November _____, 2021

Signed respectfully yours,

_____ residing at 2424 Cropsey Avenue Brooklyn NY 11214

_____ residing at 2424 Cropsey Avenue Brooklyn NY 11214

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5 ноября 2021 г.

С уважением,

Nina Guzhva проживает по адресу 2424 Cropsey Avenue Brooklyn NY 11214

Nina Guzhva проживает по адресу 2424 Cropsey Avenue Brooklyn NY 11214

* ПОСЛЕ ПОДПИСАНИЯ, ПОЖАЛУЙСТА ОСТАВЬТЕ ПИСЬМО ПОД ДВЕРЬЮ МАРЬЯНЫ МЕЛМАН В КВАРТИРЕ 14К

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November _____, 2021

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November 06, 2021

Signed respectfully yours,

Ana Melman residing at 2424 Cropsey Avenue Brooklyn NY 11214

Fernando Colon residing at 2424 Cropsey Avenue Brooklyn NY 11214

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_____ ноября 2021 г.

С уважением,

_____ проживает по адресу 2424 Cropsey Avenue Brooklyn NY 11214

_____проживает по адресу 2424 Cropsey Avenue Brooklyn NY 11214

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5 ноября 2021 г.

С уважением,

Ukanivskay Lyudmila проживает по адресу 2424 Cropsey Avenue Brooklyn NY 11214 Apt-15H

_____ проживает по адресу 2424 Cropsey Avenue Brooklyn NY 11214

* ПОСЛЕ ПОДПИСАНИЯ, ПОЖАЛУЙСТА ОСТАВЬТЕ ПИСЬМО ПОД ДВЕРЬЮ МАРЬЯНЫ МЕЛМАН В КВАРТИРЕ 14К

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November 5, 2021

Signed respectfully yours, Ulanovskaya Lyudmila residing at 2424 Cropsey Avenue Brooklyn NY 11214 Apt 15H

_____ residing at 2424 Cropsey Avenue Brooklyn NY 11214

*AFTER YOU SIGN THIS, PLEASE PUT IT UNDER THE DOOR OF MARYANA MELMAN IN APARTMENT 14K

~~Бенджик Мойсей~~

Бендик Моисей

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5 ноября 2021 г.

С уважением,

Moisey Bendik проживает по адресу 2424 Cropsey Avenue Brooklyn NY 11214

Moisey Bendik проживает по адресу 2424 Cropsey Avenue Brooklyn NY 11214

* ПОСЛЕ ПОДПИСАНИЯ, ПОЖАЛУЙСТА ОСТАВЬТЕ ПИСЬМО ПОД ДВЕРЬЮ МАРЬЯНЫ МЕЛМАН В КВАРТИРЕ 14К

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November _____, 2021

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_____ residing at 2424 Cropsey Avenue Brooklyn NY 11214

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November 5, 2021

Signed respectfully yours,

Alice Garcia residing at 2424 Cropsey Avenue Brooklyn NY 11214

Nilda Nanez residing at 2424 Cropsey Avenue Brooklyn NY 11214

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_____ ноября 2021 г.

С уважением,

_____ проживает по адресу 2424 Cropsey Avenue Brooklyn NY 11214

_____проживает по адресу 2424 Cropsey Avenue Brooklyn NY 11214

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_____ ноября 2021 г.

С уважением,

SERAFIMA SREBNIK проживает по адресу 2424 Cropsey Avenue Brooklyn NY 11214
12 F

S. SREBNIK проживает по адресу 2424 Cropsey Avenue Brooklyn NY 11214
12 F

* ПОСЛЕ ПОДПИСАНИЯ, ПОЖАЛУЙСТА ОСТАВЬТЕ ПИСЬМО ПОД ДВЕРЬЮ МАРЬЯНЫ МЕЛМАН В КВАРТИРЕ 14К

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November _____, 2021

Signed respectfully yours,

_____ residing at 2424 Cropsey Avenue Brooklyn NY 11214

_____ residing at 2424 Cropsey Avenue Brooklyn NY 11214

*AFTER YOU SIGN THIS, PLEASE PUT IT UNDER THE DOOR OF MARYANA MELMAN IN APARTMENT 14K

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November 05, 2021

Signed respectfully yours, APT 16J

LANA VERETNOFF residing at 2424 Cropsey Avenue Brooklyn NY 11214

_____ residing at 2424 Cropsey Avenue Brooklyn NY 11214

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_____ ноября 2021 г.

С уважением,

_____ проживает по адресу 2424 Cropsey Avenue Brooklyn NY 11214

_____проживает по адресу 2424 Cropsey Avenue Brooklyn NY 11214

* ПОСЛЕ ПОДПИСАНИЯ, ПОЖАЛУЙСТА ОСТАВЬТЕ ПИСЬМО ПОД ДВЕРЬЮ МАРЬЯНЫ МЕЛМАН В КВАРТИРЕ 14К

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November 5, 2021

Signed respectfully yours,

Faina Melman residing at 2424 Cropsey Avenue Brooklyn NY 11214

_____ residing at 2424 Cropsey Avenue Brooklyn NY 11214

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5 ноября 2021 г.

С уважением,

Дарья Мелман проживает по адресу 2424 Cropsey Avenue Brooklyn NY 11214

_____ проживает по адресу 2424 Cropsey Avenue Brooklyn NY 11214

* ПОСЛЕ ПОДПИСАНИЯ, ПОЖАЛУЙСТА ОСТАВЬТЕ ПИСЬМО ПОД ДВЕРЬЮ МАРЬЯНЫ МЕЛМАН В КВАРТИРЕ 14К

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5 ноября 2021 г.

С уважением,

Aleksandr Milman проживает по адресу 2424 Cropsey Avenue Brooklyn NY 11214 15E

_____проживает по адресу 2424 Cropsey Avenue Brooklyn NY 11214

* ПОСЛЕ ПОДПИСАНИЯ, ПОЖАЛУЙСТА ОСТАВЬТЕ ПИСЬМО ПОД ДВЕРЬЮ МАРЬЯНЫ МЕЛМАН В КВАРТИРЕ 14К

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November _____, 2021

Signed respectfully yours,

_____ residing at 2424 Cropsey Avenue Brooklyn NY 11214

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_____ ноября 2021 г.

С уважением,

Ю. Рычковская проживает по адресу 2424 Cropsey Avenue Brooklyn NY 11214 кв 7К

_____проживает по адресу 2424 Cropsey Avenue Brooklyn NY 11214

* ПОСЛЕ ПОДПИСАНИЯ, ПОЖАЛУЙСТА ОСТАВЬТЕ ПИСЬМО ПОД ДВЕРЬЮ МАРЬЯНЫ МЕЛМАН В КВАРТИРЕ 14К

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November 05, 2021

Signed respectfully yours,

Boris Lewitsky residing at 2424 Cropsey Avenue Brooklyn NY 11214

_____ residing at 2424 Cropsey Avenue Brooklyn NY 11214

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_____ ноября 2021 г.

С уважением,

_____ проживает по адресу 2424 Cropsey Avenue Brooklyn NY 11214

_____проживает по адресу 2424 Cropsey Avenue Brooklyn NY 11214

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5 ноября 2021 г.

С уважением,

TROSman проживает по адресу 2424 Cropsey Avenue Brooklyn NY 11214

_____проживает по адресу 2424 Cropsey Avenue Brooklyn NY 11214

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November _____, 2021

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_____ residing at 2424 Cropsey Avenue Brooklyn NY 11214

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_____ ноября 2021 г.

С уважением,

BKnokhinov проживает по адресу 2424 Cropsey Avenue Brooklyn NY 11214 # 6K

Tmachova проживает по адресу 2424 Cropsey Avenue Brooklyn NY 11214 # 6K

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Мы очень расстрились, узнав о том,что в соответствии с вашим предварительным планом перераспределения округов вы хотите удалить нас из 47 округа Ассамблеи в Бенсонхерсте и поместить в округ, который нам абсолютно не знаком. Мы всегда были тесно связаны с 47 округом в Бенсонхерст и его конкретными проблемами, а также с теми правительственными органами, которые широко входят в состав 47-го законодательного округа в Бенсонхерст, включая Совет сообщества № 11, 62-й участок полиции Нью-Йорка, CEC № 21 и 47-й округ Ассамблеи, который также находится в районе этих агенств.

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5 ноября 2021 г.

С уважением,

(apt 6D) Yury Spektor проживает по адресу 2424 Cropsey Avenue Brooklyn NY 11214

(apt 6D) Geda Gaud проживает по адресу 2424 Cropsey Avenue Brooklyn NY 11214

* ПОСЛЕ ПОДПИСАНИЯ, ПОЖАЛУЙСТА ОСТАВЬТЕ ПИСЬМО ПОД ДВЕРЬЮ МАРЬЯНЫ МЕЛМАН В КВАРТИРЕ 14К

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November 5, 2021

Signed respectfully yours,

apt 6D Yuriy Spektor residing at 2424 Cropsey Avenue Brooklyn NY 11214

apt 6D Galina Gand residing at 2424 Cropsey Avenue Brooklyn NY 11214

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5 ноября 2021 г.

С уважением,

ABRAM Gotlib проживает по адресу 2424 Cropsey Avenue Brooklyn NY 11214 Apt#6E

Faina Gotlib проживает по адресу 2424 Cropsey Avenue Brooklyn NY 11214 Apt#6E

* ПОСЛЕ ПОДПИСАНИЯ, ПОЖАЛУЙСТА ОСТАВЬТЕ ПИСЬМО ПОД ДВЕРЬЮ МАРЬЯНЫ МЕЛМАН В КВАРТИРЕ 14К

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November 5, 2021

Signed respectfully yours,

ABRAM GOTLIB residing at 2424 Cropsey Avenue Brooklyn NY 11214 Apt. 6E

FAINA GOTLIB residing at 2424 Cropsey Avenue Brooklyn NY 11214 Apt. 6E

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November 5, 2021

Signed respectfully yours,

Maryana Belman residing at 2424 Cropsey Avenue Brooklyn NY 11214

_____ residing at 2424 Cropsey Avenue Brooklyn NY 11214

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_____ ноября 2021 г.

С уважением,

_____ проживает по адресу 2424 Cropsey Avenue Brooklyn NY 11214

_____проживает по адресу 2424 Cropsey Avenue Brooklyn NY 11214

* ПОСЛЕ ПОДПИСАНИЯ, ПОЖАЛУЙСТА ОСТАВЬТЕ ПИСЬМО ПОД ДВЕРЬЮ МАРЬЯНЫ МЕЛМАН В КВАРТИРЕ 14К

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5 ноября 2021 г.

С уважением,

E. KRIKCIVA проживает по адресу 2424 Cropsey Avenue Brooklyn NY 11214

_____ проживает по адресу 2424 Cropsey Avenue Brooklyn NY 11214

* ПОСЛЕ ПОДПИСАНИЯ, ПОЖАЛУЙСТА ОСТАВЬТЕ ПИСЬМО ПОД ДВЕРЬЮ МАРЬЯНЫ МЕЛМАН В КВАРТИРЕ 14К

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November _____, 2021

Signed respectfully yours,

_____ residing at 2424 Cropsey Avenue Brooklyn NY 11214

_____ residing at 2424 Cropsey Avenue Brooklyn NY 11214

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_____ ноября 2021 г.

С уважением,

Svetlana Gekht _____ проживает по адресу 2424 Cropsey Avenue Brooklyn NY 11214

Rem Gekht _____ проживает по адресу 2424 Cropsey Avenue Brooklyn NY 11214

* ПОСЛЕ ПОДПИСАНИЯ, ПОЖАЛУЙСТА ОСТАВЬТЕ ПИСЬМО ПОД ДВЕРЬЮ МАРЬЯНЫ МЕЛМАН В КВАРТИРЕ 14К

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November _____, 2021

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_____ ноября 2021 г.

С уважением,

Козак Майя проживает по адресу 2424 Cropsey Avenue Brooklyn NY 11214

Козак Майя проживает по адресу 2424 Cropsey Avenue Brooklyn NY 11214

* ПОСЛЕ ПОДПИСАНИЯ, ПОЖАЛУЙСТА ОСТАВЬТЕ ПИСЬМО ПОД ДВЕРЬЮ МАРЬЯНЫ МЕЛМАН В КВАРТИРЕ 14К

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November _____, 2021

Signed respectfully yours,

_____ residing at 2424 Cropsey Avenue Brooklyn NY 11214

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November 5, 2021

Signed respectfully yours,

Yevgeniya Leytash 14C residing at 2424 Cropsey Avenue Brooklyn NY 11214

_____ residing at 2424 Cropsey Avenue Brooklyn NY 11214

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_____ ноября 2021 г.

С уважением,

_____ проживает по адресу 2424 Cropsey Avenue Brooklyn NY 11214

_____проживает по адресу 2424 Cropsey Avenue Brooklyn NY 11214

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November 5, 2021

Signed respectfully yours,

V. Butovsky 3H residing at 2424 Cropsey Avenue Brooklyn NY 11214

_____ residing at 2424 Cropsey Avenue Brooklyn NY 11214

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5 ноября 2021 г.

С уважением,

V. Bilovich проживает по адресу 2424 Cropsey Avenue Brooklyn NY 11214

_____ проживает по адресу 2424 Cropsey Avenue Brooklyn NY 11214

* ПОСЛЕ ПОДПИСАНИЯ, ПОЖАЛУЙСТА ОСТАВЬТЕ ПИСЬМО ПОД ДВЕРЬЮ МАРЬЯНЫ МЕЛМАН В КВАРТИРЕ 14К

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_5_ ноября 2021 г.

С уважением,

Svetlana Kruglova 3E проживает по адресу 2424 Cropsey Avenue Brooklyn NY 11214

_____проживает по адресу 2424 Cropsey Avenue Brooklyn NY 11214

* ПОСЛЕ ПОДПИСАНИЯ, ПОЖАЛУЙСТА ОСТАВЬТЕ ПИСЬМО ПОД ДВЕРЬЮ МАРЬЯНЫ МЕЛМАН В КВАРТИРЕ 14К

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November 5, 2021

Signed respectfully yours,

Rugolets Svetlana residing at 2424 Cropsey Avenue Brooklyn NY 11214

_____ residing at 2424 Cropsey Avenue Brooklyn NY 11214

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11/5 ноября 2021 г.

С уважением,

Марина Рипковская проживает по адресу 2424 Cropsey Avenue Brooklyn NY 11214
ЗФ

_____ проживает по адресу 2424 Cropsey Avenue Brooklyn NY 11214

* ПОСЛЕ ПОДПИСАНИЯ, ПОЖАЛУЙСТА ОСТАВЬТЕ ПИСЬМО ПОД ДВЕРЬЮ МАРЬЯНЫ МЕЛМАН В КВАРТИРЕ 14К

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November _____, 2021

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05 ноября 2021 г.

С уважением,

_____ проживает по адресу 2424 Cropsey Avenue Brooklyn NY 11214

Марьяна Мелман проживает по адресу 2424 Cropsey Avenue Brooklyn NY 11214
apt 14K

* ПОСЛЕ ПОДПИСАНИЯ, ПОЖАЛУЙСТА ОСТАВЬТЕ ПИСЬМО ПОД ДВЕРЬЮ МАРЬЯНЫ МЕЛМАН В КВАРТИРЕ 14К

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November _____, 2021

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5 ноября 2021 г.

С уважением,

Azizbyanova S. проживает по адресу 2424 Cropsey Avenue Brooklyn NY 11214
Apt 3G

_____ проживает по адресу 2424 Cropsey Avenue Brooklyn NY 11214

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November _____, 2021

Signed respectfully yours,

_____ residing at 2424 Cropsey Avenue Brooklyn NY 11214

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04 ноября 2021 г.

С уважением, Ада Мальцерова

Apt-3C, II этаж проживает по адресу 2424 Cropsey Avenue Brooklyn NY 11214 - 6535

_____ проживает по адресу 2424 Cropsey Avenue Brooklyn NY 11214 - 6535

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November _____, 2021

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4 ноября 2021 г.

С уважением, Lyubov Shapiro

Apt 3-F проживает по адресу 2424 Cropsey Avenue Brooklyn NY 11214

_____ проживает по адресу 2424 Cropsey Avenue Brooklyn NY 11214

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November 05, 2021

Signed respectfully yours,

M. Melman residing at 2424 Cropsey Avenue Brooklyn NY 11214

MARK GORNY residing at 2424 Cropsey Avenue Brooklyn NY 11214

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Мы настоятельно просим вас восстановить все территории по обе стороны Кропси Авеню, примерно между 26-й и 19-й авеню, обратно в 47-й округ ассамблеи в районе Бенсонхерст на вашей окончательной карте.

_____ ноября 2021 г.

С уважением,

_____ проживает по адресу 2424 Cropsey Avenue Brooklyn NY 11214

_____проживает по адресу 2424 Cropsey Avenue Brooklyn NY 11214

* ПОСЛЕ ПОДПИСАНИЯ, ПОЖАЛУЙСТА ОСТАВЬТЕ ПИСЬМО ПОД ДВЕРЬЮ МАРЬЯНЫ МЕЛМАН В КВАРТИРЕ 14К

I am a resident of the Regina Pacis Senior Housing Corporation building. I reside at 2424 Cropsey Avenue, Brooklyn NY 11214 which is a 19-story building.

Since the creation of Regina Pacis Housing, we have always been closely related to the Bensonhurst neighborhood and to the 47th Assembly District. Many of our residents regularly go to that Assembly District community office, whenever we need help with any problem or concern.

We are very upset to learn that your Preliminary Redistricting Plan wants to remove us from the Bensonhurst Assembly District and place us in a district in which we have no common interest. We have always been involved with the Bensonhurst community and its specific issues and concerns and with those governmental bodies which the Bensonhurst 47th Assembly District heavily encompasses, including Community Board #11, the NYPD 62nd Precinct, CEC #21, and the 47th Assembly District which also mostly coincides with these same agencies.

We urge you to restore the area on both sides of Cropsey Avenue, roughly between 26th Avenue and 19th Avenue, back into the proposed Bensonhurst District.

We urge you to keep the area on both sides of Cropsey Avenue, roughly between 26th Avenue and 19th Avenue, in the labeled Bensonhurst District in your final map to be proposed.

November 05, 2021

Signed respectfully yours,

M. Gil residing at 2424 Cropsey Avenue Brooklyn NY 11214 @

Maya Gil residing at 2424 Cropsey Avenue Brooklyn NY 11214
apt. 12K

*AFTER YOU SIGN THIS, PLEASE PUT IT UNDER THE DOOR OF MARYANA MELMAN IN APARTMENT 14K

Я проживаю в доме Regina Pacis Housing Corporation. Я живу по адресу 2424 Cropsey Avenue, Brooklyn NY 11214, это 19-этажное здание.

С момента создания Regina Pacis Housing мы всегда были тесно связаны с 47-м округом Ассамблеи в районе Бенсонхерст. Многие из наших жителей регулярно ходят в офис этого законодательного округа, когда нам нужна помощь в решении каких-либо проблрем.

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Мы настоятельно просим вас восстановить все территории по обе стороны Кропси Авеню, примерно между 26-й и 19-й авеню, обратно в 47-й округ ассамблеи в районе Бенсонхерст на вашей окончательной карте.

_____ ноября 2021 г.

С уважением,

_____ проживает по адресу 2424 Cropsey Avenue Brooklyn NY 11214

_____проживает по адресу 2424 Cropsey Avenue Brooklyn NY 11214

* ПОСЛЕ ПОДПИСАНИЯ, ПОЖАЛУЙСТА ОСТАВЬТЕ ПИСЬМО ПОД ДВЕРЬЮ МАРЬЯНЫ МЕЛМАН В КВАРТИРЕ 14К

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_____ ноября 2021 г.

С уважением,

_____ проживает по адресу 2424 Cropsey Avenue Brooklyn NY 11214

Anya Bondar проживает по адресу 2424 Cropsey Avenue Brooklyn NY 11214

* ПОСЛЕ ПОДПИСАНИЯ, ПОЖАЛУЙСТА ОСТАВЬТЕ ПИСЬМО ПОД ДВЕРЬЮ МАРЬЯНЫ МЕЛМАН В КВАРТИРЕ 14К

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We urge you to restore the area on both sides of Cropsey Avenue, roughly between 26th Avenue and 19th Avenue, back into the proposed Bensonhurst District.

We urge you to keep the area on both sides of Cropsey Avenue, roughly between 26th Avenue and 19th Avenue, in the labeled Bensonhurst District in your final map to be proposed.

November _____, 2021

Signed respectfully yours,

_____ residing at 2424 Cropsey Avenue Brooklyn NY 11214

_____ residing at 2424 Cropsey Avenue Brooklyn NY 11214

*AFTER YOU SIGN THIS, PLEASE PUT IT UNDER THE DOOR OF MARYANA MELMAN IN APARTMENT 14K

We have received 177 copies of the following petition.

Independent Redistricting Commission Testimony

Dear Commissioners,

I am a member of the United Chinese Association of Brooklyn (UCAOB), located at 1787 Stillwell Avenue, Brooklyn, NY 11223. As a longtime Bensonhurst resident, I am deeply concerned about the potential redrawing of the current maps in which the area west of McDonald Avenue will no longer be part of Bensonhurst. Therefore, I propose that the Commission keep the neighborhoods in Bensonhurst intact.

According to the proposed plan, the area from Avenue O to Avenue U, and McDonald Avenue to West 7th Street will be changed from the district of Assemblyman William Colton, who is dear to our hearts and is someone I deeply trusted in, to the 45th Assembly District. With that mentioned, this also means that the local law enforcement that oversees the safety of the community will be replaced with the 61st Precinct instead of the 62nd Precinct that we all are familiar and building our trust with, the 21st School District will be switched to the 22nd School District, and the 11th Community Board will be replaced by the 15th Community Board.

Without a doubt, the surge in Asian residents has transformed our neighborhoods, with great potential to significantly reshape Southern Brooklyn's housing market, small businesses and political representation in the next decade. This schism impacts our ability to be represented in a cohesive manner and be civically engaged for common causes. With continued growth of the Asian-American residents, the voices of the Asian-American community could be further weakened and neglected due to the overpopulation in the area. If the new map is being transferred to Midwood, which is located in the 45th AD, I am faithful that it will also cause conflicts of interest, ideology, multiple clashes in daily life and lack of resources, etc. In addition to that, the harmonious and intimate relationship between the Chinese community and the 62nd Precinct, which has been hardly built-up over the past decades, would be reversed and all the achievements would be lost. Eventually, the redrawing of the area means that everything will start from scratch, and all the community organizations and law enforcement units will need to re-establish their connections, all of which are full of unknowns and worries.

Therefore, I strongly urge the Independent Redistricting Commission to redraw the designated Bensonhurst district by including the area from west of McDonald Avenue (McDonald Ave to West 6th Street, from Avenue O to Avenue U) a part of the Bensonhurst neighborhoods without dividing them apart.

提交給獨立重劃區委員會的證詞

尊敬的委員們,

我是布碌崙華人聯合會(UCAOB)的一名會員，該會的會址是在1787 Stillwell Avenue, Brooklyn, NY 郵區號 11223。在得知了紐約州選區重劃獨立委員會即將要劃分部份布碌崙賓臣墟華社地區的計劃之後，其中Mcdonald大道以西的地區將不再是賓臣墟的一部分。作為一個長期居住在賓臣墟的居民，我對目前的地圖可能的重劃深表關注，因此，我建議委員會保持賓臣墟的居民區的完整性。

眾所周知，紐約州選區重劃獨立委員會日前提出建議將布碌崙賓臣墟部分華社地區，從原本的第47州眾議員選區重劃到第45選區。這也將會造成原本隸屬的市警分局，學區及社區委員會全部變動。這樣的劃分也會為居住在賓臣墟的社區民眾們造成諸多不便，多年來在社區建造的關係也將付諸流水。根據原定的計劃，從O大道至U大道，Mcdonald大道至西7街的區域，將從原本我們大家倍感親切的第47選區的州眾議員寇頓 (Assemblyman William Colton) 的選區改到第45選區。這也將意味著轄管社區的警局也將由原本充滿熟悉感的62分局換成61分局，21學區換成22學區，第11社區委員會換成第15社區委員會。

不可否認，亞裔居民的人口劇增改變了我們的社區，有很大的潛力在未來十年大大重塑南布碌仑的住房市場、小企業和政治代表。這種分裂不止影響了我們以凝聚力的方式被代表，還影響到了作為一名公民能力範圍內所可以行使的責任。隨著亞裔美國人居民的持續增長，由於該地區人口過多，亞裔美國人社區的聲音可能被進一步削弱和忽視。倘若按照新劃分的地圖轉到坐落在第45選區的Midwood社區，恐怕也會造成各種利益，意識形態上的衝突和資源使用不足等種種問題發生。除此之外，華人社區與62分局在過去數十年來建立起來的良好警民關係也將推倒重來，一切成果也都付諸東流。重畫地區代表著一切將從零開始，社區各機構和執法單位都需要重新建立聯繫，這一切都充滿著未知數和令我們感到非常擔憂和不安。

為此，我強烈要求重劃獨立委員會重新規劃賓臣墟地區，將Mcdonald大道以西的地區(Mcdonald大道至西六街，從O大道至U大道)作為賓臣墟社區的一部分，而不是將它們拆分。

November 9, 2021

Sincerely,

(Name) Kam Tai Wong

(Address)

57. Bay 32nd St.

Brooklyn N.Y. 11214

We have received 505 copies of the following petition.

I am a member of the Chinese American Social Service Center (CASS) which is located at 124 Avenue O Brooklyn NY 11204. I am urging the area located between McDonald Area and West 7th Street, roughly between Avenue O and Avenue U, which your preliminary plan has removed from the 47th Assembly district and moved into the proposed district you have designated as the proposed Gravesend District, should be moved back under your proposed into your proposed district designated as the Bensonhurst District. This area west of McDonald Avenue should not be moved into the district labelled as the Gravesend District in the Independent Redistricting Commission Plans.

The area west of McDonald Avenue between roughly Avenue U and Avenue O has a longstanding relationship with the Bensonhurst neighborhood. This area is within Community Planning Board #11, the NYPD 62nd Precinct, and NYC Department of Education Council District 21, all of which are also included in the proposed Bensonhurst District, while the so-called Gravesend labelled district to which this area is proposed to be moved into is mostly covered by Community Planning Board #15, and NYPD 61st Precinct.

The area west of McDonald Avenue has always been considered a relevant part of the rest of Bensonhurst, both in terms of common issues and concerns, while the area east of McDonald Avenue traditionally has no such a common interest.

Our co-founder of CASS, Dr. Tim Law, has been appointed as a member of Community Board #11 as a result of the strong connection with the organization which coincides, mostly with the proposed Bensonhurst designated district, and not with the proposed Gravesend designated district. Yet Dr. Law and many of my fellow members, family, and friends reside in the part west of McDonald Avenue which your plan proposed to transfer to the designated Gravesend district. This proposed change will greatly change our neighborhood.

I urge you to keep the area west of McDonald Avenue in the labelled Bensonhurst District in your final map to be proposed.

November ___, 2021

Sincerely,

Leland L

(Name)

(Address) 1528 W. 5TH ST.
Brooklyn N.Y. 11204

Comments of Dr. Tim F. Law residing at 1639 West 3rd Street Brooklyn NY 11223, and Yan Shan Wu residing at 2052 66 Street Brooklyn NY 11204.

We are founders of the Chinese American Social Service Center (CASS) which is located at 124 Avenue O Brooklyn NY 11204. We are urging the area located between McDonald Area and West 7th Street, roughly between Avenue O and Avenue U, which your preliminary plan has removed from the 47th Assembly district and moved into the proposed district you have designated as the proposed Gravesend District, should be moved back under your proposed into your proposed district designated as the Bensonhurst District. This area west of McDonald Avenue should not be moved into the district labelled as the Gravesend District in the Independent Redistricting Commission Plans.

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The area west of McDonald Avenue has always been considered a relevant part of the rest of Bensonhurst, both in terms of common issues and concerns, while the area east of McDonald Avenue traditionally has no such a common interest.

For example, our organization members are primarily from Community Board 11 and reside or have small businesses within the confines of the 62nd Precinct. We have built a deep relationship with other businesses and community organizations which are within the Bensonhurst designated proposed district. For example, our co-founder, Dr. Tim Law, has been appointed as a member of Community Board #11 as a result of the strong connection with our organization which coincides, mostly with the proposed Bensonhurst designated district, and not with the proposed Gravesend designated district. Yet Dr. Law and many of our members reside in the part west of McDonald Avenue which your plan proposed to transfer to

the designated Gravesend district. This proposed change will greatly weaken many of our organization's ties which we have built over our entire past history.

Our organization has also built a strong partnership with such community organizations as the Federation of Italian American Organizations, the United Chinese Association of Brooklyn, Health Essential Association, and the NYPD 62nd Precinct Community Council which will be weakened by moving this area west of McDonald Avenue to a totally different neighborhood which you have designed at the proposed Gravesend district.

Additionally, you will be breaking the influence of Asian families in electoral politics by splitting this area west of McDonald Avenue from the rest of the proposed Bensonhurst District. While you may propose adding new Asian families to make up the loss of those being transferred from the designated Bensonhurst District, in fact, the Asian families being added have a much lower voting and registration history than those Asian population residing in the area being removed from the area west of McDonald Avenue. Therefore, the Asian voting strength in the Bensonhurst designated district will be significantly reduced by this proposed plan.

We urge you to keep the area west of McDonald Avenue in the labelled Bensonhurst District in your final map to be proposed.

November 4, 2021

Yours sincerely,

Yan Shan (Angel) Wu (CASS Executive Director)

Dr. Tim F. Law (CASS Senior Consultant)

COMMUNITY BOARD 6, QUEENS

104-01 METROPOLITAN AVENUE · FOREST HILLS, NY 11375-4136
TEL: (718) 263-9250 · FAX: (718) 263-2211
QN06@CB.NYC.GOV
WWW.NYC.GOV/CB6Q

Whitepot Settled 1653

ALEXA WEITZMAN
CHAIR

DONOVAN RICHARDS
BOROUGH PRESIDENT

FRANK P. GULLUSCIO
DISTRICT MANAGER

November 16, 2021

New York State Independent Redistricting Commission
250 Broadway – 22nd Floor
New York, NY 10007

Re: Redistricting Maps

Dear Chair and Commissioners:

On behalf of Queens Community Board 6 at a duly noticed public meeting taking place on Wednesday, November 10, 2021, by a vote of 30 approvals, 3 denials, 0 abstentions, voted to support this letter. We provide the following request based on the existing district configurations and the preliminary district maps the Commission has issued.

Queens Community Board 6, comprising two neighborhoods, Rego Park (11374) and Forest Hills (11375), requests that the commission work to keep those neighborhoods whole in their representation. Civic Engagement in our neighborhoods is central to a vibrant and thriving community. When a singular area has multiple representatives for the same level of government it creates an unnecessary barrier to engagement. Recent challenges like the flooding following Hurricane Ida demanded robust and immediate engagement with our elected officials. Currently that means we must engage with 2 City Council Members, 4 State Assembly Members, 3 State Senators, and 1 Congress Member. Simplifying the representation for these two communities opens up civic engagement and helps neighbors organize in a streamlined fashion.

Under the newly designed NYSIRC (New York State Independent Redistricting Commission) maps, Community Board 6 would see an increase in the number of representatives in the New York State Senate. The New York State Assembly Democrat Map drafts keeps Community Board 6 at 3 New York State Assembly Members. Yet, under the maps built by the Republicans, Queens Community Board 6 would find themselves represented by 4 New York State Assembly Members.

Other cities throughout the state of similar or slightly larger populations don't have this permeation of representation. We ask that we keep the number of representatives both in the New York State Senate and the New York State Assembly simplified. Streamlined representation simply makes it easier for our neighborhoods to get the help they need when they need it.

Thank You.

Sincerely,

Alexa Weitzman, Chair, on behalf of Queens Community Board 6

cc:
Hon. Andrea Stewart-Cousins, Majority Leader, New York State Senate Hon. Carl E. Heastie, Speaker, New York State Assembly
Hon. Toby Stavisky, New York State Senate
Hon. Joseph Addabbo, New York State Senate
Hon. Leroy Comrie, New York State Senate
Hon. Daniel Rosenthal, New York State Assembly
Hon. Jeffrion Aubry, New York State Assembly
Hon. Andrew Hevesi, New York State Assembly
Hon. Brian Barnwell, New York State Assembly

f Porter
eek Road
, NY 14174

Kara Hibbard
Town Clerk
716-745-3730
TownofPorter.Net

2021-88

Meeting: 11/08/21 07:00 PM

Opposition to th ARMUFF" Congressional District for the Town of Porter

RE: OPPOSITION TO THE FF" CONGRESSIONAL DISTRICT FOR THE TOWN OF PORTER

WHEREAS, because of the fed nial census, New York State must redraw district lines for the United States House of Representativ

WHEREAS, the New York State dent Redistricting Commission is presently accepting public comment on the redrawing of congressio cts in New York State, and

WHEREAS, since 2013, all resid rter have lived in the 27th Congressional District, and

WHEREAS, Porter's placement s district has been wholly and entirely proper, given that the county contains a mix of village and rur with many shared interests, and

WHEREAS, from 2003 to 2012, s situated within the "Earmuff District," which connected our town to metropolitan and suburban R more than 80 miles to the east, and

WHEREAS, the "Earmuff District d from the east side of Buffalo, north through the town and city of Tonawanda north to Niagara Fal n Niagara, Lewiston, and Porter, then east across the shores of Lake Ontario, through portions of 10 Niagara, Orleans and Monroe counties, including the city of Rochester and additional towns y's southeast, and

WHEREAS, inclusion in the "Earm ct" clearly violated the generally accepted criteria for good-government redistricting, particu rms of compactness and preservation of communities of interest, and

WHEREAS, draft maps have recen ted in various publications which have suggested that - solely for partisan political purposes - the st w York should re-establish an "Earmuff District" that would reunite the town of Porter, among agara Frontier localities, with the city of Rochester, and

WHEREAS, it is incumbent upon t Board to make its voice heard on behalf of town residents as critical decision-making lies ahead of congressional redistricting,

NOW, THEREFORE, BE IT

RESOLVED, that in the congressio icting process, the Town of Porter does hereby discourage any effort to re-establish a so-called "E strict" connecting any portion of the Niagara Frontier to the city of Rochester, and be it further

RESOLVED, that this Honorable Bo reby encourage decision-making authorities, including but not limited to the New York State Indepe districting Commission, the New York State Legislative Task Force on Demographic Research and Reappo nt and/or the New York State Legislature to reject all efforts to re-establish a so-called "Earmuff Distri district which seeks to similarly connect the Buffalo and Rochester metropolitan areas, and b

RESOLVED, that certified copies of t tion be sent to the New York State Independent Redistricting

Town of Porter
3265 Creek Road
Youngstown, NY 14174

Kara Hibbard
Town Clerk
716-745-3730
TownofPorter.Net

2021-88

Meeting: 11/08/21 07:00 PM

Opposition to the "EARMUFF" Congressional District for the Town of Porter

RE: OPPOSITION TO THE "EARMUFF" CONGRESSIONAL DISTRICT FOR THE TOWN OF PORTER

WHEREAS, because of the federal decennial census, New York State must redraw district lines for the United States House of Representatives, and

WHEREAS, the New York State Independent Redistricting Commission is presently accepting public comment on the redrawing of congressional districts in New York State, and

WHEREAS, since 2013, all residents of Porter have lived in the 27th Congressional District, and

WHEREAS, Porter's placement within this district has been wholly and entirely proper, given that the county contains a mix of village and rural areas with many shared interests, and

WHEREAS, from 2003 to 2012, Porter was situated within the "Earmuff District," which connected our town to metropolitan and suburban Rochester more than 80 miles to the east, and

WHEREAS, the "Earmuff District" stretched from the east side of Buffalo, north through the town and city of Tonawanda north to Niagara Falls, through Niagara, Lewiston, and Porter, then east across the shores of Lake Ontario, through portions of 10 towns in Niagara, Orleans and Monroe counties, including the city of Rochester and additional towns to that city's southeast, and

WHEREAS, inclusion in the "Earmuff District" clearly violated the generally accepted criteria for good-government redistricting, particularly in terms of compactness and preservation of communities of interest, and

WHEREAS, draft maps have recently circulated in various publications which have suggested that - solely for partisan political purposes - the state of New York should re-establish an "Earmuff District" that would reunite the town of Porter, among other Niagara Frontier localities, with the city of Rochester, and

WHEREAS, it is incumbent upon this Town Board to make its voice heard on behalf of town residents as critical decision-making lies ahead in terms of congressional redistricting,

NOW, THEREFORE, BE **IT**

RESOLVED, that in the congressional redistricting process, the Town of Porter does hereby discourage any effort to re-establish a so-called "Earmuff District" connecting any portion of the Niagara Frontier to the city of Rochester, and be it further

RESOLVED, that this Honorable Body does hereby encourage decision-making authorities, including but not limited to the New York State Independent Redistricting Commission, the New York State Legislative Task Force on Demographic Research and Reapportionment and/or the New York State Legislature to reject all efforts to re-establish a so-called "Earmuff District," or any district which seeks to similarly connect the Buffalo and Rochester metropolitan areas, and be it finally

RESOLVED, that certified copies of this resolution be sent to the New York State Independent Redistricting

Commission (250 Broadway, 22nd Floor, New York, NY 10007), the New York State Legislative Task Force on Demographic Research and Reapportionment (250 Broadway, Suite 2100, New York, NY 10007), the Speaker of the New York State Assembly and the Majority Leader of the New York State Senate, and to the local offices of the Representatives in Congress in New York's 26th and 27th Congressional Districts.

Motion was made by Councilman Adamson and seconded by Deputy Supervisor Baker.

Roll call: Supervisor Johnston, yes; Deputy Supervisor Baker, yes; Councilman Adamson, yes; Councilman white, absent; Councilman Ortiz, yes.

✓ Vote Record - Resolution RES-2021-88

☑ Adopted
☐ Adopted as Amended
☐ Defeated
☐ Tabled
☐ Withdrawn

		Yes/Aye	No/Nay	Abstain	Absent
Jipp Ortiz	Voter	☑	☐	☐	☐
J. Duffy Johnston	Voter	☑	☐	☐	☐
Jeff Baker	Seconder	☑	☐	☐	☐
Larry White	Voter	☐	☐	☐	☑
Tim Adamson	Mover	☑	☐	☐	☐

On a motion made by Trustee Epstein and seconded by Trustee Klein the following resolution was adopted.

RESOLUTION

OPPOSING THE ASSEMBLY REDISTRICTRING PLAN PROPOSED BY THE INDEPENDENT REDISTRICTING COMMISSION THAT WOULD RESULT IN RYE BROOK CHANGING NYS ASSEMBLY DISTRICTS

WHEREAS, a NYS Independent Redistricting Commission (the "Commission") was created to provide recommendations for re-drawing NYS district boundaries after the 2020 Census; and

WHEREAS, the Commission has proposed to remove the Village of Rye Brook from the current Sound Shore Assembly District (91st Assembly District) and splitting the Village from the Town of Rye; and

WHEREAS, this action would cause disastrous effects on the regional common goals shared among the municipalities currently located within the Sound Shore District including the Villages of Rye Brook, Port Chester, Mamaroneck, and Larchmont, and the Towns of Rye and Mamaroneck, and part of the City of New Rochelle; and

WHEREAS, the removal of the Village of Rye Brook from the Sound Shore District would separate Rye Brook from its partner Village of Port Chester, which is also located within the Town of Rye; and

WHEREAS, the removal of the Village of Rye Brook from the Sound Shore District would separate both Port Chester and Rye Brook residents who are served by the Town of Rye including its municipal court, whose judges would then represent residents in two different Assembly districts; and

WHEREAS, the removal of the Village of Rye Brook from the Sound Shore District would also separate Rye Brook residents from the Town of Rye Assessment and Tax Collection services who would serve town residents in two different Assembly districts; and

WHEREAS, since the Port Chester High School and the Port Chester Middle School are both physically located within the Village of Rye Brook, and 1/3 of the properties in Rye Brook are located in the Port Chester School District, the removal of the Village of Rye Brook from the Sound Shore District would result in homeowners in the same school district being represented by two different Assembly districts thereby weakening their state representation on issues of shared concern; and

WHEREAS, since the Village of Rye Brook has primarily collaborated and shared services with the other Sound Shore municipalities, including shared EMS, fire service, library services, capital improvements, and shared equipment, these commonalities of interests, which often involve support from state representatives, would be divided if Rye Brook was removed from the Sound Shore District; and

WHEREAS, since Rye Brook is within the Long Island watershed, and all stormwater in the municipality flows into the Long Island Sound, the Village of Rye Brook has the common interest of regional planning with other municipalities in the current Sound Shore District for items such as stormwater and flooding concerns, so separating Rye Brook from the other Long Island Watershed municipalities is counter to the goal of effective regional planning, which often includes state grants and legislative representation; and

WHEREAS, since all of the Rye Brook sanitary sewers flow into either the Port Chester sanitary sewer treatment plant in the Port Chester Sewer District, or the Blind Brook sanitary sewer treatment plant (in Rye City) in the Blind Brook Sewer District, separating Rye Brook from the municipalities in these two sewer districts is counter to the goal of effective regional planning, since these issues often includes state grants and legislative representation, and

WHEREAS, Rye Brook is served by a private water company (Suez) that also serves the municipalities in the current Sound Shore District, and often involves the need for state representation on issues involving the NYS Public Service Commission, establishing water rates, and other issues such as water company mergers, acquisitions, and other environmental and inter-state impacts, so separating Rye Brook from the other municipalities served by the same private water company would be counter-productive to efficiently and effectively address these concerns; and

WHEREAS, the proposed new assembly district would place Rye Brook with other municipalities as far north as Mt. Kisco and Bedford, which have very little shared common interests in the important areas identified in this resolution, and would result in weaker state representation for those areas which are very important to the residents and municipal officials in Village of Rye Brook.

NOW THEREFORE BE IT RESOLVED, that the Village of Rye Brook Board of Trustees hereby strongly and emphatically opposes any removal of the Village of Rye Brook from the other municipalities currently located within the Sound Shore District since we have many common interests with those municipalities which often result in the need for uniform and clear state representation; and be it

FURTHER RESOLVED, that for the reasons stated in this resolution that the Village of Rye Brook Board of Trustees hereby strongly and emphatically opposes the splitting of Rye Brook from the Town of Rye in the redistricting of State Senate and Congressional Districts; and be it

FURTHER RESOLVED, that if Rye Brook is removed from the Sound Shore District, our state representation, as well as the state representation of the residents in the newly divided Town of Rye, would be significantly marginalized regarding our areas of common interest; and be it

FURTHER RESOLVED, that the Village of Rye Brook Board of Trustees urges the NYS Independent Redistricting Commission to reconsider their proposal to remove the Village of Rye Brook from the current Sound Shore District based upon the additional information provided in this resolution; and be it

FURTHER RESOLVED, that this duly adopted resolution of the Village of Rye Brook be forwarded to the NYS Independent Redistricting Commission, NYS Assemblyman Steve Otis, NYS Senator Shelley Mayer, Congressman Mondaire Jones and the Town of Rye Town Council.

TRUSTEE EPSTEIN	**AYE**
TRUSTEE FISCHER	**ABSENT**
TRUSTEE HEISER	**AYE**
TRUSTEE KLEIN	**AYE**
MAYOR ROSENBERG	**AYE**

State of New York
County of Westchester } ss:
Village of Rye Brook

I hereby certify that this is the Resolution adopted by the Board of Trustees of the Village of Rye Brook which was duly passed by said Board on November 2, 2021

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Seal of the Village of Rye Brook, this 3rd day of November, 2021

Village Clerk

Dr. Brian K. Bellair
Superintendent of Schools
bbellair@wboro.org
Telephone: 315.266.3303
Fax: 315.768.9723

Mr. David Russo
Assistant Superintendent for Learning and Accountability

Mr. Joseph T. Muller II
Assistant Superintendent for Business

Whitesboro Central School District

Office of the Superintendent
65 Oriskany Boulevard • Whitesboro, NY 13492
www.wboro.org

Testimony to the Independent Redistricting Commission

Submitted on Behalf of: *Brian K. Bellair, Superintendent of the Whitesboro Central School District*

November 23, 2021

Hello, my name is Brian Bellair and I am submitting testimony on behalf of the Whitesboro Central School District.

This school district represents approximately 3,300students and covers Whitesboro, Marcy, Deerfield Whitestown and parts of Schuyler. I write today to participate in New York's newly implemented independent redistricting process and the effects redistricting will have on our community.

As a community of interest we are focused on providing a sound public education to the students of our region. Maintaining the Whitesboro Central School District within a single legislative district would ensure our elected leaders understand our issues and are focused on advocating for them at the state and federal level. The continuity of this legislative district is critical to the ability of our school board of education and me to provide services or receive assistance from our current representatives and would more broadly impact our ability to effectively lobby and advocate for decisions and policies that shape our public education system.

My community represents a diverse district, yet its residents share common interests. If my community was to be divided into different districts, our representation would be diminished and this would hinder the community's ability to come together. We believe that our current representation is fully committed to listening to my community's/group's concerns.

Thank you to the Independent Redistricting Commission for allowing me to submit testimony. I again ask that you consider the needs of my community so that there may continue to be adequate and fair representation.

Respectfully,

Brian K. Bellair

Brian K. Bellair, Ph.D.
Superintendent of Schools
Whitesboro Central School District
65 Oriskany Blvd.
Suite #1
Whitesboro, NY 13492
315-266-3301

COMMUNITY BOARD 6, QUEENS

104-01 METROPOLITAN AVENUE · FOREST HILLS, NY 11375-4136
TEL: (718) 263-9250 · FAX: (718) 263-2211
QN06@CB.NYC.GOV
WWW.NYC.GOV/CB6Q

Whitepot Settled 1653

ALEXA WEITZMAN
CHAIR

DONOVAN RICHARDS
BOROUGH PRESIDENT

FRANK P. GULLUSCIO
DISTRICT MANAGER

November 16, 2021

New York State Independent Redistricting Commission
250 Broadway – 22nd Floor
New York, NY 10007

Re: Redistricting Maps

Dear Chair and Commissioners:

On behalf of Queens Community Board 6 at a duly noticed public meeting taking place on Wednesday, November 10, 2021, by a vote of 30 approvals, 3 denials, 0 abstentions, voted to support this letter. We provide the following request based on the existing district configurations and the preliminary district maps the Commission has issued.

Queens Community Board 6, comprising two neighborhoods, Rego Park (11374) and Forest Hills (11375), requests that the commission work to keep those neighborhoods whole in their representation. Civic Engagement in our neighborhoods is central to a vibrant and thriving community. When a singular area has multiple representatives for the same level of government it creates an unnecessary barrier to engagement. Recent challenges like the flooding following Hurricane Ida demanded robust and immediate engagement with our elected officials. Currently that means we must engage with 2 City Council Members, 4 State Assembly Members, 3 State Senators, and 1 Congress Member. Simplifying the representation for these two communities opens up civic engagement and helps neighbors organize in a streamlined fashion.

Under the newly designed NYSIRC (New York State Independent Redistricting Commission) maps, Community Board 6 would see an increase in the number of representatives in the New York State Senate. The New York State Assembly Democrat Map drafts keeps Community Board 6 at 3 New York State Assembly Members. Yet, under the maps built by the Republicans, Queens Community Board 6 would find themselves represented by 4 New York State Assembly Members.

Other cities throughout the state of similar or slightly larger populations don't have this permeation of representation. We ask that we keep the number of representatives both in the New York State Senate and the New York State Assembly simplified. Streamlined representation simply makes it easier for our neighborhoods to get the help they need when they need it.

Thank You.

Sincerely,

Alexa Weitzman, Chair, on behalf of Queens Community Board 6

cc:
Hon. Andrea Stewart-Cousins, Majority Leader, New York State
Senate Hon. Carl E. Heastie, Speaker, New York State Assembly
Hon. Toby Stavisky, New York State Senate
Hon. Joseph Addabbo, New York State Senate
Hon. Leroy Comrie, New York State Senate
Hon. Daniel Rosenthal, New York State Assembly
Hon. Jeffrion Aubry, New York State Assembly
Hon. Andrew Hevesi, New York State Assembly
Hon. Brian Barnwell, New York State Assembly

School District of the City of Niagara Falls, New York

630 66th Street ◆ Niagara Falls, NY 14304 ◆ (716) 286-4211 ◆ Fax: (716) 286-4283

October 7, 2021

New York State Independent Redistricting Commission
250 Broadway, 22nd Floor
New York, NY 10007

Dear Honorable Commissioners:

As the Superintendent of the Niagara Falls City School District, I am writing to offer my views and opposition to the establishment of a so-called "earmuff" congressional district. The 2002 map that started in Niagara Falls and continued with termination in the southeastern Monroe County Town of Perinton was suboptimal for Niagara Falls.

The best congressional districts are compact, contiguous, and share common interests and concerns. A "hodgepodge district" often has divergent needs and competitive struggles for governmental resources. The proposed composition of suburban, urban, and rural areas lack core continuity and dilute advocacy and support. Recent articles and reports indicate that efforts may be again underway to recreate this type of district. I strongly urge you not to recreate this form of representation.

I sincerely believe that the cities of Buffalo and Niagara Falls have similar character and concerns. After Buffalo, Niagara Falls is the largest urban school district in Western New York facing very similar challenges. I believe other districts in Niagara County are very different in the challenges they face and the needs they have. It is my belief that Niagara Falls is best served as a school district with other large urban districts as it currently exists.

I respectfully request your consideration of rejecting a return to an "Earmuff District" and to keep the educational similarities of Niagara Falls and Buffalo coterminous in any redistricting effort.

Sincerely,

Mark Laurrie
Superintendent
Niagara Falls City School District

Cc: Hon. Carl E. Heastie, Speaker, NYS Assembly
Hon. Andrea Stewart-Cousins, Majority Leader, NYS Senate

Town of Tonawanda

Town of Tonawanda Board
2919 Delaware Ave
Kenmore, NY 14217

Marguerite Greco, Town Clerk
Telephone: (716) 877-8800

October 4, 2021

NYS Independent Redistricting Commission
250 Broadway
22nd Floor
New York, NY 10007

Dear NYS Independent Redistricting Commission:

Please be advised that the Town Board, at a meeting held on September 27, 2021 7:00 PM, considered and adopted the following legislative document(s):

Resolution RES-2021-687 **Adopted [Unanimous]**
Motion: To Oppose any Effort to Reestablish a So Called "Earmuff District" Connecting any Portion of the Town of Tonawanda to the City of Rochester, as Set Forth in the Agenda Before You.

CC: NYS Legislative Task Force on Demographic Research
Honorable Carl E. Heastie, Speaker of the New York State Assembly
Honorable Andrea Stewart-Cousins, Majority Leader of the New York State Senate
Honorable Brian Higgins, Representative, New York's 26th Congressional Dist.
Honorable Chris Jacobs, Representative, New York's 27th Congressional Dist.

Sincerely,

Marguerite Greco

Marguerite Greco
Town Clerk

Attachment(s)

town of
Tonawanda

Town of Tonawanda Board
2919 Delaware Ave
Kenmore, NY 14217
Marguerite Greco, Town Clerk
Department: Town Clerk
09/27/21 07:00 PM
DOC ID: 17873

ADOPTED
RESOLUTION 2021-687

Motion: To Oppose any Effort to Reestablish a So Called "Earmuff District" Connecting any Portion of the Town of Tonawanda to the City of Rochester, as Set Forth in the Agenda Before You.

WHEREAS, because of the federal decennial census, New York State must redraw district lines for the United States House of Representatives, and

WHEREAS, the New York State Independent Redistricting Commission is presently accepting public comment on the redrawing of congressional districts in New York State, and

WHEREAS, since 2013, all residents of the Town of Tonawanda have lived in the 26th Congressional District, which unites the cities of Niagara Falls, North Tonawanda, Tonawanda, Buffalo and Lackawanna with contiguous towns and villages, including the Town of Tonawanda, and

WHEREAS, the Town of Tonawanda's placement within this district has been wholly and entirely proper, given that the town, the city of Buffalo, and adjacent communities are integral components of the Niagara Frontier, a compact and contiguous region of New York State with an integrated economy and many shared interests, and

WHEREAS, the current 26th Congressional District, including the Town of Tonawanda, meets all of the generally accepted criteria for a good-government district, including compactness, contiguity, and preservation of communities of interest, combining voters of shared interest throughout the district; maintenance of this type of district with the town of Tonawanda included therein is essential to the growth and betterment of our city, and

WHERAS, from 2003 to 2012, the Town of Tonawanda was situated within the "Earmuff District," which rather than connecting to Buffalo instead divided the city of Buffalo and connected our Town to metropolitan and suburban Rochester more than 80 miles to the east, and

WHEREAS, the "Earmuff District" stretched from the east side of Buffalo to the Town of Tonawanda north to Niagara Falls, through Lewiston and Porter, then traversed east across the shores of Lake Ontario, through portions of 10 towns in Niagara, Orleans and Monroe counties, including the city of Rochester and additional towns to that city's southeast, and

WHEREAS, inclusion in that "Earmuff District" clearly violated the generally accepted criteria for good-government redistricting, particularly in terms of compactness and preservation of communities of interest, and

WHEREAS, draft maps have recently circulated in various publications which have suggested that - solely for partisan political purposes - the state of New York should re-establish an "Earmuff District" that would reunite the Town of Tonawanda, among other Niagara Frontier localities, with the city of Rochester, and

WHEREAS, it is incumbent upon this Town Board to make its voice heard on behalf of Town residents as critical decision-making lies ahead in terms of congressional redistricting,

NOW, THEREFORE, BE IT RESOLVED, that in the congressional redistricting process, the Town of Tonawanda does hereby encourage the town's inclusion in a congressional seat with other densely populated municipalities within the Niagara Frontier, including but not limited to the city of Buffalo, and does hereby discourage any effort to re-establish a so-called "Earmuff District" connecting any portion of the Niagara Frontier to the city of Rochester, and be it further

RESOLVED, that this Honorable Body does hereby encourage decision-making authorities, including but not limited to the New York State Independent Redistricting Commission, the New York State Legislative Task Force on Demographic Research and Reapportionment and/or the New York State Legislature to keep the town of Tonawanda in a congressional district with a similar iteration to today, united as it is with the cities of Buffalo, Lackawanna, Niagara Falls, North Tonawanda, and the towns of Tonawanda, Amherst, Cheektowaga, Grand Island, and West Seneca, and be it further

RESOLVED, that this Honorable Body does urge the aforementioned decision-making authorities to reject all efforts to re-establish a so-called "Earmuff District," or any district which seeks to similarly connect the Buffalo and Rochester metropolitan areas, and be it finally

RESOLVED, that certified copies of this resolution be sent to the New York State Independent Redistricting Commission (250 Broadway, 22nd Floor, New York, NY 10007), the New York State Legislative Task Force on Demographic Research and Reapportionment (250 Broadway, Suite 2100, New York, NY 10007), the Speaker of the New York State Assembly and the Majority Leader of the New York State Senate, and to the local offices of the Representatives in Congress in New York's 26th and 27th Congressional Districts.

RESULT:	**ADOPTED [UNANIMOUS]**
MOVER:	John Bargnesi, Councilman
SECONDER:	Shannon M. Patch, Councilwoman
AYES:	Emminger, Bargnesi, Patch, Szarek, O'Malley

I do certify that I have compared the foregoing with the original minutes of the regular meeting of the Town Board held on September 27, 2021 and that the foregoing is a true and correct transcript from said original minutes and the whole thereof, and that the resolutions duly adopted by said Town Board are on file in my office.

IN WITNESS WHEREOF, I have hereunto set my hand and seal of the said Town of Tonawanda, Erie County, New York, this 28th day of September, 2021.

Marguerite Greco

Marguerite Greco, Town Clerk
Town of Tonawanda, New York

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Town of Tonawanda

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Testimony to the Independent Redistricting Commission

Submitted on Behalf of the Town of Moreau, NY

October 27, 2021

As the duly elected Supervisor for the Town of Moreau, Saratoga County, NY, I respectfully submit the following non-partisan testimony on behalf of my community to the New York State Independent Redistricting Commission (IRC).

The Town of Moreau is conveniently located in the northern section of Saratoga County, approximately 15 miles from the Saratoga Racetrack and Racino, Saratoga Performing Arts, and historic downtown Saratoga Springs, and 10 miles from beautiful Lake George and the Adirondack Park.

Our Town provides ample recreational activities. Moreau Lake State Park covers over 4,000 acres of pristine forestland and was rated by Reserve America as one of the Top 100 Campgrounds in the nation. The Harry J. Betar, Jr. Recreational Park highlights our Town, providing acres of athletic fields, pavilion facilities, and trails for hiking and cross-country skiing. Our town also offers several riparian activities on the Hudson River including boat launches, beaches, and picnic areas that greatly contribute to our special quality of life.

Without question, the Town of Moreau is a wonderful, vibrant, successful, and growing community, with a current population of approximately 16,000 residents, covering an approximate area of 43.58 square miles. Moreau is viewed as an excellent, welcoming, attractive, and affordable place to live, work, and visit.

I write today to participate in New York's newly implemented independent redistricting process and the effects redistricting will have on our community. As a community of interest, I am focused on our region and the families I serve in a non-partisan manner as Town Supervisor. Maintaining my community within a single legislative district would ensure that our elected representatives understand our issues and are focused on advocating for them at the state and federal levels.

The continuity of our community is critical to its ability to provide essential services and receive assistance from our current representatives. Changing the jurisdiction of the district and our community's place within it would more broadly affect the ability of our community to continue moving forward and successfully meet the needs of all residents.

Our community, the Town of Moreau, and its proud residents share common interests and a true sense of community and working together.

If our community is split up into different districts, our representation would be significantly diminished and hinder the community's ability to work together collectively and collaboratively with our state officials. Accordingly, the Town of Moreau thus requests to remain part of the contiguous 43rd Senate District with Senator Jordan as our Senate representative.

Our Town's State Senator, Daphne Jordan, does a tremendous job representing and serving Moreau as part of the 43rd Senate District. I have worked with Senator Jordan on a whole host of local economic development and public service projects and always found her to be highly attentive to our needs and an excellent partner serving and representing our mutual constituents.

Thank you in advance to the Independent Redistricting Commission for allowing me to submit this testimony. I again request that you consider the needs of our community so that there may continue to be responsive and fair state representation that meets our important needs.

Respectfully,

The Honorable Todd Kusnierz
Supervisor, Town of Moreau
351 Reynolds Road
Moreau, NY 12828
(518) 792-1030
moreausuper@townofmoreau.org

Please submit testimony to:

submissions@nyirc.gov

The Commission also accepts your comment by mail. Your written public comment may be mailed to:

Independent Redistricting Commission
250 Broadway, 22nd Floor
New York, NY 10007

VILLAGE OF WILSON
375 Lake Street
P.O. Box 596
Wilson, NY 14172-0596

Arthur Lawson, Mayor
Carey L. O'Connor, Clerk-Treasurer
(716)751-6764 Fax (716)751-6787

www.villageofwilson.org

NO "EARMUFF" CONGRESSSIONAL DISTRICT FOR WESTERN NEW YORK

WHEREAS, because of the federal decennial census, New York State must redraw district lines for the United States House of Representatives, and

WHEREAS, the New York State Independent Redistricting Commission is presently accepting public comment on the redrawing of congressional districts in New York State, and

WHEREAS, since 2013, all residents of The Village of Wilson have lived in the 27th Congressional District, and

WHEREAS, The Village of Wilson's placement within this district has been wholly and entirely proper, given that the district contains a mix of village and rural areas with many shared interests, and

WHEREAS, from 2003 to 2012, The Village of Wilson was situated within the "Earmuff District" which connected our town to metropolitan and suburban Rochester more than 80 miles to the east, and

WHEREAS, the "Earmuff District" stretched from the east side of Buffalo, north through the town and city of Tonawanda north to Niagara Falls, through Niagara, Lewiston, Wilson and Porter, then east across the shores of Lake Ontario, through portions of 10 towns in Niagara, Orleans and Monroe counties, including the city of Rochester and additional towns to the city's southeast, and

WHEREAS, inclusion in the "Earmuff District" clearly violated the generally accepted criteria for good-government redistricting, particularly in terms of compactness and preservation of communities of interest, and

WHEREAS, draft maps have recently circulated in various publications which have suggested that – solely for partisan political purposes—the state of New York should re-establish and "Earmuff District" that would reunite The Village of Wilson, among other Niagara Frontier localities, with the city of Rochester, and

WHEREAS, it is incumbent upon this village Board to make its voice heard on behalf of town residents as critical decision-making lies head in terms of congressional redistricting,

NOW, THEREFORE, BE IT

RESOLVED, that in the congressional redistricting process, The Village of Wilson does herby discourage any effort to re-establish a so-called "Earmuff District," connecting any portion of the Niagara Frontier to the city of Rochester, and be it further

RESOLVED, that this Honorable Body does hereby encourage decision-making authorities, including but not limited to the New York State Independent Redistricting Commission, the New York State Legislative Task Force on Demographic Research and Reapportionment and/or the New York State Legislature to reject all efforts to re-establish a so-called "Earmuff District," or any district which seeks to similarly connect the Buffalo and Rochester metropolitan areas, and be it finally

RESOLVED, that certified copies of this resolution be sent to the New York State Independent Redistricting Commission (250 Broadway, 22nd Floor, New York, NY 10007), the New York State Legislative Task Force on Demographic Research and Reapportionment (250 Broadway, Suite 2100, New York, NY 10007), the Speaker of the New York State Assembly and the Majority Leader of the New York State Senate, and the local offices of the Representatives in Congress in New York's 26th and 27th Congressional Districts.

ADOPTION: November 18, 2021
Resolution: 21-2021

CERTIFICATION OF CLERK
Carey L. O'Connor
Carey L. O'Connor

ROLL CALL:

Arthur Lawson, Mayor	YES	NO
Phil Russell, Trustee	YES	NO
Brad Simpson, Trustee	YES	NO

For Hearing on Nov 22, 2021, Re: 2021 Restricting

BLACK VOTES MATTER (BVM)

PO Box 145
Garden City, NY 11530
Phone: (516)461-8299 Email: bvmncli@gmail.com

May 30, 2021

ALLEGED CONSPIRACY: ANDREW CUOMO, GOVERNOR, NEW YORK STATE AND JAY JACOBS, CHAIR, NEW YORK STATE DEMOCRATIC COMMITTEE (APPOINTED BY CUOMO (AGAIN), AND CHAIR, NASSAU COUNTY DEMOCRATIC COMMITTEE) for over 20 years.

JAY JACOBS MUST BE REMOVED FROM BOTH POSITIONS IMMEDIATELY.

REQUEST

We, the following citizens/voters of Nassau County, Long Island, New York, insist on the removal of Jay Jacobs from both positions IMMEDIATELY.

We allege that Andrew Cuomo, Governor, New York, State, and Jay Jacobs, New York State Democratic Committee Chair (Appointed by Cuomo (AGAIN), Chair Nassau County Democratic Committee have conspired to suppress the Black vote in Nassau County, Long Island, New York, using nefarious, racist, bigoted schemes to divide the Black vote and eliminate Black leaders in order to control the election process by pitting Black Board of Elections employees against Black candidates. Jacobs' mission is to silence the Black leaders of Nassau County.

OUR REQUESTS

We, BVM, on behalf of ALL Nassau County voters, are entitled to an investigation of these allegations by: Letitia James, NYS Attorney General; Andrea Stewart-Cousins, Majority Leader, New York State Senate; Carle Heastie, Speaker, New York State Assembly; Jaime Harrison, Chair, National Democratic Committee (DNC); Chuck Schumer, United States Senator. These officials are hereby put on notice, **VOTER SUPPRESSION** should not be tolerated in New York, or anywhere in the United States of America. Suppressing the Black vote is even more heinous!!

RIGHT TO VOTE

The US Justice System espouses the right to vote in all countries. It is time NOW to relieve the Nassau County voter of Jay's knee on our necks, that we can breathe, and thus, can be assured of our right to vote, without fear of reprisal (being fired).

Dozens of potential voters are willing, under oath, via subpoena, to tell of their experiences under Jacobs.

- We request a thorough, open, and fair investigation of the following allegations, issue subpoenas to witnesses (under oath) to present verification of these allegations, and to utilize the Justice System for all plaintiffs and defendants to ensure justice prevails.
- These allegations have a negative impact on all Nassau County voters. When voting is suppressed, justice is denied. The manipulation of the voting system is a violation of the rights of all voters. Jay Jacobs must be removed as State Chair of the New York State

These are facts supported by legal documents, history, activities ongoing in Nassau County with No one willing to assist the Black voters in Nassau

BLACK VOTES MATTER (BVM)

PO Box 145
Garden City, NY 11530
Phone: (516)461-8299 Email: bvmncli@gmail.com

1. Joann Arrington, Citizen, (ZIP) 11552
2. Anissa Moore, Council Leader (Former), City of Long Beach, (ZIP) 11561
3. Carol Gordon, Removed as a candidate by Jacobs for ten years, (ZIP) 11758
4. Earlene Hooper, Deputy Speaker, New York State Assembly (Former), (ZIP) 11551
5. Gypsy Jefferson, Civic Activist (ZIP) 11096
6. Minister Runnie Myles, (ZIP)11561 (See lawsuit brought by Myles (***see attachment #4, page 2, lines #3, 8, 12, 10, 11, 13, 14, 15, 16, 18, 19, 21, 22, 23, 24, 26, 27, 28, 29***) (Docket #19-3373-cv), Runnie Myles Appellant against Jay Jacobs et al., Appellees (Case now in Appeals Court)-11/16/20,

ALLEGED ALLEGATIONS

Fred Brewington, Esq., with the knowledge and approval of Jay Jacobs attempted to dismantle the 18th Assembly District through a lawsuit against the existence of the 18th A.D. in the 2010/2011 Census reapportionment.

The 18th A.D. was established in 1982 with the leadership of the Hon., Hazel N. Dukes, Esq. Hazel Dukes' tenacity, determination, foresight, and respect for the right to vote by all peoples succeeded in creating the 18th Assembly District. We are ashamed of what Brewington, Melvin Boone, Dennis O. Jones, and Regis Thompson Lawrence attempted to do.

Interestingly, Jay Jacobs' name does not appear on the document. This sordid attempt to dilute the Black vote is reprehensible. To dismantle the selfless, hard work of Hazel Dukes, Esq., President, NAACP Conference of New York State, is a disgrace to the sacrifice she has contributed to the Black voter.

Brewington, a Civic Rights Leader, should be ashamed of what Jay Jacobs coerced him to do.

Docket # 11-CV-5632, CASE: Favors v. Drayton: Plaintiffs: **Fred K. Brewington, Esq., Melvin Boone (Trustee, Village of Hempstead? "Kevin Boone"), Dennis O. Jones, Regis Thompson Lawrence** & CASE: Favors v. Cuomo: Plaintiffs; Mark A. Favors et al against Defendants; Andrew M. Cuomo, Governor of the State of New York…Sheldon Silver, Majority Leader of the New York State Assembly; Brian M. Kolb, as Minority Leader of the New York State Assembly; the New York State Task Force on Demographic Research and Reapportionment ("LATFOR"). This lawsuit was filed by **Fred Brewington, Esq.**, in the United States District Court Eastern District of New York. A three Judge panel set forth detailed instructions in its Referral Order to guide this Court in the redistricting process (See 2/28/12 Order of Referral at 3-4). "**First** the Recommended Plan must comport with the constitutional requirements of population equality and the Equal Protection Clause. **Second**, the Recommended Plan must comply with the mandates of the Voting Rights Act of 1965, avoiding the twin ills of minority vote dilution and retrogression. **Third**, the Recommended Plan must follow the traditional redistricting principles of **compactness, contiguity, respect for political subdivisions, and preservation of communities of interest**. …this Court recommends that the Three-Judge Panel adopt the Recommended Plan in it's entirety." Decided May 12, 2012 by Roanne L. Mann, United

BLACK VOTES MATTER (BVM)

PO Box 145
Garden City, NY 11530
Phone: (516)461-8299 Email: bvmncli@gmail.com

for political subdivisions, and preservation of communities of interest. ...this Court recommends that the Three-Judge Panel adopt the Recommended Plan in it's entirety." Decided May 12, 2012 by Roanne L. Mann, United States Magistrate Judge:... "The Recommended Plan also comports with the requirements of the Fourteenth Amendment to the United States Constitution, which prohibits both intentional and excessive uses of race in redistricting. See Shaw v. Reno. 509 U.S. 630, 658 (1993). First, the Equal Protection Clause prevents state actors engaged in redistricting from purposefully discriminating against a racial group by diluting it's vote. See City of Mobile v. Bolden. 446 U.S. 55, 66 (1980). Second, the Supreme Court has held that a redistricting plan violates the Equal Protection Clause where race is a "predominant factor motivating [a] decision to place a significant number of voters within or without a particular district." Miller v. Johnson, 515 U.S. 900, 916 (1995). Courts have held that race was a "predominant factor" in redistricting plans where "traditional race-neutral districting principles" were subordinated to considerations of race. Id. Additionally, courts in this district have applied these mandates to court-drawn plans. See PRLDEF. 796 F.Supp. at 692."... "The Three-Judge Panel's Order of Referral directs that the Recommended Plan "comply with 42 U.S.C. 1973(b) and with all other applicable provisions of the Voting Rights Act" See 2/28/12 Order of Referral at 3. Sections 2 and 5 of the Voting Rights Act of 1965 are designed to protect against two principal problems: minority dilution and retrogression in the electoral position of minorities. As explained below, the Recommended Plan complies with the requirement of the Voting Rights Act. And neither retrogresses nor dilutes the vote of any citizens on account of race" See Persily Aff ¶ 108. "By it's terms, Section 5 requires that redistricting plans must neither have "the purpose nor...the effect of debying or abridging the right to vote on account or race, or color, or [language minority]." 42 U.S.C. 1973c(a). The "purpose" standard prohibits redistricting motivated by "any discriminatory purpose" (rarely applicable in the court-drawn setting). Id 1973c(c), while the "effect" standard prohibits changes "that would lead to a retrogression in the position of racial minorities with respect to their effective exercise of the electoral franchise."...The Voting Rights Act further clarifies that [a]ny voting qualification or prerequisite to voting or standard practice, or procedure with respect to voting that has the purpose of or will have the effect of diminishing the ability of any citizens of the United States on account of race or color or in contravention of the guarantees set forth in section1973b(f)(2) of this title, to elect their preferred candidates of choice denies or abridges the right to vote within the meaning of subsection (a) of this section.

Jay Jacobs, Fred Brewington, and Esmerelda Simmons failed in their attempt to suppress the Black vote in the 18th A.D.

The attempt to dissolve the 18th A.D. was not successful.

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A. **Permitting dead people to vote** It is no secret that Jacobs allows dead people's votes to be counted. **(see attachment#1)**

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B. **Choosing a candidate (Wilson Pakula) who was not a registered voter and not permitted to be a candidate in a primary, or vote in a primary.** Jacobs' chosen candidate could not vote in the 2018 primary because said candidate was not a registered Democrat. Cuomo campaigned with said candidate. Cuomo is the head of the New York State Democratic Committee. He had to know the candidate was not a registered Democrat and was not eligible to vote in a primary. JAY Primaried the Designated Democrat Candidate

Intentionally left blank Jay refused to endorse the Party's

C. **Preventing Black people from submitting legitimate petitions to be candidates.**

The Hon. Anissa Moore, City of Long Beach, Council President (Former), who happens to be a Black woman, was the first Black woman elected to the City of Long Beach Council. The distinction, is that, not only was she the first Black woman, but the ONLY female elected to the Long Beach City Council, in the history of said City. This same done by Jacobs, the State Chair, likening her to the KKK

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The racist, bigoted, heinous, manipulative reaction of Jay Jacobs, Nassau County Democratic Committee Chairman, resulted in an organized, contrived mission of Jacobs, utilizing his position to divide Blacks against Blacks. Please review the Hon. Anissa Moore's statement as to what Jacobs has done, and continues to do, with the power imbued in the position of Committee Leader. (***see attachment #9***)

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D. **Attempting to disallow ANY Democratic candidate to access any independent party line.** All candidates are chosen by Jay Jacobs, excluding Democratic Committee Members from the candidate selection process.

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E. **Withholding legitimate petitions to be circulated within the same time-frame as Jacobs' "candidate of choice".** This denies Black aspiring candidates equal opportunity to acquire signatures, because Jacobs' chosen candidate would have a two-week head-start. Any other Black (Non-Jacobs choice) candidate would have a paucity of potential signatures because most were already taken.

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F. **Exclusion: of the name of a candidate on the Democratic petition (2021).** The plan was that a Black incumbent candidate would not be aware of the exclusion of said candidate's name on the petition. The incumbent Democrat (Black) was apprised of the exclusion. Having verified that the name was excluded, Jacobs was confronted, and required to withdraw the manipulated petition and re-do petitions including the names of **ALL** candidates. This occurred in the 2011 election period.

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G. **Cross-endorsing**: Judicial candidates (Republican) are cross-endorsed on the ballot with the approval of Jacobs. Jay Jacobs' racism was evident when all Republican judicial candidates were cross-endorsed, but the incumbent (a Black man) was not. He refused to cross-endorse an incumbent Black Republican Judge and chose to support/endorse/finance a

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In some instances, Jacobs' "chattel" will refuse to "obey", so the Inspector will be assigned to an election site in an all-White Election District that resents the presence of a Black Inspector, thus, refusing to allow the Inspector to participate and perform any election tasks.

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A particular Black male Inspector, who had worked on Election Day for many years, was disallowed to work, because he refused to abrogate his right to a secret ballot. His refusal to "Obey Jay" resulted in his being disallowed to work as an Inspector on any future Elections. Jacobs' method/scheme is to divide-and-conquer: divide Black employees against Black candidates so that they will not have to suffer the consequences of refusing to "Obey Jay" and be fired. Democratic Nassau Committee (Divide-N-Conquer- DNC)

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Also, on the ballot in the 2018 Gubernatorial election were Gov. ~~Andrew Cuomo and Taylor Raynor~~ ~~(now Assemblywoman Taylor Darling)~~, who was not eligible to vote, because she was not a registered voter. As such, she was a candidate, while Ms. Anaschka McClendon was denied the right to work, because she refused to "Obey Jay". (***see attachment #8***) a Candidate for the assembly

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L. **Franking**: The DNC uses USPS to send mail to candidates with time-sensitive requirements. The franking on the envelope displays two (2) separate dates. Thus, the candidate receives the "time-sensitive" information too late to comply with the request. (USPS – FEDERAL?)

When absentee ballots are sent to absentee voters, electioneering literature is enclosed in the ballot package(***see attachment #3***).

M. **Chattel: "I own Wayne"**… July 2007, two voters had a meeting with Jacobs in Jacobs' office. The purpose of the meeting was in regards to an issue in the Village of Hempstead, hoping to utilize Jacobs' leadership to resolve the matter.
Jacobs stated "I spent over $70,000 to get Wayne elected. Anyone who needs anything in Hempstead **MUST** come to me (Jacobs) because, "I OWN WAYNE". This meeting was in the presence of two (2) citizens. So, there are two people who, under oath, are willing to

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N. **Refusing to Allow Black Potential Candidates to submit legitimate petitions** with the required (more than) signatures. This is Jacobs' business as usual (and has implemented this voter-suppression tactic for decades. Jacobs then engages in public ridicule and bullying, warning any potential candidate, "You must Obey Jay" because it is Jacobs who chooses the candidate, not the Democratic Committee members.
Jacobs' ire is so egregious that an Executive Board Member of a renown Black Civil Rights Organization, stated to a potential Black candidate, "I cannot be seen with you. Someone might tell on me." (meaning Jacobs). "So, don't come to my home or be near me, because I am afraid someone might see me with you and tell Jay." This intimidated Democrat is an organizer, civic leader, and holds a meaningful position in a renown Black Civil Rights organization, yet is TERRIFIED of Jay.

Jacobs' bias and money, convinced a "Dark Horse", Black man to run a primary against the incumbent Black Mayor, to assure that the Black voters would divide their votes and the White male, Jacobs' Republican choice, would win the election. The Black incumbent Mayor did not win re-election. local Village

In order to do this, Jacobs forced a Black Nassau County Board of Elections employee to sign the necessary document (Wilson Pakula) so that the Republican could be (Jacobs' choice) could defeat the incumbent Black Mayor.

The County employee, two years after the incumbent was defeated, by splitting the Black vote, **PUBLICLY** apologized to the former Mayor whom Jacobs had removed. The employee's apology was long after Jacobs' scheme had succeeded. The BOE employee indicated that said employee was "tricked" into signing the document (Wilson Pakula) that removed the Mayor from the ballot, and vowed it would never happen again. The apology was accepted.

Nevertheless, in the next election, this same employee worked diligently to remove an incumbent Black Democratic candidate. **WE ALL NEED OUR JOBS.**

O. **The Nassau County Democratic Committee** has the potential to cause the **DEMISE** of the Democratic Party in Nassau County. The 2016 Presidential election is a good example. Hillary Clinton did not win Nassau County. Her only votes, (less than 2% of the total) came

primary against the Black male incumbent. Thus, the Black judicial Republican did not have access to the Democratic line, while White Republican candidates were on both lines (Republican and Democrat). The Black Judicial candidate did not have access as did his counterparts. He was not re-elected. (Jacobs' bigotry worked)

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H. **Media Complicity with Jacobs**: October 2017- May 2020 six(6) or seven(7) men were indicted for conspiracy. Only one White man was included in the group. The White man was separated from the group, leaving six(6) Black men to be indicted.

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In another case, a White politician pled guilty to embezzlement, and was sentenced as a felon. His sentence was six (6) months incarceration. Upon release, the felon was required to wear a "boot". The Long Island media (visual/written) did not report his confession or sentencing, but only reported about 2-3 minutes on one day of coverage. The six black men who were indicted (separate case, same time-frame), were "covered" daily, four to five times a day (visual/written).

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One of the six indicted, was found NOT GUILTY on all counts. The media never covered the acquittal of this Black man. As of this date, many people are not aware that this defendant was found **"NOT GUILTY"**, because the media failed/refused to report it. This is complying with the unusual control that Jacobs has over the local media: Selective reporting: White versus Black.

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I. **Plantation Politics**: Jay Jacobs divides Black voters against each other by using fear, threats, and terminating the employment of any Black county worker who refuses to work against Black candidates. Jay Jacobs controls **ALL** county agencies and these threats are **REAL**!! If a Black employee does not "Obey Jay", they will have no income (FIRED). This means, not only the loss of their income and ability to support their families, but the loss of health insurance, pension and any and all benefits that accompany a civil employee.

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J. **Civil Service County Employees**: Fear of losing employment, being fired, losing pension, health insurance benefits, etc. County employees are so intimidated that they whisper and quietly complain. They have real tangible fears. They acknowledge that they are Jay's chattel, and tremble in fear when there is an election, because if the Democrat does not win, they have protection, but are transferred to a lower-paying position. Pensions are based on the employee's salary and being placed in a lower-salary reduces their lifetime pension. This has a negative impact on their future ability to survive.

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Even partially disabled persons must "walk" petitions in pain (knee), so as not to displease Jacobs, or be fired.

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from the 18th A.D. 98% of Nassau County voters, voted for Donald Trump. Had **Jay Jacobs, Fred Brewington Esq., Melvin Boone (Kevin Boone?), and Regis Thompson Lawrence** succeeded in their 2011 lawsuit, Hillary would not have gotten those votes. Black voters are tired and leaving the Democratic Party of Nassau County. **WE CANNOT ALLOW THIS TO HAPPEN AGAIN!**

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P. **Anti-Semitism:** We, BVM, do not support or participate in any form of racism, whether verbal or active, regardless of one's perceived position of privilege. We abhor racism/bigotry.

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When Cuomo expressed his opposition to the potential pardon of Sheldon Silver, former Speaker NYS Assembly, Cuomo's response was disgusting. Silver was investigated by the Morland Commission, that Cuomo established with the premise to eradicate crooked politicians. Cuomo dismantled the commission in less than eighteen (18) months after it became very close to investigating the Executive Branch. Sheldon Silver made a mistake, but **NO ONE DIED!!**

It was ugly, mean, divisive, and could result in more acts of hate against people who are **perceived** to be different from the norm: Black, Asian, Immigrant, LGBTQ (***see attachment #2***).

Jacobs' Juneteenth Celebration on June 17, 2021 is comprised of a Black female Democrat, a Black male Democrat, and a White female Democrat. Jay's **choice** to celebrate Juneteenth is tantamount to having Simon Legre (Uncle Tom's Cabin) represent the introduction of the Emancipation Proclamation.

Q. **We, BVM, on behalf of all voters request a prompt, public exposure of these allegations.** Governor Cuomo, by appointing Jacobs as the State Chair, while obviously aware of Jacobs' illegal conduct, has endorsed these heinous acts committed by Jacobs. Perhaps this is the problem with Cuomo's tolerance of Jacobs.

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Obviously, Cuomo is aware of what Jacobs does to Black voters. He must know. **If** he knows, and condones Jacobs' illegal, hateful conduct, Cuomo must **resign. If** Cuomo does not know, then he **MUST BE IMPEACHED.**

There is no place in New York State (or in the United States) for RACISTS, BIGOTS or SELF-DESIGNATED PRIVILEDGED PERSONS.

REMOVE JACOBS FROM BOTH POSITIONS IMMEDIATELY!

Jacobs' knee is on our necks-**Please**, "Help Us to Breathe"-!

Respectfully submitted,

BVM

The People of Black Votes Matter (BVM)

copy

LAWSUIT MYLES VS JACOBS

No. 19-3373-cv

for Nov. 22, 2021 Now in Appellate Court

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

RUNNIE MYLES

Appellant,

-against-

JAY JACOBS, et al.

Appellees.

On Appeal from an Order of the
United States District Court for the Eastern District of New York

BRIEF OF APPELLANT

JONATHAN C. CLARKE
Law Offices of Clarke & Fellows
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Farmingdale, New York 11217
Telephone: 516-325-3889
Fax: 631-777-7310

all # 34

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PRELIMINARY STATEMENT

Plaintiff-Appellant Runnie Myles ("Mr. Myles" or "Plaintiff") appeals from a final judgment (Dkt. 54)[1] entered pursuant to a decision by the United States District Court for the Eastern District of New York (Azrack, J) dismissing all of Plaintiff's claims pursuant to Fed. R. Civ. P. 12(b)6 and 12(b)5.

JURISDICTIONAL STATEMENT

The court below had subject matter jurisdiction pursuant to 28 U.S.C. § 1331.

This Court has jurisdiction of this appeal pursuant to 28 U.S.C. § 1291. Final judgment was entered in the court below on October 18, 2019. (Dkt. 55). Plaintiff filed a timely notice of appeal on October 16, 2019. (Dkt. 57).

The appeal is from a final judgment that disposes of all Plaintiff's claims in this action against all Defendants.

---

[1] Plaintiff is appealing in *forma pauperis* and proceeding on the Original Record. Citing to the record will be "Dkt__".

STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

1) Whether Mr. Myles stated a cause of action under the First Amendment when he alleged that a county party chairman surreptitiously stripped his nomination; removed him from the official designating petition; worked in concert with County Defendants to prepare and prosecute an Order to Show Cause to remove him from the ballot; and ordered employees at the Nassau County Board of Elections, which is a governmental entity, to intimidate witnesses who were going to be called at a state court hearing to validate his designating petition all because of Mr. Myles' statements concerning large scale development projects in Long Beach.

2) Whether the Nassau County Democratic Chairman's actions were state action since he is vested with broad powers under N.Y. Elec. Law § 3–502 to appoint the head of Defendant Board of Elections and because he worked in concert with county officials to suppress Mr. Myles' candidacy because of Mr. Myles' statements about gentrification.

3) Whether Defendant Gugerty as Commissioner of the Board of Elections was a policymaker who could create municipal liability and whether there is a municipal policy of First Amendment retaliation for political purposes.

4) Whether Mr. Myles stated a claim under §1985 based on political animus.

5) Whether Defendant Jacobs and Defendant Gugerty adequately challenged service of process when they merely presented attorney affirmations that generally denied service and did not provide affidavits of Defendants denying service.

STATEMENT OF THE CASE

A. The Nature of the Case

Mr. Myles brought this action alleging violations of the First Amendment, due process and equal protection applicable to Defendants pursuant to 42 U.S.C. §§1983 and §1985. Mr. Myles only appeals denial of his First Amendment claims.

The Nassau County Democratic Committee "NCDC" nominated Mr. Myles as the NCDC's candidate for Long Beach City Council at a duly convened nominating convention. Defendant Jacobs who is the Chairman of the NCDC opposed Mr. Myles nomination because of statements Mr. Myles made against gentrification in the City of Long Beach.

Because of these statements against gentrification, Defendant Jacobs in secret removed Mr. Myles from the official Democratic designating petition. A designating petition is a petition on which a political party gathers signatures to have its candidate's name appear on a ballot.

Mr. Myles did not learn until sometime after the convention that Defendant Jacobs was circulating an official NCDC petition with his name removed, and a candidate who supported gentrification in Long Beach was substituted in his place.

Mr. Myles created his own designating petition and gathered signatures to force a primary election. After gathering the requisite signatures, Mr. Myles submitted his

designating petition to the Board of Elections.

Defendant Jacobs marshaled all the resources of the NCDC to challenge Mr. Myles' petition despite the fact that Mr. Myles was still the duly nominated candidate of the NCDC. Defendant Jacobs enlisted the attorneys for the NCDC to challenge Mr. Myles designating petition.

Defendant Jacobs ordered the Democratic employees of the Nassau County Board of Elections to intimidate the people who signed Mr. Myles' designating petition from testifying at the hearing to validate Mr. Myles' petition. Defendant Jacobs has a statutory right to appoint Democratic members of the Nassau County Board of Elections and, therefore, had control over those Democratic employees. Mr. Myles was forced to withdraw his petitions since Defendant Jacobs with the aid of NCDC resources and Nassau County Board of Election employees interfered with Mr. Myles' defense of his petition.

Mr. Myles filed the instant action seeking damages for constitutional violations. Mr. Myles did not file an action to review or in any way seek a remedy that would require this Court to get involved in the machinery of the state electoral process.

After the matter was fully briefed, the district court granted Defendants' motion to dismiss. (Dkt. 55). The lower court's decision is cursory with regard to

the First Amendment claims and seems to dismiss Mr. Myles First Amendment claims on the basis that he did not show racial animus and that his First Amendment claims are duplicative of a due process claim.

The lower court was silent with regard to the claims against Defendant Jacobs' actions. The rationale for disregarding Defendant Jacobs actions appears in a footnote in which the lower court indicated it would not consider the claims against Defendant Jacobs because he is a volunteer of the NCDC. (Dkt. 54 Footnote 4).

The lower court also found that Defendant Jacobs and Defendant Gugerty were not properly served despite the fact that neither of those Defendants submitted an affidavit denying service. The lower court did not hold a traverse hearing regarding service of process.

The Course of Proceedings and Disposition Below

Plaintiff commenced this litigation by filing a Complaint on November 3, 2017. (Dkt. 1). It was not until January 14, 2019, that the motion to dismiss on the matter was fully briefed. (Dkt. 47). Defendant Jacobs also moved for sanctions claiming this action was frivolous. *Id.* On May 6, 2019, Judge Azrack referred the motion to dismiss and the sanctions motion to Magistrate Lindsay. On September 17, 2019, Magistrate Lindsay issued a recommendation to dismiss Plaintiff's claims which was so ordered by Judge Azrack. (Dkt. 53).

On September 30, 2019, Magistrate Lindsay held a hearing with regard to

Defendant Jacobs' sanction motion where she denied Defendant Jacobs' request for sanctions. (Dkt. 56). On October 16, 2019, Plaintiff filed a Notice of Appeal. (Dkt. 57). On October 29, 2019, Plaintiff moved to proceed in *forma pauperis*. On December 6, 2019, Defendant Jacobs instead of appealing the denial of his sanctions motion or moving to renew and reargue made another sanctions motion. (Dkt. 59). Defendant Jacobs' sanctions motion is still pending.

On January 22, 2020, Judge Azrack denied Plaintiff's in *forma paupris* application. On February 19, 2020, plaintiff moved in this Court to proceed in *forma pauperis*. On May 20, 2020, this Court granted the application to proceed in *forma pauperis*.

STATEMENT OF FACTS

On May 31, 2017, Mr. Myles was nominated at a duly convened nominating convention by the entire Nassau County Democratic Committee. (Compl. ¶24)[4]. On or about June 16, 2017, Defendant Jacobs surreptitiously and unilaterally stripped the nomination of Mr. Myles and two other candidates who stood against gentrification in Long Beach. Defendant Jacobs then omitted Mr. Myles and the two (2) other Long Beach candidates from the Party's official designating petition sometime after the nominating convention. Defendant Jacobs actions were motivated by Mr. Myles' stance on

[4] Plaintiff's Complaint is at Docket Entry No.1 and will be cited in this brief as "Compl. ¶___".

gentrification in the City of Long Beach. (Compl. ¶14-17). When Mr. Myles learned Defendant Jacobs removed his name from the designating petition, Mr. Myles created his own designating petition; gathered the requisite signatures; and submitted the designating petition to the Board of Elections. (Compl. ¶27).

Despite being a governmental agency, the Board of Elections is a highly political organization divided into a Republican and Democratic half. The Board of Elections employs a bipartisan review of designating petitions. (Compl. ¶34). The Board of Election's Bipartisan committee found Mr. Myles' designating petition valid. Defendant Jacobs caused an Order to Show Cause to be filed in state court challenging the bipartisan finding and to remove Mr. Myles from the ballot claiming that the signatures on Mr. Myles' designating petition were not valid. (Compl. ¶30).

County party chairmen hold great influence over County Boards of Elections with the power to appoint patronage employees within the Board of Elections. Patronage Democratic employees of the Board of Elections whom Defendants Jacobs and Gugerty controlled worked in concert with the attorneys for the Nassau County Democratic Committee to aid in the creation and prosecution of Defendant Jacobs' Order to Show Cause. (Compl. ¶¶28-31). The Board of Elections supplied, in violation of Freedom of Information Law, the necessary documents to file an Order to Show Cause. (Compl. ¶30). Furthermore, Defendants Jacobs and Gugerty, ordered Democratic patronage employees at the Board of Elections to intimidate and prevent witnesses from testifying at the hearing on the Order to Show Cause by sending the patronage employees to harass and intimidate

individuals who signed Mr. Myles' designating petition. The signors of Mr. Myles' designating petition were mainly elderly African Americans from the North Park section of Long Beach. (Compl. ¶28).Mr. Myles withdrew from the race after he was unable to adequately defend his designating petition in state court because Defendants intimidated his witnesses from testifying about the validity of their signatures.

Mr. Myles brought suit under a number of legal theories, *inter alia*: First Amendment, Due Process, Equal Protection, Voting Rights Acts and various provisions of the New York State Constitution. Mr. Myles has withdrawn all but his First Amendment claims as applied through 42 U.S.C. §§1983 and 1985.

The Lower Court's Decision

The entirety of the lower Court's First Amendment analysis is the following:

> Similarly, Myles First Amendment claims lacks merit. Myles appears to be asserting that the defendants violated two different, albeit overlapping, rights, namely, his right to participate in the political process and his right to assemble for the advancement of a political belief. Nonetheless, the basis of both of these claims is indistinguishable from his due process and equal protection claims. Myles contends that the reason he was not placed on the nominating petition was because he had promised to fight against gentrification projects. Pl.'s Mem at 9. Myles claims that in an attempt to quash his First Amendment rights, Jacobs sent Daniel Lamparter, on behalf of the BOE, to the housing projects at Channel Park to intimidate signors of Myles' designating petition so that they would not testify on his behalf in the state court. Completely disregarding the fact that he also acknowledges that he voluntarily withdrew that petition because he was afraid that he would be indicted for fraud, Myles, nonetheless, contends that the defendants actions could not have been based on anything other than discriminatory intent. *Id.* The Court disagrees. Read as a whole, the complaint makes clear that the defendants' actions were driven by their desire to ensure that Harris Beach would be able to generate legal fees from the Comprehensive Plan and iStar because Harris Beach was a major donor to the Nassau County Democratic Party. In other words, the complaint itself compels the inference that the defendants would have gladly supported Myles had he not pledged to block the development. Thus, Myles has not substantiated his claims that the actions of

> the defendants were motivated by racial bias. Accordingly, Myles' First Amendment claim must also be dismissed. See Dkt 54.

Altogether, the lower court's First Amendment analysis is eleven (11) sentences long. Five (5) of those sentences deal with whether Mr. Myles pled racial bias. Therefore, nearly half of the lower court's First Amendment analysis is based on a requirement that does not exist. The lower court did not cite to any First Amendment precedent. However, the lower court seems to be referencing *Rivera-Powell v. New York City Bd. of Elections*, 470 F.3d 458, 469 (2d Cir. 2006).

The lower court never directly addressed the allegations surrounding Defendant Jacobs in this matter. However, the lower court reasoned in a footnote that the claims against Defendant Jacobs were not viable because he is not a state actor, "Although the Court need not address the claims against Jacobs, it warrants mention that Jacobs is a volunteer chairman of the NCDC. He was not a state actor." (Dkt. 54 at pg. 16 footnote 4).

The lower court did rule as to the § 1985 claim. However, the lower court did not take into consideration that this Circuit has not made a definitive ruling on whether racial animus is required in § 1985 claims.

With regard to the service of process, the lower court reversed the burden of proof on service of process. The lower court found that, despite the fact that no Defendant supplied an affidavit rebutting service, that Defendants proved that service was not effectuated essentially applying the same standard to service of process as is required in vacating a default. The lower court also found that even if Defendant Jacobs was served at the

Nassau County Democratic Committee Headquarters, it was not proper to serve the Nassau County Democratic Committee Chairman at the Nassau County Democratic Committee Headquarters. The court never held a traverse hearing on this matter.

SUMMARY OF THE ARGUMENT

The lower court misconstrued the nature of Mr. Myles' First Amendment claims. The lower court treated Mr. Myles First Amendment retaliation claim as identical to a due process claim. Although the lower court does not cite to what it believed was the controlling case law on this matter, the lower court seems to invoke *Rivera-Powell v. New York City Bd. of Elections*, 470 F.3d 458 (2d Cir. 2006).

Rivera-Powell, stands for the proposition that an aggrieved candidate cannot receive federal court review of a "garden variety" election dispute simply by appending a First Amendment claim to a an action to validate a designating petition. The policy concerns are obvious behind *Rivera-Powell*. New York Election Law governs the validity of designating petitions and state courts regularly hear article 78 proceedings concerning the validity of designating petitions. It would open the floodgates of litigation if an aggrieved candidate could file in federal court when state courts are designed for petition challenges.

Appellant agrees with the policy concerns of *Rivera-Powell*, but there are limits to its reach. *Rivera-Powell* is applicable to disputes concerning administrative decisions of Boards of Elections or the process provided in state courts with regard to validity of designating petitions—so called "garden variety" election disputes.

Rivera-Powell is not applicable to intentional interference with the electoral process. Furthermore, *Rivera-Powell* is a discretionary doctrine. *Rivera-Powell* essentially prohibits a federal court from involving itself in the machinery of an active election

dispute, not a cause of action such as Mr. Myles alleges which is for damages concerning retaliatory action taken against him for speaking out against gentrification. The lower court should have applied a First Amendment retaliation analysis.

The lower court further erred in that it completely disregarded Defendant Jacobs actions. The lower court never discussed the allegations against Defendant Jacobs with regard to his unilateral actions after the nominating convention and marsheling the resources of the NCDC against its own candidate. Regardless of *Rivera-Powell's* discretionary concerns, *Rivera-Powell* is not applicable to disputes regarding nominating conventions.

The proper standard for nominating conventions comes from the *N.Y. State Bd. of Elections v. López Torres*, 552 U.S. 196 (2008) and its progeny. *López Torres* stands for the proposition that this Court will not get involved in the process of a party nomination. However, Mr. Myles is not claiming he was treated unfairly at the party's nominating convention. He was nominated at the convention after all. He is claiming that Defendant Jacobs violated his First Amendment rights when he marshaled the resources of the NCDC against its own candidate after he was actually nominated. This is an issue of first impression for this Court.

The lower court never addressed whether Defendant Jacobs is considered a state actor which is relevant for Defendant Jacobs actions in coordination with the County Defendants. Defendant Jacobs as a chairman of the NCDC is endowed with statutory rights to appoint governmental employees in the county board of elections. This Court

has found this to be state action in criminal contexts. The lower court never addressed this issue.

The lower court denied that Plaintiff pled municipal liability despite the fact that Plaintiff alleges municipal liability in detail. Plaintiff further shows that these very same Defendants have a long history of committing First Amendment violations.

Lastly, the lower court improperly reversed the burden of proof on service of process issues applying a standard imported from FRCP 60(b)5 and not 12(b)5. Plaintiff supplied an affidavit of a process server. Defendants did not supply a sworn affidavit rebutting service. Even if Plaintiff's affidavit was defective, the lower court was still required to hold a traverse hearing which it did not.

STANDARD OF REVIEW

This Court reviews the granting of a motion to dismiss on the pleadings *de novo*. See *Karedes v. Ackerley Group, Inc.*, 423 F.3d 107, 113 (2d Cir. 2005) ("We apply a *de novo* standard of review to the grant of a motion to dismiss on the pleadings, accepting as true the complaint's factual allegations and drawing all inferences in the plaintiff's favor."). Furthermore, this Court reviews *de novo* a district court's decision to dismiss a complaint for lack of personal jurisdiction. See *Chloé v. Queen Bee of Beverly Hills, LLC*, 616 F.3d 158, 163 (2d Cir.2010).

ARGUMENT

I. First Amendment Claims

The most substantial error the lower court committed was finding Mr. Myles' First Amendment claim was duplicative of a due process claim. The lower court reasoned,

> Myles appears to be asserting that the defendants violated two different, albeit overlapping, rights, namely, his right to participate in the political process and his right to assemble for the advancement of a political belief. Nonetheless, the basis for both of these claims is indistinguishable from his due process and equal protection claims. (Dkt. 54 pgs. 17-18)

The lower court does not cite to, or reference, the First Amendment precedent from which it derives this analysis. However, the lower court seems to be basing its decision on the leading case on election disputes in this Circuit, *Rivera-Powell v. New York City Bd. of Elections*, 470 F.3d 458, 469 (2d Cir. 2006). In *Rivera-Powell*, the Plaintiff initiated an Article 78 proceeding in state court but abandoned the action to file in federal district court, asking the federal court to review a Board of Elections' decision on her designating petition.

The only difference between the state court action and the federal action was the federal action had a First Amendment claim appended. This Court held that "...when a candidate raises a First Amendment challenge to his or her removal from the ballot based on the allegedly unauthorized application of an admittedly valid restriction, the state has satisfied the First Amendment if it has provided due process." *Id.*

The real point of *Rivera-Powell* is an aggrieved candidate cannot elevate every "garden variety"[2] decision the Board of Elections makes concerning designating petitions into a constitutional question simply by adding a First Amendment claim. The Court explained that a "contrary holding would permit any plaintiff to obtain federal court review of even the most mundane election dispute merely by adding a First Amendment claim to his or her due process claim." *Id.*

Rivera-Powell has been cited in over sixteen (16) decisions with regard to election disputes, and each time courts invoke *Rivera-Powell*, it has been fatal to Plaintiffs' claims.[3] It is important to note that in those sixteen (16) cases, a federal district court was either asked to provide some form of relief that would be outcome determinative in an election and thereby raise Federalism concerns, or the court was asked to review "Garden Variety" Board of Election's decisions. Even before *Rivera-Powell*, this Court was reluctant to entertain such election disputes. *Shannon v. Jacobwitz*, 394 F.3d 90, 96 (2d

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[2] This Court considers the following to be "garden variety" election disputes: malfunctioning of voting machines; human error resulting in miscounting of votes and delay in arrival of voting machines; allegedly inadequate state response to illegal cross-over voting; mechanical and human error in counting votes; technical deficiency's in printing ballots, mistakenly allowing non-party members to vote in a congressional primary, and arbitrary rejection of ten (10) ballots *Shannon v. Jacobwitz*, 394 F.3d 90, 96 (2d Cir. 2005).

[3] *Murawski v. Pataki*, 514 F.Supp.2d 577 (S.D.N.Y. 2007); *Douglas v. Niagara Cnty. Bd. of Elections*, No. 07-609A, 2007 US. Dist. LEXIS 76693 (W.D.N.Y., October 16, 2007); *Libertarian Party of Conn. V. Bysiewicz*, No. 08-1513, 2008 U.S. Dist. Lexis 97970 (d. Ct. December 2, 2008); *Minnus v. Bd. of Elections*, No.10-3918, 2010 U.S. Dist. LEXIS 91969 (E.D.N.Y. September 3, 2010); *McMillan v. N.Y. State Bd. of Elections*, No. 10-2502, 2010 U.S. Dist. LEXIS 109894 (E.D.N.Y. October 15, 2010); *Leroy v. N.Y.C. Bd. of Elections*, 793 F. Supp.2d 533 (E.D.N.Y. 2011); *Marchant v. N.Y.C. Bd. of Elections*, 815 F.Supp.2d 568 (E.D.N.Y. 2011); *Thomas v. N.Y.C. Bd. of Elections*, 898 F.Supp. 2d 594 (S.D.N.Y. 2012);; *Dekom v. Nassau County*, No. 12-3473, 2013 U.S. Dist. LEXIS 133616 (E.D.N.Y. 2013) *aff'd Dekom v. Nassau County*, 595 Fed. Appx. 12 (2d Cir. 2014); *Tiraco v. N.Y. State Bd. of Elections*, 963 F. Supp. 2d 184 (E.D.N.Y 2013); *Iwachiw v. N.Y.C. Bd. of Elections*, No. 12-3520, 2013 U.S. Dist. LEXIS 87125 (S.D.N.Y. 2013); *Westchester County Ind. Party v. Astorino*, 137 F. Supp.3d 586 (S.D.N.Y. 2015) *Sloan v. Michel*, No. 15-6963, 2016 U.S. Dist. LEXIS 45276 (S.D.N.Y. April 4, 2016); *Martins v. Pidot*, 663 F.App'x 14 (2d Cir. 2016)(summary order); *Bal v. Manhattan Democratic Party* (S.D.N.Y. 2018).

Cir. 2005). In *Shannon*, this Court found that "Principles of Federalism limit the power of federal courts to intervene in state elections..." *Id.*

However, Federalism is less of a concern when a Plaintiff is seeking damages and not an equitable remedy that determines the outcome of an election. *See*, *Faulkner v. Sadowski*, 486 F. Supp. 1261, 1264 (S.D.N.Y. 1980) (holding that plaintiff had a viable First Amendment claim for damages when he alleged Board of Elections misled a state court as to the number of signatures required to gain access to the ballot). Furthermore, federal district courts will step in when a Plaintiff alleges intentional acts, despite Federalism concerns. *Id.* See also, *Powell v. Power*, 436 F.2d 84, 88 (2d Cir. 1970).

To further flesh out these distinctions, it is helpful to take a closer look at *Faulkner* and this Court's recent decision in *Martins v. Pidot*, 663 F. App'x 14,17 (2d Cir. 2016)(Summary Order). In *Faulkner*, Plaintiff was denied access to the ballot when the Board of Elections indicated that three-hundred fourteen (314) signatures were necessary to obtain ballot access when in fact two-hundred seventy eight (278) signatures were required. Plaintiff had more than two-hundred seventy eight (278) valid signatures but less than three-hundred fourteen (314).

The fact that the Board of Elections misstated the signature requirement was not discovered until after the New York State Court of Appeals upheld the invalidation of Plaintiff's designating petition based on the Board of Elections' erroneous signature requirement. Plaintiff brought suit in federal court seeking damages and not injunctive relief. The court denied defendants' summary judgment motion on the bases that

"Precisely what representations the Board made during the parties' state court proceedings remains a material fact in issue." *Id.*

In *Pidot*, there are similar facts as *Faulkner* but with a different result. In *Pidot*, Plaintiff's designating petition was challenged and eventually found to be valid by New York State Court of Appeals four (4) days before the primary date. The State court would still not compel a primary because the Board of Elections indicated that four (4) days was not enough time to prepare for a primary. Plaintiff sought injunctive relief in federal district court to compel a new primary date. The district court granted Plaintiff's request. However, this Court reversed the district court, finding that under *Rivera-Powell* there was no burden on Plaintiff's First Amendment rights since he was provided a state court hearing.

Faulkner and *Pidot* are very similar factually. Both Plaintiffs had enough signatures to obtain ballot access, and they were still denied access to the ballot. In *Faulkner*, the Plaintiff's claim was viable, but in *Pidot* it was not. The key issue that separate these cases is that in *Faulkner*, Plaintiff was seeking damages while in *Pidot*, Plaintiff was seeking equitable relief in the form of this Court compelling an election.

Although not stated in the opinions in these cases, it is clear that injunctive relief requires a court getting involved in the machinery of elections whereas damages does not affect an election. This is not to say that courts will not get involved in elections. *Bush v. Gore*, 531 U.S. 98 (2000). The point is courts will not get involved for merely "garden

variety" election disputes, especially ones that are outcome determinative of elections. *Shannon v. Jacobwitz*, 394 F.3d 90, 96 (2d Cir. 2005).

This case is not a "garden variety" election dispute. *Rivera-Powell* is not applicable to the instant case for three (3) reasons. First, Mr. Myles is not asking this Court to insert itself in an election. Mr. Myles is not asking a federal court to review his designating petition and compel his name be placed on the ballot in an upcoming election or for any relief that would affect any election. Second, he is not challenging a Board of Elections' decision concerning his designating petition or any of the list of issues this Court finds "garden variety". See, footnote 2 *supra*. Rather, he is alleging purposeful and coordinated actions to deny him access to the ballot in retaliation for his stance on gentrification. Third, Mr. Myles' First Amendment claim is not the same as a due process claim.

This third point warrants some elaboration. Mr. Myles' stance on development and whether Defendants retaliated against him because of that stance simply is not an issue that could be addressed during the petition challenge that Defendant Jacobs filed. Therefore, this is not an issue regarding adequate process on the state court level. Mr. Myles only remedy for his First Amendment claims is a plenary proceeding such as the instant case, not as a defense in a summary Article 78 proceeding that Defendant Jacobs filed.

Similarly, Mr. Myles' claims against Defendant Jacobs' unilateral revocation of his nomination could not have been raised in the Article 78 proceeding either.[4] To the extent that *Rivera-Powell* is applicable to nominating conventions, Mr. Myles claims are equally outside of *Rivera-Powell* in that respect as well. Mr. Myles is not complaining of lack of process at the convention, or that the convention results were wrong. He agrees with the results of the convention. He was nominated after all. There simply was no legal device by which Mr. Myles could have prevented Defendant Jacobs from marshaling the resources of the NCDC against its own nominee. The only thing he could do is bring this suit after the violation.

The policy implications of *Rivera-Powell* and its progeny would imply that this Court's purview ends at the thresholds of the closed doors of smoke-filled backrooms of convention centers. Within those confines, it is up to party rank and file to make their voices heard. The issues of how Parties nominate their candidates not only implicates Federalism but the Party's First Amendment rights. The Supreme Court is emphatic and clear on this point that political Parties are afforded enormous First Amendment rights as to their internal affairs. *California Democratic Party v. Jones*, 530 U.S. 567 (2000).

Nevertheless, when party leaders step out from the backrooms of convention centers and intentionally interfere with the democratic process, this Court has full

[4] Whether a political party chairman's unilateral and surreptitious revocation of a nomination after a convention is violative of the First Amendment seems to be an issue of first impression for this Court. This aspect of Mr. Myles claim requires an analysis of whether state action was implicated concerning the rights of a nominated candidate which goes under the *Lopez-Torres* line of cases. Those issues will be argued in the section on state action in State action or not, at the very least, it is especially odd to be nominated by the NCDC and then have the attorneys for the NCDC attack one's nomination.

authority to step in. If *Rivera-Powell* is extend to block suits based on intentional and systematic coordination of party leaders with government officials to stop a candidate from accessing the ballot simply because the party leader does not like the candidate's views on gentrification, then there truly is no constitutional limit to what party officials can do. This Court should not find that *Rivera-Powell* creates a blank check for party leaders to subvert the electoral process with impunity. "Constitutional rights would be of little value if they could be thus indirectly denied." *Smith v. Allwright*, 321 U. S. 649 (1944).

Rather, this Court should apply a First Amendment retaliation analysis, in which, one must allege: 1) he/she has an interest protected by the First Amendment; 2) Defendants' actions were motivated or substantially caused by his exercise of that right; and 3) there was a resultant and actual chilling of his exercise of the constitutional right. See *Curley v. Vill. Of Suffern*, 268 F.3d 65, 73 (2d Cir. 2001).

Mr. Myles meets all the elements listed above:

1) He spoke out against development. Political speech is protected under the First Amendment. "The First Amendment has its fullest and most urgent application to speech uttered during a campaign for political office." *Marin v. Town of Southeast,* 136 F. Supp. 3d 548 (S.D.N.Y. 2015) citing *Eu v. San Francisco County Democratic Cent. Comm.*, 489 U.S. 214 (1989). Furthermore, Mr. Myles' candidacy is an activity protected under the First Amendment. *Anderson v. Celebrezze*, 460 U.S. 780, 787-788 (1983); see also *Dushanbe v. Leeds Hose Co. #1 Inc.,* 6 F. Supp. 3d 205 (N.D.N.Y 2014).

2) Defendants were motivated by Mr. Myles' stance on gentrification to block his access to the ballot. Even the lower court concedes the complaint alleges that this is deDendants' motivating factor, "...the complaint itself compels the inference that the Defendants would have gladly supported Myles had he not pledged to block the development." (Dkt. 54 pg. 18).

3) Mr. Myles was denied access to the ballot. The denial of access to the ballot is a twofold harm. First it is a harm in itself. *Dushanbe v. Leeds Hose Co. #1 Inc.*, 6 F. Supp. 3d 205 (N.D.N.Y 2014) (holding a candidate's failure to identify specific speech is not fatal to a First Amendment claim because "mere candidacy... is protected by the First Amendment.") Likewise, denying Mr. Myles access to the ballot also prevents Mr. Myles from bringing his views concerning gentrification to the electorate, effectively chilling his speech. *Lerman v. Board of Elections in City of New York* 232 F.3d 135 (2d Cir. 2000).

It should be noted that it would be an error to argue that Mr. Myles could still speak about gentrification, just not as a candidate; and, therefore there is no injury. This is an error because though "other means to disseminate ideas might be available" to an aggrieved Plaintiff, that does not take his burdened speech outside the bounds of First Amendment protection. *Id.*

Perhaps because the lower court confused what analysis to apply in this case, it appended an odd requirement that Mr. Myles show racial bias in his First amendment claim. The lower court found:

> Thus, Myles has not substantiated his claims that the actions of the defendants were motivated by racial bias. Accordingly, Myles' First Amendment claim must also be dismissed." (Dkt. 54 pg. 18).

The lower court argues that despite the fact that defendants blocked Mr. Myles from gaining access to the ballot because of his stance on development, Mr. Myles does not have a First Amendment claim because defendants were not motivated by racial bias.

Even if it was true that defendants were not motivated by racial bias, Mr. Myles still has a First Amendment claim. This is because there simply is no racial bias requirement in a First Amendment claim. The fact that the lower court added racial bias as an element in its First Amendment analysis is no small matter. Altogether, the lower court's First Amendment analysis is eleven (11) sentences long.[5] Five (5) of those sentences deal with whether Mr. Myles pled racial bias. Therefore, nearly half of the lower court's First Amendment analysis is based on a requirement that does not exist. As argued above, all

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[5] This constitutes the entirety of the lower court's First Amendment analysis: "Similarly, Myles First Amendment claims lacks merit. Myles appears to be asserting that the defendants violated two different, albeit overlapping, rights, namely, his right to participate in the political process and his right to assemble for the advancement of a political belief. Nonetheless, the basis of both of these claims is indistinguishable from his due process and equal protection claims. Myles contends that the reason he was not placed on the nominating petition was because he had promised to fight against gentrification projects. Pl.'s Mem at 9. Myles claims that in an attempt to quash his First Amendment rights, Jacobs sent Daniel Lamparter, on behalf of the BOE, to the housing projects at Channel Park to intimidate signors of Myles' designating petition so that they would not testify on his behalf in the state court. Completely disregarding the fact that he also acknowledges that he voluntarily withdrew that petition because he was afraid that he would be indicted for fraud, Myles, nonetheless, contends that the defendants actions could not have been based on anything other than discriminatory intent. *Id.* The Court disagrees. Read as a whole, the complaint makes clear that the defendants' actions were driven by their desire to ensure that Harris Beach would be able to generate legal fees from the Comprehensive Plan and iStar because Harris Beach was a major donor to the Nassau County Democratic Party. In other words, the complaint itself compels the inference that the defendants would have gladly supported Myles had he not pledged to block the development. Thus, Myles has not substantiated his claims that the actions of the defendants were motivated by racial bias. Accordingly, Myles' First Amendment claim must also be dismissed." (Dkt. 54 pgs. 17-18).

that matters is Mr. Myles took a political stance and was retaliated against because of that stance.

The remainder of the First Amendment analysis is equally flawed. Besides conflating distinct legal theories and adding requirements of racial bias, there are other subtle flaws in the lower court's argument. The lower court argues that Mr. Myles is responsible for his inability to gain access to the ballot because he withdrew from the race after Defendants intimidated his witnesses. Nevertheless, Mr. Myles does not surrender his First Amendment rights because he succumbs to illegitimate state pressure to withdraw from the race; he only need show "ordinary firmness". *Davis v. Goord*, 320 F.3d 346, 352-53 (2d Cir. 2003). This is especially on a 12(b)(6) where the issue of "ordinary firmness" is not appropriate consideration.

Also, the lower court hypothesizes that, "the Defendants would have 'gladly' supported Myles had he not pledged to block the development". *Id.* Certainly, there are many scenarios that could be hypothesized where Defendants "would have gladly supported" Mr. Myles. The fact is the defendants did not support Mr. Myles and did everything they could to suppress his candidacy. That is the entire point of Mr. Myles' claim. This type of hypothetical reasoning to defeat Mr. Myles claim is the opposite of the lower court's requirement to draw inferences in his favor on a 12(b)(6) motion. Not only did the lower court construe allegations against Mr. Myles, it went a step further to create hypotheticals and construe those too against Mr. Myles.

2) State Action

The lower court's decision did not substantially address whether Defendant Jacobs' actions constituted state action, perhaps that is why the lower court was largely silent as to the claims against Defendant Jacobs. The lower court merely indicated in a footnote, "Although the Court need not address the claims against Jacobs, it warrants mention that Jacobs is a volunteer chairman of the NCDC. He was not a state actor." (Dkt. 54 pg. 16 footnote 4). That footnote constitutes the extent of the court's reasoning on the issue of state action.

However, the lower court's contention is inaccurate since a county chairman of a political party is an elected office pursuant to Public Officers law and not a volunteer. *See*, Public Officers Law Article 4. 73k(iii). Defendant Jacobs may voluntarily be the chairmen, but that does not make him a volunteer. Second, The lower court's portrayal of Defendant Jacobs as a volunteer minimizes the power of a county party chair and is in contradistinction to what this Court has previously found.

This Court has found, the office of county chairman for a political party to be a powerful position that enjoys both robust statutory rights and *de facto* influence over governmental entities. *United States. v. Margiotta*, 688 F.2d 108 (2d Cir. 1982). Most importantly for this case, as this Court in *Margiotta* found, New York Election Law empowers county chairs to exercise traditionally governmental functions by giving county chairs the power of appointing governmental employees. See N.Y. Elec. Law § 3–502 which provides:

> At least thirty days before the first day of January of any year in which a commissioner of elections is to be appointed, or within thirty days after a vacancy occurs in the office of commissioner of elections, the chairman of the appropriate party county committee shall file with the clerk of the county legislative body a certificate naming the person whom he is recommending for appointment as such commissioner of elections. The certificate shall be in the form and contain the information prescribed by the state board of elections.

The ability to appoint patronage employees in the Board of Elections gave Defendant Jacobs control over the County agency that interfered with Mr. Myles' rights to candidacy.

In *Margiotta*, this Court found that a county chairman's ability to nominate Board of Elections Commissioners was so influential over the apparatus of county government that the power of appointment made the chairman amenable to criminal action for activities not even related to the Board of Elections.

If this power to appoint is so powerful that it can make a chairman criminally liable for unrelated acts, clearly that same power to appoint commissioners is highly relevant to the case at hand, especially considering that this power to appoint is what allowed Defendant Jacobs to exert control over the governmental entity that thwarted Mr. Myles defense of his designating petition.

Even if this Court is unwilling to extend *Margiotta* out of the criminal realm, this Court has previously found state action in civil rights cases when a county party chairman conspired with public officials. See *Toussie v. Powel*, 323 F.3d 178 (2d Cir. 2003).

In *Toussie*, the chairman of the Republican County Committee conspired with the Brookhaven Board of Zoning Appeals to rescind a permit allowing *Toussie* to build a

house on a parcel of land he owned. This Court found that the Chairman of the County Party was liable under §1983 for those acts in coordination with the Zoning Board.

Given all of this, it was state action when Defendant Jacobs coordinated with County Defendant Gugerty to prepare and prosecute an Order to Show Cause in state court. This is clear from his power of appointment as this Court in *Margiotta* points out, and it is clear from *Toussie* that this Court recognizes state action when county party chairman coordinated with governmental entities to deprive individuals of their constitutional rights. Therefore, it was an error for the lower court to neglect Defendant Jacobs' actions in coordination with the County Defendants.

Perhaps less clear is whether Defendant Jacobs' actions constituted state action when he unilaterally and in secret revoked Mr. Myles nomination. The lower court did not address this issue at all in its decision, which is a further error. This is because federal court intervention is necessary in political party nominations where derogation of the civil rights of party adherents is at stake. *Smith v. Allwright*, 321 U. S. 649 (1944). The way a party nominates its candidates is activity within the realm of public electoral functions. *Kehoe v. Casadei*, No. 6:11-CV-0408, 2011 WL 5008044 (N.D.N.Y. Oct. 20, 2011); see also *Yassky v. Kings County Democratic County Committee,* 259 F. Supp. 2d 210, 216 (E.D.N.Y. 2003)(when the state grants political parties the right to nominate candidates and then gives those nominees special access to the ballot, the parties' procedures constitute state action even where race is not involved). *Jacobson v. Kings County Democratic County Committee* , No. 18-3280 (2d Cir. 2019)(Summary Order). Even if

this Court found that the nominating procedure was purely private activity, Defendant Jacobs' actions after the nomination are linked to ballot access and are state action. See *N.Y. State Bd. of Elections v. López Torres*, 552 U.S. 196 (2008).

3. Municipal Liability

The lower court indicated that the complaint is "devoid of any allegations" that would establish municipal liability. (Dkt. 54 at pg. 21). However, even a cursory reading of the complaint shows that Mr. Myles clearly alleged municipal liability under *Pembaur v. City of Cincinnati*, 475 U.S. 469,477-481 (1986).

If the decision to adopt a particular course of action is directed by those who establish governmental policy, the municipality is equally responsible whether that action is to be taken only once or to be taken repeatedly. *Id.* To be actionable under § 1983, a municipal policy which causes the alleged violation must be one made by a "decision maker who possesses final authority to establish municipal policy with respect to the action ordered." *Id.* Furthermore, Board of Elections Commissioners "exert final policymaking authority". *Lynch v. N.Y.C. Board of Elections*, No. 13-CV-04499 (E.D.N.Y. June 30, 2014).

First of all, Defendant Gugerty as Commissioner of the Board of Elections is a policymaker. *Id.* Second, Mr. Myles alleges Defendant Gugerty gave the orders that led to the constitutional violations. (Compl ¶28).The most significant allegations in this complaint are of Board of Elections employees harassing and intimidating witness under

the direction of Defendants Gugerty and Jacobs to interfere with the state court proceeding.

> After filing their Designating Petition with the Nassau County Board of Elections, Defendant Jay Jacobs, through Defendant, Dave Gugerty, ordered Defendant Employees of the Nassau County Board of Elections, specifically Daniel Lamparter as well as other unknown Defendant Employees, to go to the homes of the people who signed Plaintiff's Petition in North Park on work hours over a period of days on or around August 2017. Most of the people who signed the petitions were elderly, minority and or African American individuals who lived at Channel Park Homes and 225 West Park Ave. Defendant employees harassed the elderly and minority individuals and attempted to coerce them into admitting that their signatures were forged. (Compl ¶28).

Furthermore, even before making this allegation, the complaint points out that these actions amount to a custom and policy traceable to policymakers,

> ...The Actions of the Defendant Nassau County Board of Elections employees complained of herein were done as part of the custom, practice, usage, regulation and/or at the direction of the Defendants, Nassau County Board of Elections, under the direction of Defendants, Dave Gugerty and Jay Jacobs. (Compl ¶11).

Mr. Myles latter in his complaint clarifies what this allegation of custom and practice means for the instant case,

> Defendant Employees, acting through the Defendants, Dave Gugerty and Jay Jacobs, had actual and/or *de facto* policies, practices, customs and/or usages by using Defendant Board of Elections and Defendant Employees to do the legal work for private entities such as Harris Beach PLLLC., for political ends *to wit* suppressing African American minority candidates from participating in the political process. (Compl ¶ 36).

Granted this is not the most eloquent of all allegations, but the gist of this allegation is that county party chairmen exert *de facto* control over Nassau County government, and

Defendant Jacobs and Gugerty used that *de facto* control to achieve political ends in a way that was violative of Mr. Myles' constitutional rights all of which amounts to a custom and policy.

Mr. Myles can also show municipal liability generally. To prevail, a Plaintiff must identify the existence of a municipal policy or practice that caused the alleged constitutional violation. *Monell v. Dep't of Soc. Servs. of City of N.Y.*, 436 U.S. 658, 694-95, 98 S.Ct. 2018, 56 L.Ed.2d 611 (1978). A municipality can he held liable for a custom even though "such a custom has not received formal approval through the official decision-making channels." *Id.*

To prove a municipal liability apart from policymaker liability, Plaintiff must first demonstrate "the existence of a municipal policy or custom in order to show that the municipality took some action that caused his injuries beyond merely employing the misbehaving officer." *Vippolis v. Village of Haverstraw*, 768 F.2d 40, 44 (2d Cir. 1985). And, "second, the Plaintiff must establish a causal connection—an `affirmative link'—between the policy and the deprivation of his constitutional rights." *Id.* Furthermore, Prior lawsuits can be used to show a custom and policy. *Fiacco v. Rensselaer*, 783 F.2d 319 (2d Cir. 1986).

This lawsuit is not the first time that these Defendants have been alleged to commit retaliatory actions against individuals exercising their First Amendment rights. The following court actions demonstrate a pervasive suppression of individuals First Amendment rights for political gain:

In *Southampton Day Camp Realty, LLC v. Gormon*, 118 A.D.3d 976, 990 N.Y.S.2d 30 (2014), Defendant Jacobs used the NCDC attorneys at Harris Beach to bring a lawsuit to intimidate civic organizations who spoke out against development projects. Defendant Jacobs' NCDC attorneys at Harris Beach were sanctioned for commencing a SLAPP suit against a civic organization in violation of New York Civil Rights Law 70-a.

In *Butler v. Jacobs et al*, 2:07-cv-01472 (DRH)(ARL), Garry at that time was not yet a Partner in Harris Beach but a patronage employee at Nassau County's OTB. In *Butler*, Defendant Jacobs ordered Garry to fire an employee at OTB because she was not campaigning for Democratic Candidates in violation of her First Amendment rights.

In *Williams v. County of Nassau*, 684 F. Supp. 2d 268 (E.D.N.Y 2010), two (2) Plaintiffs exposed that the county was diverting block grant money to create patronage positions in the county. At that time, Defendant Gugerty was not the commissioner of the Board of Elections, but he was commissioner of the Civil Service Board. Defendant Gugerty was instrumental in firing Plaintiffs in that case for exposing county misconduct.

In *Morgenstern v. County of Nassau*, No. 04-cv-58 (E.D.N.Y. April 26, 2010), Plaintiff pointed out that Nassau County employees were improperly using county resources for NCDC political fundraising. Morgenstern was then fired as a result of her whistleblowing.

In *People v. Moldando*, 2019 Slip. Op. 29078 (1st Dist. 2019), an employee of the Nassau County Board of Elections was indicted for interfering with the primary election

for Legislator. This election was during the same election cycle that Mr. Myles sought to get on the ballot.

It is almost cliché that government in New York State, and Nassau County in particular, is inundated with career political appointees and politicians who misuse government. It cannot be stressed enough that Mr. Myles is not asking the Court to be bogged down in questions concerning the legitimacy of Nassau County's entrenched political patronage system and pay to play politics. That is a purely political consideration, and the only court that can adjudicate that is the court of public opinion through the voters of Nassau County.

However, once these political appointees and party leaders use the apparatus of government to violate citizens' civil rights, this court can weigh in on that limited question of whether it amounts to a custom and policy. The above referenced cases show that not only have these First Amendment retaliation issues repeated, but these same Defendants are repeat players. Their actions amount to a custom and policy.

4. Mr. Myles has a viable claim under 42 U.S.C. §1985

i) 42 U.S.C. §1985 (2)

The lower court never decided on, and Defendants never moved as to Section §1985 (2) claims which make it unlawful for two or more persons to obstruct the course of justice in state courts. *Keeting v. Carey,* 706 F.2d 377 (2d Cir. 1983). Defendant Jacobs conspired with the County Defendants to interfere with the a state court proceeding. This

issue was never addressed by the lower court. If for no other reason, this case should be remanded for further proceedings since this matter was not litigated.

ii) 42 U.S.C. §1985 (3)

The lower court did rule as to the § 1985(3) claim. However, the lower court did not take into consideration that this Circuit has not made a definitive ruling on whether racial animus is required in § 1985(3) claims. The Second Circuit has never overruled its holding that racial animus is not a requirement in a § 1985(3) claims. See *Keeting v. Carey,* 706 F.2d 377 (2d Cir. 1983). However, since *Keeting*, the Supreme Court has called into question if political animus is sufficient to be the basis of a § 1985 (3) claims. See *United Bhd. Of Joiners and Carpenters of Am. v. Scott*, 463 U.S. 825, 836 (1983). Some Circuits after *Scott* have held that there is a racial animus component, and some circuits have held that claims based on political animus are actionable. See, *Is it Really All about Race: Section 1985 (3) Political Conspiracies in the Second Circuit and Beyond*, L. Pinzow, Forham L. Rev., 2014. The Second Circuit since *Scott* has not issued a final determination on the matter. *Gleeson v. McBride*, 869 F. 2d 688 (2d Cir. 1989).

Furthermore, the lower court was wrong concerning the pleading standard in §1985 claims. See *Ciambrello v. County of Nassau*, 292 F.3d 307, 324-25 (2d Cir.2002); see also, *Delaney v. City of Albany*, (N.D.N.Y. 2019) citing to *Boykin v. KeyCorp*, 521 F.3d 202, 2008 WL 817111, 22 (2d Cir. Mar. 27, 2008).

LEAVE TO AMEND

Lastly, if Mr. Myles' complaint is deficient in any way, the lower court should have granted an opportunity to amend the complaint. The Second Circuit has stated that "when a motion to dismiss is granted, the usual practice is to grant leave to amend the complaint." *Hayden v. Cnty. of Nassau*, 180 F.3d 42, 53 (2d Cir. 1999), overruled on other grounds by *Gonzaga v. Doe*, 536 U.S. 273, 122 S. Ct. 2268, 153 L. Ed. 2d 309 (2002); see also FED. R. CIV. P. 15(a)(2) wherein the court should freely give leave [to amend] when justice so requires.

5. Defendants were properly served

A process server's affidavit establishes a rebuttable presumption of proper service. *Davis v. Musler,* 713 F.2d 907 (2d Cir.1983). A Defendant may rebut this presumption through a sworn affidavit in which *the* Defendant denies receipt of service. *Id.* Furthermore, Defendant must swear to "specific facts" to rebut the presumption. Where a Defendant's affidavit successfully rebuts the presumption of proper service, the Court must hold an evidentiary hearing. *Id.* (citing *Skyline Agency v Coppotelli, Inc.*, 117 AD2d 135 (1986)). A district court's failure to hold an evidentiary hearing is reversible error. *Davis v. Musler,* 713 F.2d 907 (2d Cir.1983).

Defendants submitted only affirmations of their attorneys saying they were never served. This is insufficient to challenge service. Defendants have in no way properly challenged service, but even if they did, the court was required to hold a hearing to

determine the validity of service—which it did not. Furthermore, a dismissal for lack of service should not go to the merits of the case.

WHEREFORE, it is respectfully requested that this Court reverse the lower courts grant of summary judgment and find that service was proper. In the alternative, it is requested that this Court grant leave to amend the complaint and reserve defendants with the amended complaint.

Respectfully submitted,
LAW OFFICES OF CLARKE & FELLOWS

By: /S/Jonathan Clarke
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CERTIFICATE OF COMPLIANCE WITH RULE 32(a)(7)

I hereby certify pursuant to Fed. R. App. P. 32(a)(7)(C) that the attached brief is proportionally spaced, has a typeface (New Times Roman) of 14 points, and contains 8, 702 words (excluding, as permitted by Fed. R. App. P. 32(a)(7)(B), the corporate disclosure statement, table of contents, table of authorities, and certificate of compliance), as counted by the Microsoft Word processing system used to produce this brief.

Dated: November 16, 2020

Jonathan Clarke
Jonathan C. Clarke

AFFIRMATION OF SERVICE

The following motion and supporting papers have been served on the attorneys for Defendants via Regular Mail and ECF filing on October 16, 2020.

Respectfully submitted,
LAW OFFICES OF CLARKE & FELLOWS P.C.

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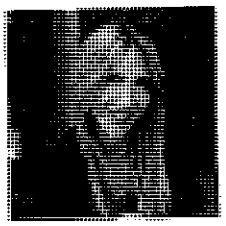

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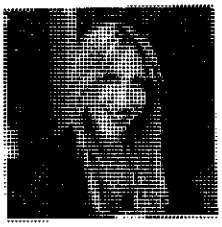

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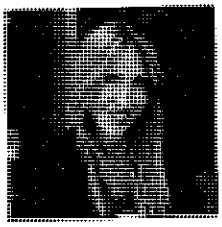

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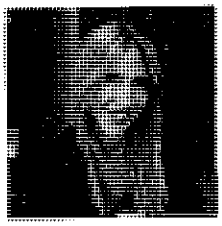

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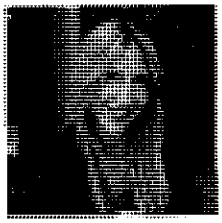

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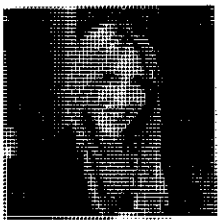

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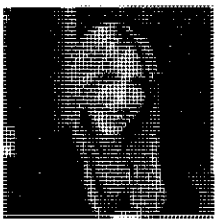

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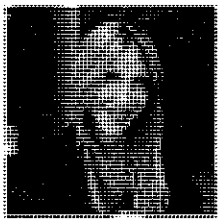

A comprehensive plan for Long Beach — why we need it

By Leah Tozer

A comprehensive plan can be an extremely useful tool for planning the future growth of a local community. Most importantly, it can be used to address the constant change and evolution of our community, Long Beach – the best place to live on Long Island!

We all thoroughly enjoy our gorgeous barrier island lifestyle and, as a community, it's up to us to take action to ensure that our children and grandchildren will still be able to enjoy Long Beach in the future.

The goals of Long Beach's Comprehensive Plan — funded by state grants — are rebuilding and sustainability. Largely based on community input, the plan calls for increasing environmental resiliency, creating a more sustainable year-round economy, providing diverse and affordable housing and developing more recreational areas. It also focuses on alleviating the tax burden with redevelopment that will create jobs, and making the Park Avenue downtown transit-oriented.

I was recently privileged to attend and graduate from the Land Use Leadership Alliance training program provided by Pace University School of Law and Touro Law School, along with senior staff from the Department of Environmental Conservation, the Environmental Protection Agency, U.S. Department of State, and the city's Department of Economic Development and Planning.

I have been shown both the updated and projected flood plans based on the current rate of rising sea levels, and the reality of the situation is terrifying. We must take decisive action to protect and preserve the barrier beach community we all cherish.

Through the introduction of the new comprehensive plan for Long Beach, for the very first time in nearly 30 years, our city is going to update its zoning code, bringing us in line with other prestigious coastal communities such as New York City, San Francisco and the Hamptons, allowing for new developments to be designed and constructed to protect against — and minimize — the impact of potential future natural disasters on low-lying, coastal areas, as well other environmental issues likely to be caused by climate change.

Additionally, incredible new and exciting projects designed to greatly expand economic growth within the city are proposed to come to life. Examples include a performing and cultural arts center in the downtown area, a new promenade and a marina on the bay front servicing water taxis, spider bridges to make getting around the neighborhoods easier, and green spaces down by the boardwalk. Another significant goal of these projects is to keep Long Beach families in Long Beach.

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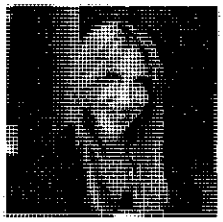

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DOCKET # 11-CV-5632
United States District Court, E.D. New York.

Favors v. Cuomo

881 F. Supp. 2d 356 (E.D.N.Y. 2012)
Decided May 16, 2012

No. 11–CV–5632 (RR)(GEL)(DLI)(RLM).

2012-05-16

Mark A. FAVORS, Howard Leib, Lillie H. Galan, Edward A. Mulraine, Warren Schreiber, and Weyman A. Carey, Plaintiffs, Donna Kaye Drayton, Edwin Ellis, Aida Forrest, Gene A. Johnson, Joy Woolley, Sheila Wright, Melvin Boone, Grisselle Gonzalez, Dennis O. Jones, Regis Thompson Lawrence, Aubrey Phillips, Linda Lee, Shing Chor Chung, Julia Yang, Jung Ho Hong, Juan Ramos, Nick Chavarria, Graciela Heymann, Sandra Martinez, Edwin Roldan, Manolin Tirado, Linda Rose, Everet Mills, Anthony Hoffman, Kim Thompson–Werekoh, Carlotta Bishop, Carol Rinzler, George Stamatiades, Josephine Rodriguez, Scott Auster and Itzchok Ullman, Intervenor–Plaintiffs, v. Andrew M. CUOMO, as Governor of the State of New York, Robert J. Duffy, as President of the Senate of the State of New York, Dean G. Skelos, as Majority Leader and President Pro Tempore of the Senate of the State of New York, Sheldon Silver, as Speaker of the Assembly of the State of New York, John L. Sampson, as Minority Leader of the Senate of the State of New York, Brian M. Kolb, as Minority Leader of the Assembly of the State of New York, New York State Legislative Task Force on Demographic Research and Reapportionment ("Latfor"), John J. Mceneny, as Member of Latfor, Robert Oaks, as Member of Latfor, Roman Hedges, as Member of Latfor, Michael F. Nozzolio, as Member of Latfor, Martin Malavé Dilan, as Member of Latfor, and Welquis R. Lopez, as Member of Latfor, Defendants.

Daniel Max Burstein, Jeffrey Alan Williams, New York, NY, Richard Mancino, Willkie Farr & Gallagher, New York, NY, for Plaintiffs. Esmeralda Simmons, Joan P. Gibbs, Brooklyn, NY, Frederick K. Brewington, Valerie M. Cartright, Law Offices of Frederick K. Brewington, Hempstead, NY, Glenn Duque Magpantay, Kenneth Kimerling, Asian American Legal Defense & Education Fund, Jackson Chin, LatinoJustice PRLDEF, Richard Mancino, Willkie Farr & Gallagher, Noah Barnett Peters, Kaye Scholer, Jeffrey M. Norton, Randolph M. McLaughlin, James Herschlein, Jose Luis Perez, Jeffrey Dean Vanacore, Daniel Max Burstein, Jeffrey Alan Williams, New York, NY, Marc E. Elias, Perkins Coie, LLP, John M. Devaney, Washington, DC, Kevin J. Hamilton, Seattle, WA, Lee Daniel Apotheker, Pannone Lopes Devereaux & West, White Plains, NY, for Intervenor Plaintiffs.

REENA RAGGI

359 *359

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OPINION AND ORDER

REENA RAGGI, Circuit Judge, GERARD E. LYNCH, Circuit Judge and DORA L. IRIZARRY, District Judge.

In this opinion and order, we address several outstanding motions following our previous orders denying defendants' motions to dismiss the original complaint, *see Favors v. Cuomo,* 866 F.Supp.2d 176, No. 11–cv–5632 (RR)(GEL)(DLI)(RLM), 2012 WL 824858 (E.D.N.Y. Mar. 8, 2012), and adopting, with slight modifications, Magistrate Judge Roanne L. Mann's report and recommendation for the enactment of a new congressional redistricting plan for New York that complies with federal and state law, *see Favors v. Cuomo,* No. 11–cv–5632 (RR)(GEL)(DLI)(RLM), 2012 WL 928223 (E.D.N.Y. Mar. 19, 2012). First, we deny defendants Dean G. Skelos's, Michael F. Nozzolio's, and Welquis R. Lopez's (collectively, the "Senate Majority Defendants") motion to dismiss the amended complaints for lack of ripeness and failure to state a claim. Second, we grant the Senate Majority Defendants' and defendants Sheldon Silver's, John J. McEneny's, and Roman Hedge's (collectively, the "Assembly Majority Defendants") motions to dismiss intervening plaintiff Itzchok Ullman's complaint for failure to state a claim. Third, we deny the motions for preliminary injunctive relief filed by Donna Kaye Drayton, Edwin Ellis, Aida Forrest, Gene A. Johnson, Joy Woolley, Sheila Wright, Melvin Boone, Grisselle Gonzalez, Dennis O. Jones, Regis Thompson Lawrence, and Aubrey Phillips ("Drayton Intervenors"); and Juan Ramos, Nick Chavarria, Graciela Heymann, Sandra Martinez, Edwin Roldan, and Manolin Tirado ("Ramos Intervenors"). Fourth, we grant defendants John L. Sampson's and Martin Malavé Dilan's (collectively, the "Senate Minority Defendants") motion for leave to amend their answer and to file a cross-claim against the Senate Majority Defendants. Fifth, we deny the motion to intervene filed by Todd Breitbart, Tobias Sheppard Bloch, Gregory Lobo–Jost, Raul Rothblatt, Mark Weisman and David Wes Williams (collectively, "Proposed Breitbart Intervenors").

In resolving these motions, we assume familiarity with the facts and record of the underlying proceedings. Nevertheless, we begin by providing a brief background focusing on the events that transpired on and after March 15, 2012, when New York enacted redistricting plans for the State Assembly and Senate.

I. *Background*

361 On March 15, 2012, Governor Andrew M. Cuomo signed into law newly enacted *361 state legislative districts based upon the 2010 census ("New Senate Plan," "New Assembly Plan" and, collectively, "New Plans"). Before putting the New Plans into effect, however, defendants [1] had to obtain preclearance under Section 5 of the Voting Rights Act, *see*42 U.S.C. § 1973c, from either the United States Department of Justice ("DOJ") or

the United States District Court for the District of Columbia ("D.C. District Court") because New York, Kings, and Bronx counties are "covered" jurisdictions, *see* 28 C.F.R., pt. 51, App. Defendants took both steps to obtain preclearance. The New Senate Plan was submitted to DOJ on March 16, 2012, and the New Assembly Plan was submitted to DOJ on March 28, 2012. Meanwhile, actions were filed with the D.C. District Court seeking the empaneling of a three-judge court and declaratory judgments that the New Plans comply with Section 5 of the Voting Rights Act. *See* Compl., *New York v. United States,* No. 12–cv–413 (RBW)(JWR)(RJL) (D.D.C. Mar. 16, 2012); Compl., *New York v. United States,* No. 12–cv–500 (RBW)(JWR)(RJL) (D.D.C. Mar. 30, 2012).

[1] Defendants, all sued in their official capacities, are Andrew M. Cuomo, as Governor of the State of New York; Robert J. Duffy, as President of the State Senate; Dean G. Skelos, as Majority Leader and President Pro Tempore of the State Senate; Sheldon Silver, as Speaker of the State Assembly; John L. Sampson, as Minority Leader of the State Senate; Brian M. Kolb, as Minority Leader of the State Assembly; the New York State Legislative Task Force on Demographic Research and Reapportionment ("LATFOR"); John J. McEneny, as a member of LATFOR; Robert Oaks, as a member of LATFOR; Roman Hedges, as a member of LATFOR; Michael F. Nozzolio, as a member of LATFOR; Martin Malavé Dilan, as a member of LATFOR; and Welquis R. Lopez, as a member of LATFOR.

On March 15, 2012, a group of petitioners, including defendant Dilan and proposed intervenor Breitbart, brought a special proceeding in New York State Supreme Court, New York County, alleging that the New Senate Plan violates the New York State Constitution because of the inconsistent application of two mathematical formulas to add a new sixty-third State Senate district. *See Cohen v. Cuomo,* No. 102185/2012 (Sup.Ct.N.Y.Cnty. Mar. 15, 2012).

Due to these intervening events since the filing of this action, this Court orally directed the plaintiffs to file any amended complaints by March 27, 2012.[2] *See* Minute Entry, Mar. 21, 2012. In their new pleadings, the Amending Plaintiffs requested that this Court draft state legislative redistricting plans for the 2012 elections because the New Plans cannot be implemented until they are precleared, and there was a substantial risk that preclearance would not be obtained by the beginning of the candidate petitioning period on June 5, 2012. Without this Court's intervention, they maintained, New York would be forced to hold an election using the outdated and malapportioned existing plans, which would violate the Equal Protection and Due Process Clauses of the Fourteenth Amendment to the United States Constitution, as well as Article III, §§ 4 and 5 of the New York State Constitution.

[2] Plaintiffs are Mark A. Favors, Howard Leib, Lillie H. Galan, Edward A. Mulraine, Warren Schreiber, and Weyman A. Carey ("Favors Plaintiffs"); Linda Lee, Shing Chor Chung, Julia Yang, and Jung Ho Hong ("Lee Intervenors"); the Drayton Intervenors; the Ramos Intervenors. We refer to these plaintiffs collectively as the "Amending Plaintiffs" in this opinion and order. In addition to the Amending Plaintiffs, Intervenor Itzchok Ullman filed an amended complaint, which we address separately, *see infra* Part II.B.

The Drayton Intervenors, Lee Intervenors, and Ramos Intervenors alleged that, even if the New Plans obtained
362 preclearance*362 and survived the state court challenge, the New Senate Plan improperly dilutes the voting power of African Americans, Asian Americans and Hispanics in violation of the United States Constitution and the Voting Rights Act, and the malapportioned districts lack any legitimate justification. The Drayton and Ramos Intervenors alleged that the New Assembly Plan also violates Section 2 by failing to create new

majority-minority districts in Nassau County and New York and Bronx Counties, respectively. The Drayton and Ramos Intervenors moved for preliminary injunctive relief on their Fourteenth Amendment one person, one vote and race discrimination claims, and their Voting Rights Act claims.

The Senate Majority Defendants moved to dismiss the Favors Plaintiffs' amended complaint in its entirety, as well as the Drayton, Lee, and Ramos Intervenors' amended complaints to the extent that they sought relief from allegedly malapportioned districts on grounds of ripeness, *see*Fed.R.Civ.P. 12(b)(1), and for failure to state a claim upon which relief can be granted, *see*Fed.R.Civ.P. 12(b)(6). Amending Plaintiffs and the Senate Minority Defendants opposed the motion.

On March 27, 2012, Intervenor Plaintiff Itzchok Ullman filed an amended complaint alleging that the New Assembly Plan improperly divides the Town of Ramapo, which could be contained in a single Assembly district, in a way that dilutes the Chasidic Jewish community's political power in violation of the Fourteenth Amendment and Article III, § 5 of the New York State Constitution. The Assembly Majority Defendants together with the Senate Majority Defendants moved to dismiss pursuant to Fed.R.Civ.P. 12(b)(6).

At a status conference held on April 18, 2012, this Court orally denied the motions to dismiss the amended complaints with the exception of that filed by Ullman, on which we reserved decision, and indicated that this written decision would follow. *See* Minute Entry, Apr. 18, 2012. Two days later, on April 20, this Court heard oral argument regarding the standard of review applicable to the Drayton, Lee, and Ramos Intervenors' malapportionment challenge to the New Senate Plan, as well as the population measurement the Court should use to assess the various challenges presented. At the conclusion of the hearing, we ordered the Drayton and Ramos Intervenors to produce the evidence on which they intended to rely to support their preliminary injunction motions. *See* Minute Entry, Apr. 20, 2012.

On April 27, 2012, DOJ advised the D.C. District Court that it had precleared the New Senate Plan. On May 3, 2012, following an expedited appeal directly from the trial court, the New York State Court of Appeals held that the application of two different methods to calculate the number of districts in the New Senate Plan did not violate the New York State Constitution. *See Cohen v. Cuomo,* 19 N.Y.3d 196, 946 N.Y.S.2d 536, 969 N.E.2d 754 (N.Y.Ct. of Appeals 2012). Thus, Amending Plaintiffs' claims regarding the need for this Court to create interim State Senate maps while preclearance and the New York Court of Appeals decisions were pending are now moot. Those claims remain viable with respect to the New Assembly Plan, however, which has not yet obtained preclearance. Further, the Drayton, Lee, and Ramos Intervenors' constitutional and Voting Rights Act challenges to the New Senate Plan remain to be decided.

II. *Discussion*

A. *Senate Majority Defendants' Motion To Dismiss the Amended Complaints*

363 At the April 18 hearing, we stated that we would file a written decision to explain *363 our oral denial of the Senate Majority Defendants' motion to dismiss the amended complaints to the extent they sought to have this Court create interim redistricting maps while the preclearance process and state court litigation were pending. Although those claims are now moot with respect to the New Senate Plan, because we represented that a written decision would follow, and because the New Assembly Plan has not yet been precleared, we offer the following explanation for why the Amending Plaintiffs' claims were and are ripe for review and why their amended complaints stated claims for relief.

1. *Ripeness Challenge*

The Senate Majority Defendants' contention that Amending Plaintiffs' claims were not ripe as of April 18, 2012, can be understood in two parts. First, insofar as the Amending Plaintiffs complained that defendants had failed to provide the state with election districts that had secured either DOJ or court approval necessary for implementation, the Senate Majority Defendants argued that no remediable injury was shown because the New Plans had been submitted for such approval in sufficient time to secure preclearance before June 5, 2012. They dismissed as speculative Amending Plaintiffs' allegations that the New Plans would not be precleared by June 5 or would be found to violate the New York State Constitution.

Second, insofar as the Amending Plaintiffs complained that the New Plans, even if precleared, violate the Equal Protection guarantee of one person, one vote and Section 2 of the Voting Rights Act, the Senate Majority Defendants asserted that these claims were premature because the New Plans could not be implemented—and, thus, the constitutional violations could not occur—before preclearance was secured.

"A case is properly dismissed for lack of subject matter jurisdiction under Rule 12(b)(1) when the district court lacks the statutory or constitutional power to adjudicate it." *Makarova v. United States,* 201 F.3d 110, 113 (2d Cir.2000). "Ripeness is a jurisdictional inquiry." *Murphy v. New Milford Zoning Comm'n,* 402 F.3d 342, 347 (2d Cir.2005). "Ripeness is peculiarly a question of timing. Its basic rationale is to prevent the courts, through premature adjudication, from entangling themselves in abstract disagreements." *Thomas v. Union Carbide Agric. Prods. Co.,* 473 U.S. 568, 580, 105 S.Ct. 3325, 87 L.Ed.2d 409 (1985) (internal quotation marks, brackets, and citation omitted).

Amending Plaintiffs' claims are ripe for reasons analogous to those discussed in this Court's denial of the initial motions to dismiss this matter. *See Favors v. Cuomo,* 866 F.Supp.2d at 182–85, 2012 WL 824858, at *4–*7. Although the Governor signed the New Plans into law on March 15, 2012, those Plans could not be implemented for the upcoming elections until they were precleared. *See Perry v. Perez,* — U.S. —, 132 S.Ct. 934, 941, 181 L.Ed.2d 900 (2012) ("Section 5 prevents a state plan from being implemented if it has not been precleared."). Insofar as those Plans had not been precleared at the time of our April 18 oral ruling, New York was thus without a lawful redistricting plan for an election cycle that would start within only six weeks. It is undisputed that the Court could not allow that election cycle to proceed under the existing plans because they are based upon the outdated 2000 census. *See, e.g., Flateau v. Anderson,* 537 F.Supp. 257, 262 (S.D.N.Y.1982) (three-judge court) ("If we waited until there no longer was time in 1982 for the reapportionment to be effected, the constitutional violation would then have occurred, but it would be too late for any timely remedy to be structured."). Therefore, as of the date of this Court's oral order, there were no State Senate and *364 Assembly
364 districts that could be used in the 2012 state legislative elections. Moreover, and what the Senate Majority Defendants fail to address satisfactorily, even if the New Plans were precleared by June 5, 2012, the amended complaints also assert federal constitutional and Section 2 Voting Rights Act claims that fall outside of the preclearance process and the state constitutional challenge in *Cohen.* Regardless of the outcome of the preclearance process and the state constitutional challenge, this Court needs to address these claims.

Thus, as of April 18, the Amending Plaintiffs adequately alleged injury from either (1) the complete lack of a precleared redistricting plan for the 2012 elections to the state legislature, or (2) the implementation of a plan that, even if precleared under Section 5 of the Voting Rights Act, nevertheless violated the Fourteenth Amendment's guarantee of one person, one vote and Section 2 of the Voting Rights Act. In short, resolution of the pending preclearance process and the *Cohen* litigation would not eliminate the Amending Plaintiffs' claimed injuries, but would only clarify their scope.

Insofar as the Senate Majority Defendants' ripeness challenge argues that any remedy would be premature, we are not persuaded. Redistricting remedies cannot be created on the spot (as this Court knows all too well after drafting congressional districts in an extremely tight time frame). As the Court's appointed expert, Professor Nathaniel Persily, has advised, "a court should have as its goal the imposition of a plan no later than one month before candidates may begin qualifying for the primary ballot," which "means that the court should begin drawing its plan about three months before the beginning of ballot qualification in order to build in time for possible hearings and adjustments to the plan." Nathaniel Persily, *When Judges Carve Democracies: A Primer on Court–Drawn Redistricting Plans*, 73 Geo. Wash. L. Rev. 1131, 1147 (2005). Here, less than two months remained from the date of the Court's April 18, 2012 oral order until the June 5 start of the candidate petitioning period for the Court to craft a contingent redistricting plan. Under such circumstances, Amending Plaintiffs' claims were certainly ripe for consideration as to both their merits and to the possible remedy of a judicially created redistricting plan, particularly if the New Plans were not precleared by June 5, 2012. *See Branch v. Smith*, 538 U.S. 254, 259–61, 265–66, 123 S.Ct. 1429, 155 L.Ed.2d 407 (2003) (affirming three-judge panel's interim plan where state plan had not yet been precleared); *Fund for Accurate & Informed Representation, Inc. v. Weprin*, 796 F.Supp. 662, 673 (N.D.N.Y.) (three-judge panel) (exercising jurisdiction where state plan had not been precleared "for the sake of ensuring a fair, timely election in New York State this Fall"), *aff'd mem.*,506 U.S. 1017, 113 S.Ct. 650, 121 L.Ed.2d 577 (1992); *Scaringe v. Marino*, No. 92–cv–0593, 1992 WL 144627, at *2 (N.D.N.Y. June 18, 1992) (three-judge panel) ("[U]nless new districts are devised in accordance with constitutional and statutory mandates, cleared through the procedural maze, and implemented in a timely fashion, plaintiff alleges that he will be deprived of his right to vote for a Senator and an Assemblyman because no valid districts will be in existence.").[3] Time did not permit*365 the Court to run the risk of having no contingent plan ready if the New Senate Plan was not precleared, and simply to hope that the legislature could remedy any defects in the short time frame remaining, particularly when the legislature had taken more than a year to pass the New Plans following the release of the 2010 census results. *See Smith v. Clark*, 189 F.Supp.2d 503, 511 n. 5 (S.D.Miss.2002) (three-judge court) ("We are simply unwilling to wait until a point in time that would not provide ample time for our thorough consideration of the reapportionment issues presented in this case."), *aff'd sub nom. Branch v. Smith*, 538 U.S. 254, 123 S.Ct. 1429, 155 L.Ed.2d 407 (2003).

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3 The Senate Majority Defendants' reliance on the Supreme Court's holding in *Branch* that "a district court may not impose a remedial plan unless the State plan 'had not been precleared and *had no prospect of being precleared* in time for the ... election,' " Senate Majority Defs.' Mem. 13, Dkt. Entry 286–1 (quoting *Branch v. Smith*, 538 U.S. at 265, 123 S.Ct. 1429) (emphasis and alteration in memorandum of law), misses the mark. The Court here did not propose to adopt its own plan at the expense of the New Plans. Nor did it determine that there was no possibility the New Plans would be precleared in time. It merely recognized its jurisdiction to begin the process of crafting a contingent plan to be implemented if necessary.

For similar reasons, Amending Plaintiffs' constitutional and Voting Rights Act challenges to the New Plans were ripe for review even while preclearance and *Cohen* were pending. Because of the short period between the amended complaints' filing and the beginning of the petitioning period, this Court needed to be prepared to resolve any preliminary injunction motions filed in response to the precleared New Plans, and, if Amending Plaintiffs sustained their burdens, to grant preliminary relief before the state election cycle commenced.[4]

4 As we explain, *see infra* Part II.C, the Drayton and Ramos Intervenors did not carry their burdens to obtain preliminary injunctive relief in part because the Court finds that it cannot resolve the complex issues raised in their favor in the short time available. This only reinforces our ripeness determination, in that the issues raised and relief sought required

immediate court consideration.

Additionally, the Court notes that the New Assembly Plan was submitted to DOJ on March 28, 2012. As of the date of this Opinion and Order, no action has been taken by DOJ, whose sixty-day deadline for review expires on May 27, 2012, nine days before the candidate petitioning period begins. Thus, with respect to the New Assembly Plan, the situation remains as it did on April 18, 2012, with the people of the State of New York facing the risk that the New Assembly Plan will not be precleared in time for the petitioning period. There is a continued need for the Court to exercise jurisdiction to prepare an interim Assembly map.

In sum, this case was ripe for review at the time of the Court's April 18, 2012 oral ruling and remains so today.

2. *12(b)(6) Challenge*

The Senate Majority Defendants also moved to dismiss the amended complaints under Fed.R.Civ.P. 12(b)(6), contending that they failed to plead facts that would entitle the Amending Plaintiffs to the relief sought, *i.e.*, implementation of State Senate and Assembly plans drafted by the Court. The Senate Majority Defendants argued that the Amending Plaintiffs failed to establish that any part of the New Senate Plan would be denied preclearance or that the Court has the authority to craft a remedy in the event that the 63rd district is found unconstitutional in *Cohen*.

To determine whether dismissal is appropriate under Fed.R.Civ.P. 12(b)(6), "a court must accept as true all [factual] allegations contained in a complaint," but it need not accept "legal conclusions." *Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S.Ct. 1937, 173 L.Ed.2d 868 (2009). For this reason, "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice" to insulate a claim against dismissal. *Id.* Moreover, "[t]o survive a motion to *366 dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.' " *Id.* (quoting *Bell Atl. v. Twombly*, 550 U.S. 544, 570, 127 S.Ct. 1955, 167 L.Ed.2d 929 (2007)). "[W]here the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct, the complaint ... has not shown ... that the pleader is entitled to relief." *Id.* at 679, 129 S.Ct. 1937 (internal citations and quotation marks omitted).

Applying these principles, we conclude that the Senate Majority Defendants' arguments are misplaced. Accepting Amending Plaintiffs' allegations as true, as the Court must for the purpose of deciding this motion, this Court has the authority to grant the relief sought. The Senate Majority Defendants' assertion that, under *Perry*, the Court cannot draft an interim plan but can only implement the New Senate Plan, misreads the Supreme Court's holding. In *Perry*, the Supreme Court instructed that, while courts must look to a duly enacted redistricting plan for "guidance" in drafting an interim judicial plan, "[a] district court making such use of a State's plan must, of course, take care not to incorporate into the interim plan any legal defects in the state plan." 132 S.Ct. at 941. Thus, *Perry* describes the *standards* the Court must use in drafting a redistricting map, not, as the Senate Majority Defendants suggest, the Court's *ability* to implement an interim plan when there is no precleared plan based upon the latest census. *See id.* ("[T]he state plan serves as a *starting point* for the district court." (emphasis added)).

Here, Amending Plaintiffs have alleged that portions of the New Senate Plan do not pass muster under federal law. For example, the Ramos Intervenors allege that the New Senate Plan violates Section 2 of the Voting Rights Act and the Fourteenth Amendment because it purposefully dilutes the Hispanic vote by underpopulating majority White districts upstate while overpopulating downstate districts with large percentages of Hispanic and other minority voters. The Drayton Intervenors allege that the New Plans divide,

or "crack," compact African American and other minority communities in Nassau County to dilute their voting power in violation of Section 2 of the Voting Rights Act. Similarly, the Lee Intervenors allege that Asian American communities are divided and diluted in the New Plans. At this stage of the litigation, the Court cannot assess the ultimate merits of these allegations. But if Amending Plaintiffs were ultimately to succeed on these Section 2 and Fourteenth Amendment claims, and the Court were compelled to draft a new plan, the Court could not adopt the New Senate Plan wholesale. It would have to exclude any identified legal defects in the enacted plan. *See Perry,* 132 S.Ct. at 941–42.

Thus, because Amending Plaintiffs state claims upon which this Court can grant relief, the Senate Majority Defendants' motion to dismiss is denied as without merit. Further, the motion is denied as moot insofar as the New Senate Plan has been precleared and has survived petitioners' state law challenge in *Cohen,* and this Court may now consider the underlying one person, one vote and Section 2 challenges to the New Senate Plan. **B.** ***Assembly and Senate Majorities' Motions To Dismiss Ullman Intervenor's Complaint***

Intervening plaintiff Itzchok Ullman faults the New Assembly Plan because it divides the Town of Ramapo into three districts, and purposefully separates into two different districts the villages of New Square and Kaser, both of which contain *367 large Chasidic Jewish populations.[5] Ullman alleges in his amended complaint that this division of Ramapo violates the Fourteenth Amendment because it (1) is improperly based upon religious considerations; (2) diminishes Ullman's voting power without due process of law; and (3) runs afoul of the one person, one vote requirement of the Equal Protection Clause.

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5 As one court has explained:

> A large portion of the Town of Ramapo is a state park and undeveloped land. In the occupied area, a "village movement" has resulted in the formation of eleven incorporated villages within the town borders along its perimeter. An incorporated village controls the tax base within its boundaries and has the authority to execute its own zoning laws, run schools, operate police, fire, water and sewage departments and regulate the use of the streets.
>
> *Leblanc–Sternberg v. Fletcher,* 763 F.Supp. 1246, 1247 (S.D.N.Y.1991) (footnote omitted).

Ullman, however, has since disclaimed the argument that the New Assembly Plan's division of Ramapo is based upon religious considerations. When, at oral argument, the Court asked Ullman's counsel whether "there was deliberate discrimination against these Jewish communities on the basis of religion," Counsel responded, "No, your Honor. What we are alleging is that there is deliberate discrimination against these communities based on their voting patterns." Apr. 18, 2012 Hr'g Tr. at 41–42. Ullman now contends that the Villages of Kaser and New Square were intentionally placed into separate Assembly districts, not because of any invidious discrimination against Chasidic Jewish people, but to enhance Assemblywoman Ellen C. Jaffee's reelection prospects. These allegations are insufficient to state a claim under the Fourteenth Amendment.

As the Second Circuit has recognized, "[i]t is well settled that there is no right to community recognition in the reapportionment process. Voting is a personal right and, in the absence of invidious discrimination, voters of a city, town, or geographic or ethnic community are not entitled to be grouped together in a single election unit." *Mirrione v. Anderson,* 717 F.2d 743, 745 (2d Cir.1983) (citation omitted); *see also United Jewish Orgs. of Williamsburgh, Inc. v. Wilson,* 510 F.2d 512, 521 (2d Cir.1975) (rejecting argument that a "state must in a reapportionment draw lines so as to preserve ethnic community unity" because such a holding would "make reapportionment an impossible task for any legislature"), *aff'd sub nom. United Jewish Orgs. of Williamsburgh, Inc. v. Carey,* 430 U.S. 144, 97 S.Ct. 996, 51 L.Ed.2d 229 (1977); *Wells v. Rockefeller,* 281 F.Supp. 821, 825 (S.D.N.Y.1968) (three-judge panel) ("The Legislature cannot be expected to satisfy, by its redistricting action,

the personal political ambitions or the district preferences of all of our citizens. For everyone on the wrong side of the line, there may well be his counterpart on the right side."), *rev'd on other grounds,* 394 U.S. 542, 89 S.Ct. 1234, 22 L.Ed.2d 535 (1969). Thus, in the absence of any invidious motive such as religious discrimination (and Ullman has conceded there is none), the Chasidic Jewish community, or any other ethnic community, in Ramapo does not have an absolute constitutional right to be grouped in the same district.

Ullman asserts that the division of the Ramapo Chasidic Jewish community in the New Assembly Plan is an impermissible political gerrymander. Although the Supreme Court has held that partisan gerrymandering claims are justiciable under the Equal Protection Clause, *see Davis v. Bandemer,* 478 U.S. 109, 125, 106 S.Ct. 2797, 92 L.Ed.2d 85 (1986); *but see Vieth v. Jubelirer,* 541 U.S. 267, 305–06, 124 S.Ct. 1769, 158 L.Ed.2d 546 (2004) (plurality opinion) (concluding that partisan gerrymandering*368 claims are non-justiciable political questions), a question arises as to what showing a plaintiff must make to sustain such a claim, *see Davis v. Bandemer,* 478 U.S. at 132, 106 S.Ct. 2797 (plurality opinion) (stating that, at minimum, plaintiff must show that "the electoral system is arranged in a manner that will consistently degrade a voter's or a group of voters' influence on the political process as a whole"); *but see Vieth v. Jubelirer,* 541 U.S. at 309–13, 317, 124 S.Ct. 1769 (Kennedy, J., concurring) (concluding that partisan gerrymandering claims are justiciable, but that no judicially manageable standards exist for determining when legislature's consideration of voters' political classifications in redistricting amounts to Equal Protection violation). Assuming *arguendo,* as Ullman urges, that the standard set forth in *Davis v. Bandemer,* 478 U.S. 109, 106 S.Ct. 2797, still applies, we dismiss Ullman's complaint for failure to state a claim, *see*Fed.R.Civ.P. 12(b)(6).

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Ullman fails to explain either in his amended complaint or his arguments how the division of Kaser and New Square is an impermissible partisan gerrymander, particularly because Ullman has not alleged that the New Assembly Plan's division of two villages degrades or dilutes the Chasidic Jewish community's influence on the political process as a whole. Rather, Ullman alleges that the community's influence is diluted in one Assembly district. Moreover, drawing a district boundary based, at least in part, on protecting an incumbent such as Assemblywoman Jaffe, does not automatically violate the Fourteenth Amendment. *See White v. Weiser,* 412 U.S. 783, 797, 93 S.Ct. 2348, 37 L.Ed.2d 335 (1973) ("The fact that district boundaries may have been drawn in a way that minimizes the number of contests between present incumbents does not in and of itself establish invidiousness." (internal quotation marks omitted)). The Supreme Court has recognized that "[p]olitics and political considerations are inseparable from districting and apportionment." *Gaffney v. Cummings,* 412 U.S. 735, 753, 93 S.Ct. 2321, 37 L.Ed.2d 298 (1973); *see also Vieth v. Jubelirer,* 541 U.S. at 313, 124 S.Ct. 1769 (Kennedy, J., concurring) (rejecting allegation that legislature "adopted political classifications" in enacting redistricting plan as sufficient to state claim under Equal Protection Clause). Indeed, if courts were to second guess the precise placement of every single district boundary and make sure they were not drawn on the basis of any political considerations, redistricting would essentially be taken out of the hands of the New York Legislature and given to the federal courts, a result we cannot countenance.[6] *See* *369 *Perry v. Perez,* 132 S.Ct. at 940 ("Redistricting is primarily the duty and responsibility of the State." (internal quotation marks omitted)); *see also Favors v. Cuomo,* 2012 WL 928223, at *17 ("[T]he power to draw [district] lines is committed in the first instance to the states, not to the federal government, and is properly exercised by the most democratic branch of state government, the legislature.").

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6 At oral argument, Ullman's counsel suggested that *Larios v. Cox,* 300 F.Supp.2d 1320 (N.D.Ga.) (three-judge court), *aff'd mem.,*542 U.S. 947, 124 S.Ct. 2806, 159 L.Ed.2d 831 (2004), a case not cited in his memorandum of law, supports his contention that his politieal gerrymandering allegations state a viable Fourteenth Amendment claim because incumbency was not considered consistently throughout the state in drawing Assembly districts. *See* Apr. 18, 2012 Hr'g Tr. at 58. Ullman's amended complaint, however, contains no allegations that incumbency protection was a factor only

in redistricting Ramapo and, in any event, *Larios* is a one person, one vote case, not a political gerrymandering case. *See League of United Latin Am. Citizens v. Perry*, 548 U.S. 399, 422–23, 126 S.Ct. 2594, 165 L.Ed.2d 609 (2006) ("The *Larios* holding and its examination of the legislature's motivations were relevant only in response to an equal-population violation."); *Cox v. Larios*, 542 U.S. at 949–50, 124 S.Ct. 2806 (Stevens, J., concurring) (distinguishing political gerrymander claims from one person, one vote claims). The *Larios* court discussed incumbency protection only to the extent that it found that incumbency was not a valid excuse for malapportioning Georgia's state legislative districts. *Larios*, 300 F.Supp.2d at 1338 ("[T]he protection of incumbents is a permissible cause of population deviations *only* when it is limited to the avoidance of contests between incumbents and is applied in a consistent and nondiscriminatory manner." (emphasis in original)). The court did not discuss the extent to which incumbency protection can be considered in drawing district boundaries.

Insofar as Ullman's amended complaint pleads a one person, one vote claim under the Equal Protection Clause, he did not discuss this claim in his memorandum of law. To be sure, the Equal Protection Clause requires the legislature to "make an honest and good faith effort to construct districts, in both houses of its legislature, as nearly of equal population as is practicable." *Reynolds v. Sims*, 377 U.S. 533, 577, 84 S.Ct. 1362, 12 L.Ed.2d 506 (1964). But Ullman's complaint does not allege that the Ramapo Assembly districts are malapportioned. Instead, the amended complaint reflects only Ullman's dissatisfaction with how the legislature divided Ramapo into multiple Assembly districts, which is not a one person, one vote issue. Accordingly, Ullman's allegations that the Chasidic Jewish community in Ramapo is divided into separate districts do not state a claim under the Equal Protection Clause and, therefore, his amended complaint is properly dismissed.

To the extent that Ullman also claims that Ramapo's division into multiple assembly districts violates Article III, § 5, of the New York State Constitution, we decline to exercise supplemental jurisdiction over the remaining state law claim. *See*28 U.S.C. § 1367(c)(3) ("The district courts may decline to exercise supplemental jurisdiction over a claim ... if ... the district court has dismissed all claims over which it has original jurisdiction."); *Valencia ex rel. Franco v. Lee*, 316 F.3d 299, 304–06 (2d Cir.2003); *Pu v. Charles H. Greenthal Mgmt. Corp.*, No. 08–cv–10084(RJH)(RLE), 2010 WL 774335, at *5 (S.D.N.Y. Mar. 9, 2010) ("Generally, where federal claims are dismissed at an early stage, courts decline supplemental jurisdiction and dismiss pendant state law claims without prejudice."). Accordingly, Ullman's New York State Constitution claim is dismissed without prejudice. **C. *Drayton and Ramos Intervenors' Motions for a Preliminary Injunction***

The Ramos and Drayton Intervenors have filed separate motions for preliminary injunctions based on their claims under the Fourteenth Amendment and Section 2 of the Voting Rights Act. They also seek expedited discovery and the appointment of a special master.[7] For the following reasons, we deny the motions.

7 To the extent that Intervenor Ullman also moves for preliminary relief, the motion is mooted by our dismissal of his complaint.

"In order to justify a preliminary injunction, a movant must demonstrate 1) irreparable harm absent injunctive relief; 2) either a likelihood of success on the merits, or a serious question going to the merits to make them a fair ground for trial, with a balance of hardships tipping decidedly in the plaintiff's favor; and 3) that the public's interest weighs in favor of granting an injunction." *Metro. Taxicab Bd. of Trade v. City of New York*, 615 F.3d 152, 156 (2d Cir.2010) (internal quotation marks and citation omitted). We find the second and third
370 factors dispositive here.*370

On the current record, the intervenors have not shown a likelihood of success on the merits. The movants' claims are both factually and legally complex. For example, their one person, one vote claims rest on novel, contested legal ground. The parties sharply dispute the circumstances under which a redistricting plan with population disparities closely approaching the ten percent range that has sometimes been found acceptable can be rejected. *Compare Larios v. Cox,* 300 F.Supp.2d at 1337–42 (holding that plan with just–below–10% population disparity is impermissible "where population deviations are not supported by [ ] legitimate interests but, rather, are tainted by arbitrariness or discrimination," including inconsistent application of redistricting criteria for political gain), *with Rodriguez v. Pataki,* 308 F.Supp.2d 346, 365–71 (S.D.N.Y.2004) (three-judge court) (upholding a just–below–10% disparity plan despite evidence of political motive because plan was supported by traditional redistricting criteria and the plaintiffs did not show that "the deviations resulted solely from impermissible considerations"). Both the one person, one vote claim and the racial discrimination claim will turn on the factual inferences to be drawn from a close evaluation of the details of the plan, and on whatever evidence of the legislature's purpose or intent may be available. *See, e.g., Larios v. Cox,* 300 F.Supp.2d at 1337–38, 1347 ("Simply stated, a state legislative reapportionment plan that systematically and intentionally creates population deviations among districts in order to favor one geographic region of a state over another violates the one person, one vote principle firmly rooted in the Equal Protection Clause."); *Rodriguez v. Pataki,* 308 F.Supp.2d at 363–65 (holding that "a one-person, one-vote claim will lie even with deviations below ten percent" if plaintiff "can present compelling evidence that the drafters of the plan ignored all the legitimate reasons for population disparities and created the deviations solely to benefit certain regions at the expense of others"); *Bush v. Vera,* 517 U.S. 952, 958–59, 116 S.Ct. 1941, 135 L.Ed.2d 248 (1996) (plurality opinion) (holding that strict scrutiny applies to a redistricting plan if plaintiff shows that race was "the predominant factor motivating the legislature's redistricting decision" (internal quotation marks, brackets, and emphasis omitted)). But the Drayton and Ramos Intervenors have presented little evidence on this question, and the parties vigorously dispute whether discovery into the subjective motivations of the drafters of the plan is either legally relevant or permissible in light of legislative privilege.

Similarly, the movants' Section 2 vote-dilution claims require proof of the three "necessary preconditions" established by the Supreme Court in *Thornburg v. Gingles,* 478 U.S. 30, 50–51, 106 S.Ct. 2752, 92 L.Ed.2d 25 (1986). To win on the merits, they must show that a minority group is (1) "sufficiently large and geographically compact to constitute a majority in a single-member district," (2) "politically cohesive," and (3) the majority votes "sufficiently as a bloc to enable it ... usually to defeat the minority's preferred candidate." *Id.; accord Bartlett v. Strickland,* 556 U.S. 1, 11–12, 129 S.Ct. 1231, 173 L.Ed.2d 173 (2009). But the movants have introduced virtually no evidence on these factors, which typically require substantial expert testimony and analysis. *See, e.g., Rodriguez v. Pataki,* 308 F.Supp.2d at 387–404 (analyzing voluminous expert record in vote-dilution claim).

In sum, on the limited record thus far compiled by the movants, we cannot conclude that they have established that they are likely to prevail in a case that will present difficult legal and factual issues.[8] *371 371

[8] It is not clear that the movants are permitted to rely on the alternative second prong of the preliminary injunction standard: a serious merits question, and the balance of hardships tipping strongly in their favor. *See Oneida Nation of N.Y. v. Cuomo,* 645 F.3d 154, 164 (2d Cir.2011) ("A party seeking to enjoin 'governmental action taken in the public interest pursuant to a statutory or regulatory scheme' cannot rely on the 'fair ground for litigation' alternative even if that party seeks to vindicate a sovereign or public interest." (quoting *Monserrate v. N.Y. State Senate,* 599 F.3d 148, 154 (2d Cir.2010))); *see also Montano v. Suffolk Cnty. Legislature,* 268 F.Supp.2d 243, 260 (E.D.N.Y.2003) (in VRA and constitutional challenge to county legislature distrieting, holding that plaintiffs must show likelihood of success, not

simply serious question of law). Even if the Drayton and Ramos Intervenors could rely on this alternative second prong, however, preliminary relief still would not be consistent with the public interest.

To the extent the Drayton and Ramos Intervenors argue that they would be able to show a likelihood of success on the merits at an evidentiary hearing if they are given expedited discovery, we conclude that conducting such discovery and holding such a hearing in sufficient time to provide relief cannot be done consistent with the third prong of the preliminary injunction standard, the public interest. The intervenors argue that, if their legal and factual contentions are correct, they and the broader New York public face the serious and irreparable harm of an election proceeding on the basis of unconstitutionally and illegally drawn, discriminatory and unbalanced districts. At the same time, the paramount interest in fair and legal voting counsels caution rather than haste.

First, elections are complex to administer, and the public interest would not be served by a chaotic, last-minute reordering of Senate districts. It is best for candidates and voters to know significantly in advance of the petition period who may run where. *See, e.g., Diaz v. Silver,* 932 F.Supp. 462, 466–68 (E.D.N.Y.1996) (three-judge court) (in redistricting challenge, holding that, even assuming that plaintiffs had shown likelihood of success on the merits, the public interest weighed against an injunction because there was insufficient time before the election to create a new plan, and citing authority). Indeed, the Supreme Court has held that an injunction may be inappropriate even when a redistricting plan has actually been found unconstitutional because of the great difficulty of unwinding and reworking a state's entire electoral process. *E.g., Reynolds v. Sims,* 377 U.S. at 585, 84 S.Ct. 1362;*Roman v. Sincock,* 377 U.S. 695, 709–10, 84 S.Ct. 1449, 12 L.Ed.2d 620 (1964).

Second, plaintiffs' claims are not just important, but legally and factually complicated. The greatest public interest must attach to adjudicating these claims fairly—and correctly. We have little confidence that a few weeks of discovery and an abbreviated trial leaves enough time for the parties to marshal all the relevant facts and make their best arguments. We cannot ignore that the primary election process begins in less than four weeks with the opening of the period for candidates to solicit nominating petitions. In order to grant relief in time to guide (and not disrupt) that process, the Court would need to decide the complex legal issues governing discovery and the scope of the issues to be resolved at the hearing, allow the parties time to conduct whatever discovery is allowed, conduct the hearing, resolve the difficult legal and factual issues to establish whether the movants are likely to prevail, and then, if the movants succeed in establishing entitlement to relief, craft what at least some intervenors argue should be an entirely new plan for the redistricting of the state Senate, all within a few weeks. No party has even attempted to set forth a realistic schedule on which this formidable agenda can
372 be accomplished.*372 We are not persuaded that this Court would be able to give the issues or a possible remedy the careful consideration they deserve in such an abbreviated time frame. If, upon such full and careful consideration, plaintiffs do prevail, this Court can then decide what relief, including the vacatur of conducted elections and the ordering of new ones, may be warranted. *See, e.g., Arbor Hill Concerned Citizens v. County of Albany,* 357 F.3d 260, 262 (2d Cir.2004) ("It is within the scope of [the court's] equity powers to order a governmental body to hold special elections.").

The motions for preliminary injunction and expedited discovery are therefore denied. **D. *Senate Minority Defendants' Motion for Leave To Amend***

On May 1, 2012, following DOJ's preclearance of the New Senate plan, the Senate Minority Defendants moved under Fed.R.Civ.P. 15 to amend their answer to the Favors Plaintiffs' amended complaint to assert a cross-claim. Their proposed cross-claim charges that the New Senate Plan fails to reflect a good faith effort to create

districts with equal populations, and underpopulates upstate districts while overpopulating downstate districts for the impermissible purpose of achieving a political gerrymander, which, they contend, violates the Equal Protection Clause. *See, e.g., Larios v. Cox*, 300 F.Supp.2d at 1337–42. Only the Senate Majority Defendants oppose the amendment, which is granted for the reasons set forth below.

When, as here, a party seeks to amend a pleading before trial, "[t]he court should freely give leave when justice so requires." Fed.R.Civ.P. 15(a)(2). In the Second Circuit, a party can amend its pleadings "unless the nonmovant demonstrates prejudice or bad faith." *City of New York v. Grp. Health Inc.*, 649 F.3d 151, 157 (2d Cir.2011); *see also R.G.N. Capital Corp. v. Yamato Transp. USA, Inc.*, No. 95–cv–2647 (CSH), 1997 WL 3278, at *1 (S.D.N.Y. Jan. 3, 1997) ("[I]t is well settled that delay is not enough standing alone to defeat a motion to amend. The party opposing the relief must demonstrate prejudice resulting from delay."). An amendment is prejudicial "when, among other things, it would require the opponent to expend significant additional resources to conduct discovery and prepare for trial or significantly delay the resolution of the dispute." *AEP Energy Servs. Gas Holding Co. v. Bank of Am., N.A.*, 626 F.3d 699, 725–26 (2d Cir.2010) (internal quotation marks omitted).

The Senate Majority Defendants have failed to demonstrate that they will be prejudiced by their legislative colleagues' proposed cross-claim. This case, at least as it relates to the New Senate Plan, is still in its early stages. The Senate Minority Defendants' answer to the Favors Plaintiffs' amended complaint was filed only approximately one month ago. Discovery has not yet begun. The proposed cross-claim does not expand or alter the scope or posture of this case significantly, as other parties already have asserted similar one person, one vote claims based upon the alleged malapportionment of districts in the New Senate Plan. Indeed, the Senate Minority Defendants' proposed cross-claim does not come as a surprise to the Senate Majority Defendants, as they concede that the Senate Minority Defendants, despite being named as defendants, "have all along been operating as if they are plaintiffs in this action" by consistently opposing the Senate Majority Defendants and raising the same Equal Protection claims. Senate Majority Defs.' Opp. 7, Dkt. Entry 361.

The Court previously issued a scheduling order setting March 27, 2012, as the deadline for the parties to file amended complaints and April 2, 2012, as the deadline for the parties to file answers to any amended
373 *373 complaints. While the Senate Minority Defendants did not file their motion to amend until May 1, 2012, a court can grant leave to amend a pleading after a deadline set in a scheduling order where there is "good cause." *Parker v. Columbia Pictures Indus.*, 204 F.3d 326, 340 (2d Cir.2000). "Whether good cause exists turns on the diligence of the moving party." *Holmes v. Grubman*, 568 F.3d 329, 335 (2d Cir.2009) (quotation marks omitted).

Here, the Senate Minority Defendants sought to amend their answer four days after DOJ precleared the New Senate Plan on April 27, 2012, which, they argue, made their proposed cross-claim ripe for the first time. The argument confronts a hurdle: this Court had already orally rejected the Senate Majority Defendants' argument that challenges to the New Plans were not ripe in advance of preclearance. Further, in setting a schedule for all Plaintiffs to amend their complaints, the Court had suggested to the Senate Minority Defendants that they amend their answers to add cross-claims in light of their quasi-plaintiff posture in this case. *See* Mar. 21, 2012 Hr'g Tr. at 47. Nevertheless, it appears that the Senate Minority Defendants acted in good faith in delaying the filing of their proposed cross-claim based on their unusual status as named defendants and the pendency of the preclearance process. Further, because the Senate Minority Defendants have been a party in this case since its inception and have consistently stood in opposition to the Senate Majority Defendants, allowing the Senate Minority Defendants to bring their cross-claim does not materially alter the posture of this case.

The Senate Majority Defendants' contention that the motion to amend should be denied because the proposed cross-claim does not arise out of the same transaction as the "original action," Senate Majority Defs.' Opp. 17–18, is meritless. A party may bring a cross-claim that "arises out of the transaction or occurrence that is the subject matter of the original action." Fed.R.Civ.P. 13(g). In determining whether a cross-claim arises out of the same transaction or occurrence as the original claim, courts generally consider the "(1) identity of facts between original claim and [cross-claim]; (2) mutuality of proof; [and] (3) logical relationship between original claim and [cross-claim]." *Federman v. Empire Fire & Marine Ins. Co.*, 597 F.2d 798, 811–12 (2d Cir.1979); *see also id.* at 813 ("[T]he Rule 13(a) test for determining a compulsory counterclaim is identical to the Rule 13(g) test for cross-claims."). "Rule 13(g) is to be construed liberally so as to 'avoid multiple suits and to encourage the determination of the entire controversy among the parties before the court with a minimum of procedural steps ... in order to settle as many related claims as possible in a single action.' " *Bank of Montreal v. Optionable, Inc.*, No. 09–cv–7557 (GBD), 2011 WL 4063324, at *3 (S.D.N.Y. Aug. 12, 2011) (quoting Charles Alan Wright, et al., Federal Practice and Procedure § 1431, at 229–30 (3d ed. 2011)).

This Court permitted all plaintiffs to amend their complaints once the Court had developed and issued a new congressional district map and the impasse posture of the case had changed due to the enactment of the New Senate and Assembly Plans. This was done for the sake of judicial economy and because plaintiffs still objected to the New Plans on federal constitutional and Voting Rights Act grounds. The claims asserted in the amended complaints and the proposed cross-claim are logically related. While this action has undergone several permutations since it was originally commenced in November *374 2011, at its core, all plaintiffs' amended complaints and the Senate Minority Defendants' proposed cross-claim relate to the decennial redistricting process for state legislative districts and the results of that process.

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Accordingly, the Senate Minority Defendants' motion to amend their answer is granted. **E. *Proposed Brietbart Intervenors' Motion To Intervene***

Until his retirement in 2005, Todd Breitbart directed the staff work on redistricting for successive Democratic State Senate leaders. He and the other Proposed Breitbart Intervenors now seek to intervene in this action as of right, or permissively, as "six registered voters who reside in districts in and around New York City that are severely over-populated under the" New Senate Plan. Proposed Breitbart Intervenors' Proposed Compl., Dkt. Entry 345–3, ("Proposed Breitbart Compl.") ¶¶ 1, 6–11. Like the Senate Minority Defendants, Proposed Breitbart Intervenors ehallenge the New Senate Plan, alleging that it is not the result of a good faith effort to create equipopulous State Senate districts as required by the Fourteenth Amendment. The Senate Majority Defendants oppose the proposed intervention. We deny the Proposed Breitbart Intervenors' motion for the following reasons.

To intervene as of right, pursuant to Fed.R.Civ.P. 24(a), the putative intervenor must: "(1) file a timely motion; (2) claim an interest relating to the property or transaction that is the subject of the action; (3) be so situated that without intervention the disposition of the action may impair that interest; and (4) show that the interest is not already adequately represented by existing parties." *Butler, Fitzgerald & Potter v. Sequa Corp.*, 250 F.3d 171, 176 (2d Cir.2001). Proposed Breitbart Intervenors' motion is denied because they have not shown that their interests are not already adequately represented by the various intervening plaintiffs and the Senate Minority Defendants.[9]

9 Because Proposed Breitbart Intervenors' motion fails on the adequacy of representation prong, the Court need not discuss whether they have satisfied the other three criteria.

While the burden to demonstrate inadequacy of representation typically is "minimal," the Second Circuit has "demanded a more rigorous showing of inadequacy in cases where the putative intervenor and a named party have the same ultimate objective. Where there is an identity of interest, as here, the movant to intervene must rebut the presumption of adequate representation by the party already in the action." *Id.* at 179–80 (internal citations omitted). Here, the Drayton, Lee, and Ramos Intervenors, all of whom are registered New York State voters, as well as the Senate Minority Defendants, seek to strike down the New Senate Plan under the Fourteenth Amendment to the United States Constitution based upon its alleged malapportionment favoring upstate New York. Proposed Breitbart Intervenors, also registered New York State voters, seek the same relief on virtually identical grounds and, therefore, the Court concludes that their interests are already adequately represented.

In urging otherwise, Proposed Breitbart Intervenors contend that they disagree with other parties' interpretations of some of the precedents relevant to this action. Even if strategic differences could demonstrate inadequate representation in some cases, they fail to do so here, where Proposed Breitbart Intervenors and the Senate Minority Defendants are represented by the same able counsel, who would presumably interpret
375 precedent the same way whether acting on behalf of Proposed *375 Breitbart Intervenors or the Senate Minority Defendants. Indeed, insofar as Proposed Breitbart Intervenors contend their putative claim is different because they do not allege that the malapportionment is based upon racial animus, we note that, while other intervening plaintiffs appear to allege a racial motivation for the malapportionment, the Senate Minority Defendants do not. Their malapportionment theory is essentially indistinguishable from that of Proposed Breitbart Intervenors. Indeed, the Senate Minority Defendants' cross-claim is worded identically to Proposed Breitbart Intervenors' proposed complaint. *Compare* Senate Minority Defs.' Proposed Cross-cl., Dkt. Entry 344–3, ¶¶ 1–10 *with* Proposed Breitbart Compl. ¶¶ 52–61.

Proposed Breitbart Intervenors' request for permissive intervention under Fed.R.Civ.P. 24(b) is also denied. A court "may grant a motion for permissive intervention if the application is timely and if the applicant's claim or defense and the main action have a question of law or fact in common." *In re Holocaust Victim Assets Litig.*, 225 F.3d 191, 202 (2d Cir.2000) (internal quotation marks omitted). Courts have "considerable discretion" in deciding whether to grant permissive intervention. *AT & T Corp. v. Sprint Corp.*, 407 F.3d 560, 562 (2d Cir.2005). Here, as already discussed, Proposed Breitbart Intervenors have not shown how their presence as intervenors will assist the Court in resolving this case, particularly when other parties—especially parties represented by the same counsel—already are asserting the same claims and interests. To the extent Breitbart maintains that he brings an "important perspective" to this case, Breitbart Mem. at 3, Dkt. Entry 345–1, he has been able to provide that perspective to this Court as a witness for the Senate Minority Defendants, just as he did as a co-petitioner with State Senator Dilan in *Cohen*. In sum, he need not be allowed to intervene to assist the Senate Minority Defendants or to have his views heard by the Court.

Finally, the Court set March 27, 2012, as the deadline for any motions to intervene, and Proposed Breitbart Intervenors missed this deadline by more than one month. They claim that their Equal Protection challenge did not become ripe until the New Senate Plan was precleared. This is belied by our April 18, 2012 order rejecting the Senate Majority Defendants' ripeness challenge to Amending Plaintiffs' claims. Further, unlike the Senate Minority Defendants, who in good faith could have thought that, as party defendants, they could not file a cross-claim challenge while preclearance was pending, Proposed Breitbart Intervenors operated under no comparable conflict and have offered no satisfactory explanation justifying their late filing. Under such circumstances, the Court exercises its discretion to deny permissive intervention.

Accordingly, Proposed Breitbart Intervenors' motion to intervene is denied.

III. *Conclusion*

For the reasons set forth above, the Court hereby

(1) DENIES the Senate Majority Defendants' motions to dismiss the amended complaints (Dkt. Entry 286), reiterating the oral ruling made on April 18, 2012;

(2) GRANTS the Assembly Majority and Senate Majority Defendants' motions to dismiss the Ulman Intervenor complaint (Dkt. Entries 270, 286), and directs the Clerk of Court to enter judgment in favor of defendants on this claim;

(3) DENIES the Drayton and Ramos Intervenors' motions for preliminary injunctive relief (Dkt. Entries 305, 306);

376 (4) GRANTS the Senate Minority Defendants' motion for leave to amend their *376 answer and file a cross-claim (Dkt. Entry 344); and

(5) DENIES the Proposed Breitbart Intervenors' motion to intervene (Dkt. Entry 345).

The matter is hereby referred to Magistrate Judge Mann to supervise discovery on such schedule, including an expedited schedule, as she may deem appropriate, and to issue all discovery-related orders, including, but not limited to, scheduling orders and orders resolving or otherwise addressing any discovery disputes that the parties are unable to resolve after good faith efforts to reach resolution thereof without court action.

SO ORDERED.

Favors v. Cuomo

Decided May 22, 2014

11 Civ. 5632 (RR)(GEL)(DLI)(RLM)

05-22-2014

MARK A. FAVORS, HOWARD LEIB, LILLIE H. GALAN, EDWARD A. MULRAINE, WARREN SCHREIBER, and WEYMAN A. CAREY, Plaintiffs, DONNA KAYE DRAYTON, EDWIN ELLIS, AIDA FORREST, GENE A. JOHNSON, JOY WOOLLEY, SHEILA WRIGHT, LINDA LEE, SHING CHOR CHUNG, JULIA YANG, JUNG HO HONG, JUAN RAMOS, NICK CHAVARRIA, GRACIELA HEYMANN, SANDRA MARTINEZ, EDWIN ROLDAN, MANOLIN TIRADO, LINDA ROSE, EVERET MILLS, ANTHONY HOFFMAN, KIM THOMPSON-WEREKOH, CARLOTTA BISHOP, CAROL RINZLER, GEORGE STAMATIADES, JOSEPHINE RODRIGUEZ, and SCOTT AUSTER, Intervenor-Plaintiffs, v. ANDREW M. CUOMO, as Governor of the State of New York, ROBERT J. DUFFY, as President of the Senate of the State of New York, DEAN G. SKELOS, as Majority Leader and President Pro Tempore of the Senate of the State of New York, SHELDON SILVER, as Speaker of the Assembly of the State of New York, JOHN L. SAMPSON, as Minority Leader of the Senate of the State of New York, BRIAN M. KOLB, as Minority Leader of the Assembly of the State of New York, NEW YORK STATE LEGISLATIVE TASK FORCE ON DEMOGRAPHIC RESEARCH AND REAPPORTIONMENT ("LATFOR"), JOHN J. McENENY, as Member of LATFOR, ROBERT OAKS, as Member of LATFOR, ROMAN HEDGES, as Member of LATFOR, MICHAEL F. NOZZOLIO, as Member of LATFOR, MARTIN MALAVE DILAN, as Member of LATFOR, and WELQUIS R. LOPEZ, as Member of LATFOR, Defendants,

REENA RAGGI

OPINION AND ORDER

2 *2 **REENA RAGGI, United States Circuit Judge,**
GERARD E. LYNCH, United States Circuit Judge,
DORA L. IRIZARRY, United States District Judge:

This three-judge court was originally convened on February 14, 2012, pursuant to 28 U.S.C. § 2284(a), to address the original plaintiffs' complaint that defendants had failed to redraw New York's state and federal congressional districts in a manner consistent with the results of the 2010 Census, and had thus deprived plaintiffs of their constitutionally guaranteed right to vote. At the time the original complaint was filed, the New York State legislature (the "Legislature") had simply been unable to enact a plan to redraw congressional and legislative districts in conformity with the census; with respect to the congressional districts in particular, this failure left New York not only with malapportioned districts, but with the wrong number of districts, as New York had lost two seats in the House of Representatives. In light of this impasse, and with primary

3 elections looming, the Court was compelled to redraw the congressional districts. See *3 Favors v. Cuomo, No. 11-cv-5632 (RR)(GEL)(DLI)(RLM), 2012 WL 928223 (E.D.N.Y. Mar. 19, 2012).

In the meantime, the Legislature reached an agreement on a plan to redraw the state legislative districts, which was duly enacted and signed by the Governor on March 15, 2012. The adoption of this plan mooted the "impasse" claims of the original plaintiffs, insofar as those claims concerned the new districting plan, but did not end the litigation. While the new districting plan for the state Assembly proved uncontroversial -whether because it was an ideal plan or because it left the traditional Democratic majority in place, and no constitutionally feasible plan to disturb that majority could easily be imagined - the plan for the state Senate (the "Senate Plan") provoked claims, both by some of the parties to the original litigation and by various intervenor-plaintiffs and cross-claimants, that the Senate Plan violated the Constitution of the United States.[1] This opinion resolves the outstanding substantive claims that have been raised in this action.

[1] The Senate Plan led to other litigation as well. New York State voters brought an action in the state courts arguing that the plan violated the New York State Constitution insofar as it expanded the size of the Senate. That argument was ultimately rejected by the New York Court of Appeals. Cohen v. Cuomo, 19 N.Y.3d 196 (2012). Various parties also challenged aspects of the plan as violating the Voting Rights Act of 1965, and asked the U.S. Department of Justice ("the Department"), which under the Act must pre-clear certain election law changes in New York, to deny clearance. The Department rejected those challenges. To the extent that any of those arguments were pressed in this litigation, they have been resolved or abandoned.

Because of the complex procedural history of the case, it will be helpful to clarify the identity of the various
4 parties. Since the original complaint asserted that the *4 Legislature, by its inaction, had created an unconstitutional situation, the original plaintiffs named the majority and minority leaders of both houses of the Legislature, as well as the New York State Governor and the members of the advisory body created by the Legislature to advise it on districting issues, the New York State Legislative Task Force on Demographic Research and Reapportionment ("LATFOR"), as defendants. Once the legislative redistricting plan was adopted, the Senate Plan was challenged by three groups of intervenor-plaintiffs: the Drayton Intervenors, representing black voters in New York State, the Ramos Intervenors, representing Hispanic voters in New York State, and the Lee Intervenors, representing Asian voters in New York State. The Lee Intervenors' outstanding claims were resolved by this court's Judgment Order of November 5, 2013, Dkt. Entry 639, an order which also resolved the Drayton and Ramos Intervenors' various Voting Rights Act and congressional redistricting claims. Therefore only the Drayton and Ramos Intervenors (together, the "Intervenors") remain parties to this litigation, and only with regards to their various equal protection claims.

In addition, Senate Minority Leader John L. Sampson and Democrat-appointed LATFOR member Senator Martin Malave Dilan (the "Cross-Claimants") filed a cross-claim challenging the constitutionality of the Senate
5 Plan.[2] Although the complaints *5 raised by the Intervenors and Cross-Claimants (together, for the purposes of this memorandum, the "Plaintiffs") named as defendants the Governor and the leadership of both parties in the Assembly, because the objections by the Plaintiffs are directed towards the Senate Plan, the defense of the Senate Plan has been provided by the members of the Senate associated with the Republican Majority (the "Senate Majority Defendants"), including Robert J. Duffy, the President of the Senate, and Dean G. Skelos, the Majority Leader.

[2] In a Memorandum and Order, this court dismissed the claims of the Cross-Claimants for want of standing. Favors v. Cuomo, No. 11-cv-5632 (RR)(GEL)(DLI)(RLM), 2013 WL 5818773 (E.D.N.Y. Oct. 29, 2013), Dkt. Entry 636. However, the Intervenor-Plaintiffs "raise analogous claims" to the Cross-Claimants, and the Cross-Claimants remain party to this litigation as named defendants. Memorandum and Order dated October 29, 2013 at 9; see also Drayton Intervenors' Memorandum of Law in Opposition to Senate Majority Defendant's Motions for Summary Judgment, Dkt. Entry 452, at 11-13; Ramos Intervenors' Memorandum of Law in Opposition to Defendant Senate Majority Leader's Motions for Summary Judgment, Dkt. Entry 458, at 10-11 (asserting, as do the Cross-Claimants, that the Senate Plan

violates equal protection for failure to apportion districts on an equal population basis). Cross-Claimants were thus permitted to participate in the oral argument regarding these summary judgment motions, and we will consider their briefing and argument regarding the claim that the Senate Plan is unconstitutional on equal protection grounds.

The remaining substantive claims of the litigation are addressed in this opinion. The Plaintiffs contend that the Senate Plan violates voters' constitutionally guaranteed right to equal representation in state legislatures, which requires that "houses of a state legislature must be apportioned on a population basis." Reynolds v. Sims, 377 U.S. 533, 577 (1964); see also Motion to Amend/Correct/Supplement Answer to Amended Complaint by Martin Malave Dilan, John L. Sampson, Dkt. Entry 344, at 1-2; Drayton Intervenors' First Amended Complaint for Declaratory Judgment and Injunctive Relief, Dkt. Entry 254, at 18; Ramos Intervenors' First Amended Complaint, Dkt. Entry 257, at *6 8. The Intervenors further contend that the Senate Plan was the product of impermissible racial animus and thus violates the Equal Protection Clause of the 14th Amendment. See Motion to Intervene by Donna Kaye Drayton et. al., Dkt. Entry 28; Notice of Motion to Intervene for Juan Ramos, et. al., Dkt. Entry 37. The Senate Majority Defendants have moved for summary judgment with regards to both sets of these claims. See Notice of Motion for Summary Judgment on all Equal-Population Claims Asserted Against the Senate Plan, Dkt. Entry 420.

6

While the Senate Plan does not reflect perfect equality in population apportionment, its minor deviations comport with the discretion afforded to the states to legislate their own redistricting. We thus conclude that the Senate Plan does not violate the one-person one-vote principle, and grant the Senate Majority Defendants' motion for summary judgment as to the Plaintiffs' claims. Because, after adequate opportunity for discovery, the Intervenors have failed to produce any evidence suggesting that the redistricting process was infected by racial prejudice, we grant the Senate Majority Defendants' motion for summary judgment as to the Intervenors' racial discrimination claims. We elaborate on the reasoning for both these decisions more extensively below. We assume familiarity with the record of prior proceedings in this case, and review the facts as necessary to address the motions before us.

DISCUSSION

I. The One-Person One-Vote Equal Protection Claim

7 *7

The Plaintiffs allege that the Senate Plan is rendered unconstitutional by its violation of the one-person one-vote principle articulated in Reynolds, and the Senate Majority Defendants move for summary judgment on this claim. To succeed on a summary judgment motion the moving party must demonstrate "there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). The moving party hears "the burden . . . to demonstrate that no genuine issue respecting any material fact exists," and in reviewing a motion for summary judgment, "all ambiguities must be resolved and all inferences drawn in favor of the party against whom summary judgment is sought." Gallo v. Prudential Residential Servs., 22 F.3d 1219, 1223 (2d Cir. 1994).

The Plaintiffs' version of the relevant facts is offered in the Declaration of Todd Breitbart, Dkt. Entry 327, and the exhibits thereto. That declaration contains the population data which underlie the Plaintiffs' allegations that the Senate Plan violates the Equal Protection Clause. Those data establish that the population deviation range of the Senate Plan - calculated by adding together the percentage deviation from the ideally populated district of the most over-populated district and the most under-populated district - is 8.80%, and the average (mean) deviation of all districts is 3.67%. Id., Ex. 2 at 20.[3] The effect of these deviations from perfect population

equality is, the Plaintiffs *8 contend, to allocate approximately one seat to the New York "upstate region" that, if the districts contained exactly equal population, would be allocated to the "New York City" region. Decl. of Todd Breitbart at 8-9, ¶¶ 19-22, Dkt. Entry 327.

3 These numbers are undisputed. The Senate Majority Defendants concede that the maximum deviation is 8.80%, Memorandum of Law in Support of Senate Majority Defendants' Motion for Summary Judgment, Exhibit 2, Dkt. Entry 420, and furthermore put forth underlying population data identical to those of the Plaintiffs, Decl. of Todd R. Geremia in Support of the Senate Majority Defendants' Motion for Summary Judgment, Exhibit A, Dkt. Entry 419.

The Plaintiffs claim that, based on this evidence, it is apparent that

> the population deviations in the 2012 Senate plan result not from any good faith effort to pursue traditional redistricting principles, but rather from the Senate Majority's single-minded effort to maximize partisan advantage for the Republicans without exceeding a ten percent total deviation. . . . [T]he Senate Majority increased the size of the Senate to 63 seats under false pretenses and maximally under-populated virtually all of the upstate districts in order to shoehorn an additional district into the upstate region that it expects a Republican will win.

Memorandum in Opposition to Defendants' Motion for Summary Judgment at 1, Dkt. Entry 453. The Plaintiffs further argue that, at the least, they should receive the opportunity to conduct further discovery in order to unearth the true motives behind the legislature's decision to adopt the Senate Plan. Id. at 24.

The Equal Protection Clause of the Fourteenth Amendment establishes the principle of "one person, one vote," Reynolds v. Sims, 377 U.S. at 558, and "prohibits the dilution of individual voting power by means of state districting plans that allocate legislative seats to districts of unequal population and thereby diminish the relative voting *9 strength of each voter in overpopulated districts," Rodriguez v. Pataki, 308 F. Supp. 2d 346, 363 (S.D.N.Y. 2004), aff'd 543 U.S. 997 (2004). States must "make an honest and good faith effort to construct districts, in both houses of [their] legislature[s], as nearly of equal population as is practicable." Reynolds, 377 U.S. at 577.

However, it is well established that, with regards to population equality, the apportionment of state legislative districts faces a less stringent standard than the apportionment of federal congressional districts. Id. at 577-78. " [W]hereas population alone has been the sole criterion of constitutionality in congressional redistricting under Art. I, s 2, broader latitude has been afforded the States under the Equal Protection Clause" because of the greater number of state districts and the states' interest in serving other legitimate political goals. Mahan v. Howell, 410 U.S. 315, 322 (1973). "The ultimate inquiry, therefore, is whether the legislature's plan may reasonably be said to advance a rational state policy and, if so, whether the population disparities among the districts that have resulted from the pursuit of this plan exceed constitutional limits." Brown v. Thompson, 462 U.S. 835, 843 (1983) (internal quotation marks and brackets omitted). Archetypally legitimate political aims which validate some deviation from population equality are "maintain[ing] the integrity of various political subdivisions . . . and provid[ing] for compact districts of contiguous territory," Reynolds, 377 U.S. at 578, but the Supreme Court has recognized that other goals, such as avoiding contests between incumbents, may also justify deviation, Karcher v. Daggett, 462 U.S. 725, 740 (1983). *10 However, the "overriding objective [in state apportionment] must be substantial equality of population among various districts, so that the vote of any citizen is approximately equal in weight to that of any other citizen." Reynolds, 377 U.S. at 579.

So long as a state redistricting plan satisfies this requirement of substantial equality, the Supreme Court, building from the principle that "legislative reapportionment is primarily a matter for legislative consideration and determination," id. at 586, has concluded that states possess considerable discretion to apportion their own

legislative districts. Brown quantifies one critical threshold that assays whether deviations are constitutional: so long as the percentage deviation between the most over-represented district and the most under-represented district (the "maximum deviation," calculated by simply adding the deviations of the two districts together) remains below 10%, the deviation is a "minor deviation[]." 462 U.S. at 842. Such minor deviations "are insufficient to make out a prima facie case of invidious discrimination under the Fourteenth Amendment so as to require justification by the State." Id., quoting Gaffney v. Cummings, 412 U.S. 735, 745 (1973). The Supreme Court has been explicit that within the 10% limit, even where the deviation approaches its margins, population variations alone do not establish justiciable violations. White v. Regester, 412 U.S. 755, 764 (1973) (upholding a plan with 9.9% deviation, and indicating that as such permissiveness is "as applicable to Texas as [it is] to Connecticut," it should be universal). *11

As the maximum deviation of the Senate Plan is 8.80%, it incorporates only minor deviations from population equality. While that fact does not create a safe harbor immunizing a plan from judicial review, it alleviates the state's burden to justify that deviation. See Rodriguez, 308 F. Supp. 2d at 364-65. Plaintiffs who wish to challenge such a plan must "prove that the 'minor deviation' does not result from the promotion of other legitimate state policies, but rather from an impermissible or irrational purpose." Id. at 364. In the absence of evidence that the minor deviations reflect the "taint of arbitrariness or discrimination," Roman v. Sincock, 377 U.S. 695, 710 (1964), they will not, in and of themselves, render a redistricting plan constitutionally invalid.

Because the Senate Plan reflects only such "minor deviations," so long as we can identify a rational state policy that explains the deviations, the burden falls upon the Plaintiffs to offer evidence from which a reasonable fact finder could conclude that the redistricting process was tainted by an impermissible motive. The Plaintiffs fail to do that, adducing only various statistical analyses of the Senate Plan as evidence of its tainted character and arguing that by these metrics the Senate Plan is "materially worse" than the 2002 New York State Senate redistricting plan adopted in response to the 2000 census (the "2002 Plan") that was upheld in Rodriguez. Memorandum of Law in Opposition to Defendants' Motion for Summary Judgment at 16, Dkt. Entry 453. However, regardless of the sophistication of the Plaintiffs' demographic analysis, we remain bound by controlling precedent that establishes that the maximum deviation is the *12 most relevant statistical factor. Since it is undisputed that the Senate Plan's maximum deviation is under 10% and thus qualifies as minor, and further elaboration upon statistical data comprises the sole basis of the claim of the Senate Plan's tainted character, the Plaintiffs fail to adequately demonstrate an impermissible motive on apportionment grounds.

Moreover, the Senate Majority Defendants offer explanations for the Senate Plan's attributes that validate the presence of minor deviations, and thus comprise a rational state policy. The Senate Plan preserves the cores of prior districts and avoids contests between incumbent representatives more effectively than the various alternative plans offered by the Plaintiffs. See Memorandum of Law in Support of Senate Majority Defendants' Motion for Summary Judgment at 18, Dkt. Entry 420; see also Senate Minority's Rule 56.1 Counterstatement of Material Facts at 50, Dkt. Entry 455 (conceding that the Senate Plan preserves the cores of existing districts "marginally better" than the alternatives offered by the Plaintiffs). The Senate Plan thus advances the types of political goals that exonerate deviations from perfect equality. As the Supreme Court has stated, "[a]ny number of consistently applied legislative policies might justify some variance, including, for instance . . . preserving the cores of prior districts, and avoiding contests between incumbent Representatives. As long as the criteria are nondiscriminatory, these are all legitimate objectives that on a proper showing could justify minor population deviations." *13 Karcher, 462 U.S. at 740-41 (citation omitted).[4]

4 Indeed, the Supreme Court has suggested that political justifications for divergence from population equality, if applied in a nondiscriminatory manner, will justify deviations greater than those considered minor, so long as the deviations are not shockingly large, there is no evidence of irrational motive, and some plausible traditional justification for such variance is offered. See, e.g., Mahan, 410 U.S. at 325 (upholding a plan with a maximum deviation spread of 16.4% and an average deviation of 3.89% when the asserted reason was "maintaining the integrity of political subdivision lines"); Brown, 462 U.S. at 839, 843 (upholding a plan with a maximum deviation spread of 89% and an average deviation of 16% when the plan was justified by the traditional allocation of at least one state representative to each county); Abate v. Mundt, 403 U.S. 182, 185 (1971) (upholding a plan with a deviation spread of 11.9% in a county plan that served traditional county governance structure); cf. Roman, 377 U.S. at 707-08 (invalidating a plan where the maximum deviation was 15 to 1 in the state senate, and "two-thirds of the Senate [was] elected from districts where only about 31% of the State's population reside.").

In assessing the Senate Plan, we are mindful of the principle that the redistricting process, in the absence of indications of the taint of illicit or discriminatory motives, is best left to the legislative branch. The Supreme Court has emphatically stated that in the context of minor deviations, federal courts should not impose perfectionist demands on state legislatures. See Gaffney, 412 U.S. at 747-49 (overturning a district court opinion that invalidated a plan with only minor deviations). Rather, courts are instructed to respect redistricting's status as "a political and legislative process" rather than a judicial one, and recognize that "the goal of fair and effective representation [is not] furthered by making the standards of reapportionment so difficult to satisfy that the reapportionment task is recurringly removed from legislative hands and performed by federal courts." Id. at 749. The minor deviation rule operationalizes this principle by denoting that, if *14 substantial equality of population apportionment is satisfied and there is no evidence of illegitimate intent in the redistricting process, courts ought to defer to the legislative process. As the Senate Plan reflects only minor deviations, the Senate Majority Defendants have offered a nondiscriminatory rationale for the deviations, and the Plaintiffs have failed to demonstrate that a discriminatory motive underlies the plan, we will not arrogate to ourselves the legislature's responsibility to perform the redistricting process.

The Plaintiffs lean heavily on Larios v. Cox, 300 F. Supp. 2d 1320 (N. D. Ga.), aff'd 542 U.S. 947 (2004), in which Georgia's state senate redistricting plan following the 2000 census was struck down by the courts despite possessing only a "minor deviation." With a maximum deviation of 9.98% and an average deviation of 3.78%, id. at 1327, the defective plan in Larios possessed statistical characteristics which were marginally worse than, but roughly comparable to, those of the Senate Plan at issue here. The Larios court, however, identified two defects in the redistricting process - neither present here - that rendered that plan unconstitutional: explicit regional favoritism that overpopulated Republican-leaning geographic areas to the benefit of the incumbent Democratic party; and implementation of incumbent protection that strongly favored incumbent Democrats but not incumbent Republicans by forcing Republican incumbents into competition with *15 one another.[5] Furthermore, the record in Larios attested to the facial presence of discrimination based on partisanship, as witnesses testified to the impact of explicit, politicized regional favoritism on the redistricting process, id. at 1327-28, and the court concluded that the record as a whole revealed the influence of illicit partisanship, id. at 1329-30.

15

5 "While Democratic incumbents who supported the plans were generally protected, Republican incumbents were regularly pitted against one another in an obviously purposeful attempt to unseat as many of them as possible. . . . [T]he 2002 Senate Plan included six incumbent pairings: four Republican-Republican pairings and two Republican-Democrat pairings." Larios, 300 F. Supp. 2d at 1329.

The facial presence of an irrationally prejudiced partisan agenda and the aggressively opportunistic splitting and reorganizing of incumbent districts differentiates the facts of Larios from those before us.[6] Thus, while the Plaintiffs assert that the Senate Plan is infected with the type of regional partisan bias favoring one party and condemned by the Larios court, in Larios that harm was supported by explicit evidence of discrimination in the record. Here the Plaintiffs are only able to argue that the regional bias speaks for itself. The other type of harm identified in Larios, the specific and aggressively prejudicial targeting of one party's standing incumbents, is
16 entirely absent *16 here.[7] Finally, the court in Larios concluded that the justifications offered by the creators of the invalidated Larios plan failed to conform to those the Supreme Court has acknowledged as traditional redistricting principles, id. at 1350-51, further differentiating the facts in Larios from those before us.[8]

6 At oral argument regarding the Motion for Summary Judgment, November 13, 2013, Senate Minority Cross-Claimants' Counsel suggested Larios was somehow a less egregious redistricting because the partisan interest was baldly expressed, whereas the Senate Plan reflected "deception." Artful as this argument is, it is merely an attempt to make a virtue of the absence of evidence.

7 We note one other significant practical distinction between this case and Larios. In Larios, a political party sought to retain control of both houses of the Georgia legislature, effectively disenfranchising the party that apparently had the support of a majority of the state's residents. The redistricting plan at issue here is not the unilateral product of a legislative majority party seeking to preserve its dominant role in the state despite shrinking popular support. Although the Republicans who appear to benefit politically from the Senate Plan hold a majority in the Senate, and appear to have devised the Senate Plan with little or no input from their Democratic colleagues, the Republican Senate Majority had no power to enact the Plan into law. The plan was passed, as of course it needed to be to become law, by the Democratic-controlled Assembly, and signed by a Democratic Governor. Either the Assembly or the Governor could have blocked adoption of the Senate Plan. The redistricting plan for both houses of the New York State legislature was thus the result of precisely the sort of political process that the Supreme Court has instructed us should not be lightly displaced.

8 Larios is the only three-judge district court decision invalidating a plan with only minor deviations that has been affirmed by the Supreme Court. While the Plaintiffs cite other decisions that invalidated districting plans within the 10% margin, those cases possess even more clearly distinguishing features (and, in any case, are not binding on us). See Hulme v. Madison County, 188 F. Supp. 2d 1041, 1050-51 (S.D. Ill., 2001) (apportioning found unconstitutional due to abusively partisan atmosphere during redistricting); Vigo County Republican Cent. Comm. v. Vigo County Comm'rs, 834 F. Supp. 1080, 1085 (S.D. Ind., 1993) (apportioning found unconstitutional because prior plan had deviation spread of 37%, and subsequent corrections, while bringing spread below 10%, did not reflect "good faith" effort to satisfy the equal population principle); Sutton v. Dunne, 681 F.2d 484, 488 (7th Cir. 1982) (apportioning found unconstitutional because it occurred in a two-district plan, where equality could be achieved with logistically trivial adjustments).

17 The most recent decision concerning the apportionment of the New York State *17 legislature, Rodriguez, offers a closer factual analogue than Larios. In bringing a "one person, one vote" challenge to the 2002 Plan, the plaintiffs in Rodriguez made essentially the same arguments made by the Plaintiffs here. 308 F. Supp. 2d at 363. The statistical characteristics of the 2002 Plan, with a maximum deviation of 9.78% and an average deviation of 2.22%, id. at 365, are comparable to those of the Senate Plan.[9] Perhaps most saliently, the allegations in Rodriguez mirror those made here - that the redistricting "impermissibly and arbitrarily discriminates against 'downstate' residents . . . by systematically overpopulating all of those districts and systematically underpopulating all of the 'upstate' districts," and locating an additional district upstate instead of downstate. Id. at 366. The defendants in Rodriguez offered traditional redistricting rationales to justify the 2002 Plan, including "contiguity, compactness, preserving the cores of existing districts, desiring not to pit

incumbents against one another, respecting then-current political subdivisions and county lines, and staying within the ten-percent-deviation parameter of Brown." Id. at 367. Observing that the 2002 Plan involved only minor deviations from equal apportionment, that the 2002 Plan advanced traditional redistricting goals, and that the total impact of the deviations changed the allocation of only a single seat, id. at 370-71, the Rodriguez court granted defendants' summary judgment motion.

9 The maximum deviation was higher, and the average deviation lower, in the 2002 Plan than in the Senate Plan.

18 We need not precisely delineate the relationship between the precedential authority *18 of Rodriguez and our decision here. Nor need we attempt to reconcile Larios and Rodriguez, or synthesize them to extract a universal principle for assessing equal population claims in the state redistricting context. We observe only that, as Rodriguez was summarily affirmed by the Supreme Court after the Supreme Court summarily affirmed Larios, the Supreme Court evidently found Rodriguez consistent with Larios, and that Rodriguez, broadly speaking, offers an analysis akin to our analysis of the Senate Plan. Rodriguez thus reinforces our conclusion that summary judgment must be granted in favor of the Senate Majority Defendants on the Plaintiffs' equal population claim.

There are a number of outstanding motions related to discovery on the one-person, one-vote claims. There has already been extensive discovery practice, and the remaining motions before us relate to difficult issues regarding the extent to which the work product, legislative, and attorney-client privileges protect various Senate documents sought by the Plaintiffs. The case before us, however, reveals no issue of material fact that remains in dispute. Rather, the critical facts for resolving this motion consist of the agreed-upon characteristics of the Senate Plan, and those facts reveal no violation of the Equal Protection Clause on one-person, one-vote grounds. In these circumstances any further discovery on this issue would be based on "speculation," Nat'l Union Fire Ins. Co. of Pittsburgh v. Stroh Cos., Inc., 265 F.3d 97, 117 (2d Cir. 2001). We therefore deny as moot the Senate Minority Cross-Claimants' Motion to Compel dated April 10, 2013, Dkt. Entry 581; the Ramos

19 Intervenors' Amended Motion to Compel Production from the *19 Defendant Senate Majority, dated June 7, 2013, Dkt. Entry 607; the Appeal of the Magistrate Judge Decision by the Senate Majority Defendants, dated February 25, 2013, Dkt. Entry 565; the Appeal of the Magistrate Judge Decision by the Senate Minority Cross-Claimants, dated February 25, 2013, Dkt. Entry 563; and the Assembly Majority Defendants' Appeal of Magistrate Judge Decision, dated February 25, 2013, Dkt. Entry 562.

II. Intervenors' Racial Discrimination Claims

The Intervenors further allege that the Senate Plan violates the Constitution because it intentionally discriminates on the basis of race.[10] Drayton Intervenors' Memorandum of Law in Opposition to Senate Majority Defendant's Motions for Summary Judgment, Dkt. Entry 452; Ramos Intervenors' Memorandum of Law in Opposition to Defendant Senate Majority Leader's Motions for Summary Judgment, Dkt. Entry 458. The Intervenors claim that "race was a 'motivating factor' . . . in [the Senate Majority's] drawing of the 2012 Senate plan and their location of the new Senate district upstate rather than downstate." Drayton Memorandum at 13. They further argue that the Senate Majority Defendants' motion for summary judgment should be

20 rejected, as further *20 discovery could reveal "[m]aterial facts . . . which will ultimately determine . . . whether racial bias was a motivating factor" in the redistricting process. Ramos Memorandum at 12 (emphasis omitted). For the instant inquiry, therefore, we must determine whether summary judgment in favor of the Senate Majority Defendants is appropriate, or whether the Intervenors ought to receive the opportunity to conduct further discovery.

10 The Intervenors originally raised multiple other claims, alleging various constitutional claims due to New York's failure to adopt a congressional redistricting plan and alleging Voting Rights Act Section 2 claims against the Senate Plan. We found in favor of the Intervenors regarding the claims for failure to adopt a congressional plan, and the Intervenors have withdrawn by stipulation their Section 2 claims. The Intervenors' instant allegations are the only substantive claims remaining.

The Intervenors allege that because racial animus contributed to the legislature's decisionmaking process, the Senate Plan violates the Equal Protection Clause. The Intervenors do not, however, argue that the Senate Plan reflected a "predominantly racial, not political" agenda in which the "legislature subordinated traditional race-neutral districting principles to racial considerations." Easly v. Cromartie, 532 U.S. 234, 241 (2001) (ellipses omitted). Rather they argue that racial animus was merely a motivating factor (not necessarily the "dominant" or "primary" one), whose presence would regardless taint the decision as arbitrary or irrational. Vill. of Arlington Heights v. Metro. Hous. Dev. Corp., 429 U.S. 252, 265 (1977).[11]

11 While the Drayton Intervenors suggest in passing that racial discrimination may have been a "predominate factor" in the creation of the Senate Plan, Drayton Memorandum at 13, they offer neither evidence nor substantive argument to support this claim.

Arlington Heights "set[s] forth a framework for analyzing whether invidious discriminatory purpose was a motivating factor in a government body's decisionmaking." Reno v. Bossier Parish School Bd., 520 U.S. 471, 488 (1997) (internal quotation marks omitted). Such an analysis "demands a sensitive inquiry into such
21 circumstantial and *21 direct evidence of intent as may be available." Arlington Heights, 429 U.S. at 266. Whether the state action "bears more heavily on one race than another" provides a starting point for the inquiry, but it is "rare" that a "clear pattern, unexplainable on grounds other than race, emerges from the effect of the state action even when the governing legislation appears neutral on its face." Id. "In the absence of a pattern" that is "stark . . . impact alone is not determinative, and the Court must look to other evidence of race-based decisionmaking." Miller v. Johnson, 515 U.S. 900, 914 (1995) (quoting Arlington Heights, 429 U.S. at 266) (internal quotation marks omitted). In these situations, "[racially discriminatory] impact alone is not determinative" but may provide a "starting point" for the inquiry into discriminatory intent. Arlington Heights, 429 U.S. at 266. The court then must turn to other types of evidence, including "historical background," "[t]he specific sequence of events leading up [to] the challenged decision," "[d]epartures from the normal procedural sequence" of governmental decisionmaking, and "legislative or administrative history," particularly if relevant records of bodies' decision-making process exist, to identify unconstitutionally discriminatory motive. Id. at 267-68. See also United States v. Yonkers Bd. of Educ., 837 F.2d 1181, 1221 (2d Cir. 1987) (discussing application of the Arlington Heights factors).

In sum, in all but the most "starkly" discriminatory cases, alleged discriminatory legislative intent must be grounded in two types of evidence: the discriminatory impact on racial groups, and signs that the lawmaking
22 process itself was corrupted by racial animus. *22 While the Drayton Intervenors allege that the Senate Plan's characteristics are sufficient to create an inference of the legislature's discriminatory purpose, Drayton Memorandum at 13, with the withdrawal or dismissal of all vote-dilution § 2 claims with regards to the Senate Plan, the Intervenors adduce no real evidence that the Senate Plan is racially discriminatory. See Bossier Parish, 520 U.S. at 486 (observing that § 2 vote dilution evidence may be helpfully probative of discriminatory intent in conducting the Arlington Heights test). Rather, the Intervenors repackage evidence advanced by the Cross-Claimants' equal population argument regarding the uneven upstate-downstate allocation of population and the location of the additional Senate seat. See Drayton Memorandum at 13; Ramos Memorandum at 10-11. While

the Intervenors assert that "invidious discrimination" contributed to the minor deviations present in the Senate Plan, Ramos Memorandum at 10, see also Drayton Memorandum at 13, the Intervenors offer no material evidence that the Senate Plan is racially motivated. Rather, they offer conclusory assertions that the population deviations of the Senate Plan can be attributed to racial discrimination.

That the Senate Majority Defendants have advanced valid justifications for the Senate Plan's deviations from strict equal allocation of population further undermines the claim that the Senate Plan's minor deviations provides evidence of discrimination. Where the population of a state is not distributed in a racially homogenous fashion, population deviations, such as the minor deviations in the Senate Plan, will necessarily create *23
23 differences in racial representation. However, the mere fact that a decision "arguably bear[s] more heavily on racial minorities" does not alone establish discriminatory motive. Arlington Heights, 429 U.S. at 269. The Supreme Court has "rejected the notion that a law is invalid under the Equal Protection Clause simply because it may affect a greater proportion of one race than another," Rodgers v. Lodge, 458 U.S. 613, 618 (1982).

Because the evidence of racially disparate impact is unavailing, the Intervenors must demonstrate that the process by which the Senate Plan was passed reveals legislators' illicit racial animus in order to show that the Senate Plan is discriminatory. However, the Intervenors are unable to cite any procedural irregularities or suspect legislative conduct indicating that the Senate Plan was so contaminated. Nor do any other features of the Senate Plan or of the legislative history surrounding it support an inference of racial discrimination. The disposition of similar claims in Rodriguez, 308 F. Supp. 2d at 444, further weighs against the conclusion that the "historical background," Arlington Heights, 429 U.S. at 266, of the Senate Plan suggests racial animus. As the Intervenors have also failed to demonstrate that the racial impact of the Senate Plan supports an inference of discriminatory intent, the Intervenors have offered no proof to suggest that the Senate Plan was motivated in any part by racial animus.

The Intervenors nevertheless oppose the Senate Majority Defendants' summary judgment motions by arguing that they should be permitted to continue to pursue discovery with the hope of excavating some evidence that will allow them to argue a *24 disputed material fact exists regarding the presence of racial prejudice in the
24 passage of the Senate Plan. In particular, the Intervenors have sought broad discovery of documents related to the creation of the Senate Plan. See Drayton Memorandum in Opposition to the Senate Majority et. al. Motions for a Protective Order, Dkt. Entry 423; Ramos Motion to Compel Production of Documents in Senate Majority's Privilege Logs, Dkt. Entry 606. The Senate Majority Defendants have asserted legislative privilege over various classes of these documents, resulting in extensive motion practice regarding the permissible extent of the discovery. The court has reviewed these documents in camera to determine the appropriate extent of the privilege. See Memorandum and Order dated February 8, 2013, Dkt. Entry 559 (following extensive in camera review of documents listed in privilege log, granting in part and denying in part Senate Majority Defendants' motion for a protective order); Memorandum and Order dated August 27, 2013, Dkt. Entry 615 (granting Ramos Intervenor Motion to Compel, and instructing Senate Majority Defendants to produce further documents for in camera review). During this in camera review of privileged materials, we have found no evidence that would support a finding that racial animus was a motivating factor in the creation of the Senate Plan. In view of the strong policies disfavoring disclosure of confidential records of legislative deliberation, we see no justification for ordering disclosure of privileged records that do nothing to advance the Intervenors' allegations.

While summary judgment should not be granted before the nonmoving party has *25 had "a fully adequate
25 opportunity for discovery," Berger v. United States, 87 F.3d 60, 65 (2d Cir. 1996), a district court is within its discretion to deny additional discovery that is sought only on the basis of "speculation." Nat'l Union Fire Ins.

Co., 265 F.3d at 117. The decision to deny further discovery and grant summary judgment is particularly appropriate where, despite already extensive discovery, the nonmovant has been unable to "demonstrate the existence of any genuine issue of fact." Waldron v. Cities Serv. Co., 361 F.2d 671, 673 (2d Cir. 1966).

On the well-developed record before us, there is no disputed issue of material fact, and no evidence of discrimination in the adoption of the Senate Plan. Thus, any suggestion that the Senate Plan was tainted by racial animus is purely speculative. We therefore grant the Senate Majority Defendants' motion for summary judgment with regard to the Drayton and Ramos Intervenors' claims. With the Intervenors' claims dismissed, we deny as moot the Ramos Intervenors' Amended Motion to Compel Production, Dkt. Entry 607.

CONCLUSION

In light of the lack of any material fact before us regarding either the Senate Minority Cross-Claimants' or the Intervenors' equal protection allegations, and the failure of both complaints to demonstrate that the Senate Plan violates the Equal Protection Clause on either deviations in apportionment or the presence of illicit racial motivation in the legislative process, we hereby: *26 (1) GRANT the Senate Majority Defendants' motions for summary judgment as to the Drayton Intervenors' and Ramos Intervenors' claims; and (2) DENY the discovery motions by the Senate Minority Cross-Claimants and the Ramos Intervenors, as well as the appeals of the Magistrate Judge Decisions by the Senate Minority Cross-Claimants, the Senate Majority Defendants, and the Assembly Majority Defendants. SO ORDERED. DATED: Brooklyn, New York

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May 22, 2014

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REENA RAGGI

United States Circuit Judge

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GERARD E. LYNCH

United States Circuit Judge

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DORA L. IRIZARRY

United States District Judge

Favors v. Cuomo

Decided Jul 28, 2014

DOCKET #11-cv-5632 (RR)(GEL)(DLI)(RLM)

07-28-2014

MARK A. FAVORS, HOWARD LEIB, LILLIE H. GALAN, EDWARD A. MULRAINE, WARREN SCHREIBER, and WEYMAN A. CAREY, Plaintiffs, DONNA KAYE DRAYTON, EDWIN ELLIS, AIDA FORREST, GENE A. JOHNSON, JOY WOOLLEY, SHEILA WRIGHT, MELVIN BOONE, GRISSELLE GONZALEZ, DENNIS O. JONES, REGIS THOMPSON LAWRENCE, AUBREY PHILLIPS, LINDA LEE, SHING CHOR CHUNG, JULIA YANG, JUNG HO HONG, JUAN RAMOS, NICK CHAVARRIA, GRACIELA HEYMANN, SANDRA MARTINEZ, EDWIN ROLDAN, MANOLIN TIRADO, LINDA ROSE, EVERET MILLS, ANTHONY HOFFMAN, KIM THOMP SON-WEREKOH, CARLOTTA BISHOP, CAROL RINZLER,GEORGE STAMATIADES, JOSEPHINE RODRIGUEZ, SCOTT AUSTER, and YITZCHOK ULLMAN, Intervenor Plaintiffs, v. ANDREW M. CUOMO, as Governor of the State of New York, ROBERT J. DUFFY, as President of the Senate of the State of New York, DEAN G. SKELOS, as Majority Leader and President Pro Tempore of the Senate of the State of New York, SHELDON SILVER, as Speaker of the Assembly of the State of New York, JOHN L. SAMPSON, as Minority Leader of the Senate of the State of New York, BRIAN M. KOLB, as Minority Leader of the Assembly of the State of New York, the NEW YORK STATE LEGISLATIVE TASK FORCE ON DEMOGRAPHIC RESEARCH AND APPORTIONMENT ("LATFOR"), JOHN J. McENENY, as Member of LATFOR, ROBERT OAKS, as Member of LATFOR, ROMAN HEDGES, as Member of LATFOR, MICHAEL F. NOZZOLIO, as Member of LATFOR, MARTIN MALAVE DILAN, as Member of LATFOR, and WELQUIS R. LOPEZ, as Member of LATFOR, Defendants.

REENA RAGGI, United States Circuit Judge

2 **SUMMARY ORDER** *2

GERARD E. LYNCH, United States Circuit Judge

DORA L. IRIZARRY, United States District Judge:

This Order is written for the benefit of the parties and familiarity with the underlying facts and issues is presumed.[1] On May 22, 2014, this Court granted the Senate Majority Defendants' motions for summary judgment as to the Drayton Intervenors' and Ramos Intervenors' remaining equal protection claims, and denied the discovery motions by the Senate Minority Cross-Claimants and the Ramos Intervenors, as well as the appeals from the Magistrate Judge Decisions by the Senate Minority Cross-Claimants, the Senate Majority Defendants, and the Assembly Majority Defendants. (*See generally* May 22, 2014 Opinion and Order ("5/22/14 Op. & Or."), Dkt. Entry No. 673.) The Drayton Intervenors move for reconsideration of the Court's May 22, 2014 Opinion and Order. (*See* Drayton Intervenors' Motion for Reconsideration ("Drayton Intervenors' Mot."), Dkt. Entry No. 677). The Senate Majority Defendants oppose reconsideration. (*See* Senate Majority

Defendants' Opposition to Drayton Intervenors' Mot. ("Senate Majority Defendants' Opp'n"), Dkt. Entry No. 684). Additionally, the Lee Intervenors submitted a letter requesting that the Court modify the May 22, 2014 Opinion and Order to reflect the fact that they, too, had a pending equal population claim that was subject to the Court's decision. (*See* June 5, 2014 Lee Intervenors' Letter ("Lee Intervenors' Ltr."), Dkt. Entry No. 679.) For the reasons set forth below, the Drayton Intervenors' motion for reconsideration is denied and the Lee Intervenors' letter requesting modification of the May 22, 2014 Opinion and Order is granted. *3

3 [1] A detailed discussion of the factual background of this case is set forth in this Court's May 22, 2014 Opinion and Order. (*See* 5/22/14 Op. & Or., Dkt. Entry No. 673.)

DISCUSSION

I. Drayton Intervenors' Motion for Reconsideration

"The standard for granting [a motion for reconsideration] is strict, and reconsideration will generally be denied unless the moving party can point to controlling decisions or data that the court overlooked—matters, in other words, that might reasonably be expected to alter the conclusion reached by the court." *Shrader v. CSX Transp., Inc.*, 70 F.3d 255, 257 (2d Cir. 1995). "The major grounds justifying reconsideration are an intervening change in controlling law, the availability of new evidence, or the need to correct a clear error or prevent manifest injustice." *Hinds Cnty., Miss. v. Wachovia Bank N.A.*, 708 F. Supp. 2d 348, 369 (S.D.N.Y. 2010) (citation and internal quotation marks omitted). Reconsideration is not a proper tool to repackage and relitigate arguments and issues already considered by the court in deciding the original motion. *Id.*; *United States v. Gross*, 2002 WL 32096592, at *4 (E.D.N.Y. Dec. 5, 2002). Nor is it proper to raise new arguments and issues. *Gross*, 2002 WL 32096592 at *4.

Notably, the Drayton Intervenors do not point to any intervening change of controlling law or availability of new evidence in support of their motion. Rather, the Drayton Intervenors contend that the Court: (1) overlooked and failed to rule on the Drayton Intervenors' Rule 56(d) motion; (2) overlooked the purported lack of discovery that the Drayton Intervenors received during this litigation; and (3) incorrectly held the Drayton Intervenors to a harsher legal standard than that required of parties opposing summary judgment. (*See generally* Drayton Intervenors' Mot.) Each of these arguments lacks merit.

First, the Court did not ignore the Drayton Intervenors' Rule 56(d) motion because the Drayton Intervenors did not have permission to file a free-standing motion. Specifically, the Court directed the Drayton Intervenors to raise their Rule 56(d) arguments in their opposition to the Senate Majority Defendants' motion for summary judgment. (*See* July 11, 2012 ECF Order) *4 ("Drayton Interveners' requests for a premotion conference and permission to file a motion pursuant to Rule 56(d) of the Federal Rules of Civil Procedure are denied as unnecessary. All parties are to raise any objections and other bases for opposing the motions for summary judgment, including any arguments pursuant to Rule 56(d), in their submissions in opposition to the motions for summary judgment, and not by separate motion.").

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Second, the Court considered the Drayton Intervenors' arguments for additional discovery and rejected them. Indeed, with respect to the additional discovery sought, the Court noted: "In view of the strong policies disfavoring disclosure of confidential records of legislative deliberation, we see no justification for ordering disclosure of privileged records that do nothing to advance the Intervenors' allegations." (5/22/14 Op. & Or. at 24.) Furthermore, the Senate Majority Defendants correctly noted that the Drayton Intervenors failed to identify any discovery that the Drayton Intervenors sought and did not receive on grounds other than privilege. (*See* Senate Majority Defendants' Opp'n at 2.)

Finally, the Court undertook the resolution of these motions with great care, articulating and applying the proper legal standards for resolution of such motions. (*See* 5/22/14 Op. & Or. at 7.) Under those standards, the Drayton Intervenors' claims failed. The Court considered both the evidence in the record and privileged documents reviewed *in camera*. Based on this review, there was no evidence to support the Drayton Intervenors' claims. Accordingly, the Drayton Intervenors' motion for reconsideration is denied.

II. Lee Intervenors' Letter

The Lee Intervenors request that this Court revise the May 22, 2014 Opinion and Order to reflect that the Lee Intervenors, too, had an equal population claim subject to the Court's decision. This request is granted. Thus, the May 22, 2014 Opinion and Order is modified to include the Lee Intervenors' equal population claim, in addition to the identical equal population *5 claims of the Drayton and Ramos Intervenors. For the same reasons that were detailed in the Court's May 22, 2014 Opinion and Order, the Lee Intervenors' equal population claim is dismissed.

CONCLUSION

For the reasons set forth above, the Drayton Intervenors' motion for reconsideration is denied and the Lee Intervenors' request for modification of the May 22, 2014 Opinion and Order is granted. SO ORDERED.

DATED: Brooklyn, New York

July 28, 2014

/s/

REENA RAGGI

United States Circuit Judge

/s/

GERARD E. LYNCH

United States Circuit Judge

/s/

DORA L. IRIZARRY

United States District Judge

Favors v. Cuomo

Decided Aug 10, 2012

11-CV-5632 (DLI)(RR)(GEL)

08-10-2012

MARK A. FAVORS, et al., Plaintiffs, v. ANDREW M. CUOMO, as Governor of the State of New York, et al., Defendants.

ROANNE L. MANN

MEMORANDUM AND ORDER

ROANNE L. MANN, UNITED STATES MAGISTRATE JUDGE:

The parties to this redistricting litigation have presented the Court with two discovery-related groups of motions. The first motion, filed on June 11, 2012 by the Senate Minority defendants, seeks an order compelling the Senate Majority defendants to produce all documents, and respond to two interrogatories, concerning the determination of the size of the New York State Senate following the 2010 Census redistricting cycle, "including without limitation all attorney-client communications and attorney work product . . . ." See Mem. of Law in Supp. of the Senate Minority's Mot. to Compel Regarding Waiver of Attorney-Client and Work Product Privileges with Respect to the Senate Size (June 11, 2012) ("6/11/12 Senate Minority Mem."), Electronic Case Filing ("ECF") Docket Entry ("DE") DE #390. The second group of motions, filed on June 18, 2012 respectively by the Senate Majority, Assembly Majority, and Assembly Minority defendants, requests a protective order precluding the compelled disclosure of documents and information protected by the legislative privilege. See Mem. in Supp. of Mot. for Protective Order for the Assembly Majority on the Ground of *2 Legislative Privilege (June 18, 2012) ("6/18/12 Assembly Majority Mem."), DE #394; Mem. of Law in Supp. of Senate Majority Defendants' Mot. for a Protective Order (June 18, 2012) ("6/18/12 Senate Majority Mem."), DE #397-1; Mem. in Supp. of Assembly Minority's Mot. for a Protective Order (June 18, 2012) ("6/18/12 Assembly Minority Mem."), DE #399.[1]

[1] Although named as defendants, the Senate Minority defendants (the "Senate Minority") have essentially aligned themselves with the plaintiff-intervenors, and have even filed a cross-claim against the other defendants. See Senate Minority's Amended Answer to Amended Complaint and Cross-Claim (May 23, 2012) ("5/23/12 Senate Minority Answer and Cross-Claim"), DE #370. Therefore, for ease of reference, the Court's use of the term "plaintiffs" will include within the referenced group the Senate Minority, as well as the plaintiff-intervenors, and its use of the term "defendants" will exclude from its scope the Senate Minority.

For the reasons stated herein, the Senate Minority's motion to compel is denied without prejudice. The Court defers ruling on the motions for protective orders filed by the Senate Majority, Assembly Majority, and Assembly Minority defendants (hereinafter, the "Senate Majority," "Assembly Majority," and "Assembly

Minority," respectively), pending the completion of the Court's *in camera* review of privileged documents.

The defendants are directed to produce to the Court, for *in camera* inspection, the following documents by August 17, 2012: The Senate Majority is directed to produce all documents listed in its privilege logs, and the Assembly Majority and Assembly Minority are directed to produce all documents in their respective privilege logs relating to the Assembly districts in Nassau County. Additionally, the Senate Majority, Assembly Majority, and Assembly Minority are directed to supplement their privilege logs as described in Part III of this opinion, and to serve and file (via ECF) their revised logs by August 20, 2012. *3

3

BACKGROUND [2]

2 Familiarity with the claims and parties in this case and prior proceedings is assumed. See generally Favors v. Cuomo, -- F.Supp.2d --, 2012 WL 1802073 (E.D.N.Y. May 16, 2012); Favors v. Cuomo, No. 11-cv-5632 (RR)(GEL)(DLI)(RLM), 2012 WL 928216 (E.D.N.Y. Mar. 19, 2012), aff'd with modifications, 2012 WL 928223 (E.D.N.Y. Mar. 19, 2012); Favors v. Cuomo, -- F.Supp.2d --, 2012 WL 824858 (E.D.N.Y. Mar. 8, 2012). Nevertheless, the Court will provide a brief overview of the case to help frame the discussion.

The instant litigation involves challenges to the newly enacted New York State Senate and Assembly redistricting plans (the "2012 Senate Plan" and the "2012 Assembly Plan," respectively), which were signed into law by Governor Andrew M. Cuomo in March 2012. See Favors v. Cuomo, 2012 WL 1802073, at *2. The challenges are brought by three sets of plaintiff-intervenors -- the Drayton Intervenors, the Lee Intervenors, and the Ramos Intervenors -- as against the Governor of New York, various executive officials, New York state legislators, the New York State Legislative Task Force on Demographic Research and Reapportionment ("LATFOR"), and members of LATFOR. Id. As relevant to the instant motions, the Drayton Intervenors, Lee Intervenors, and Ramos Intervenors allege that the 2012 Senate Plan "improperly dilutes the voting power of African Americans, Asian Americans and Hispanics in violation of the United States Constitution and the Voting Rights Act [("VRA")], and the malapportioned districts lack any legitimate justification." See id. The Drayton Intervenors and Ramos Intervenors also allege that the 2012 Assembly Plan "violates Section 2 [of the VRA] by failing to create new majority-minority districts in Nassau County and New York and Bronx Counties, respectively." See id. [3] Lastly, the Senate Minority has asserted a *4 cross-claim against all defendants, alleging that the 2012 Senate Plan violates the one-person, one-vote principle of the Equal Protection Clause of the Fourteenth Amendment because the Senate Majority, "[r]ather than making an honest and good faith effort to adhere as closely as possible to the Fourteenth Amendment's equal population principle, . . . maximized the population deviations[,] . . . because doing so (and increasing the size of the body by one district) was the only way the Majority could draw lines specifically intended to perpetuate the Republic majority in the Senate." See 5/23/12 Senate Minority Answer and Cross-Claim at 9-11.

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3 The Ramos Intervenors have now withdrawn their VRA Section 2 claim by stipulation. See Stipulation (July 20, 2012), DE #459-1.

Throughout the course of this litigation, the parties have from time to time raised the issues of attorney-client privilege and legislative privilege. On April 20, 2012, the three-judge court (the "Panel") assigned to this case ordered the defendants to "show cause as to why they should not be required to identify the person(s) who drew the challenged [New York State Senate] map . . . , and be prepared to produce the individual(s) for depositions." See Minute Entry for Three-Judge Court Hearing (Apr. 20, 2012). In response, the Senate Majority claimed "an absolute testimonial privilege bar[ring] plaintiffs from deposing the individual or

individuals who drew the 2012 Senate redistricting map about deliberations and communications regarding this legislative activity." See Senate Majority's Response to the Court's April 20 Order (Apr. 27, 2012) ("4/27/12 Senate Majority Resp.") at 15, DE #338.

Shortly thereafter, the Panel referred the matter to the undersigned magistrate judge "to supervise discovery on such schedule, including an expedited schedule, as she may deem appropriate, and to issue all discovery-related orders, including, but not limited to, scheduling orders and orders resolving or otherwise addressing any discovery disputes that the parties are *5 unable to resolve after good faith efforts to reach resolution thereof without court action." See Favors, 2012 WL 1802073, at *15. At a proceeding held on May 29, 2012, this Court set a discovery schedule,[4] as well as a briefing schedule for the parties' unresolved privilege issues. See Minute Entry and Order (May 29, 2012), DE #377. The parties have now filed their discovery cross-motions addressing the attorney-client privilege, work product protection, and legislative privilege.

4 Pursuant to that schedule, the plaintiffs' discovery demands were to be served by May 31, 2012, and the defendants' responses were due by June 18, 2012. See Minute Entry and Order (May 29, 2012) at 2, DE #377. The defendants' privilege logs were due, in final form, by June 25, 2012. Id.

The Senate Minority, Drayton Intervenors, Lee Intervenors, and Ramos Intervenors jointly served twenty-nine document demands and fifteen interrogatories on all defendants. See generally See generally Plaintiffs' Consolidated Initial Discovery Requests (May 31, 2012) ("Pl. Disc. Requests"), Ex. A. to Decl. of Todd R. Geremia (June 18, 2012) ("6/18/12 Geremia Decl.") at 7-15, DE #395-1. The demands and interrogatories seek documents and information regarding the development of the 2012 Senate and 2012 Assembly Plans. See id. With respect to the 2012 Senate Plan, the plaintiffs generally request documents and information regarding the instructions given to the mapmakers, the reasons that the plan deviates from equal population, the use of traditional redistricting principles or partisan goals in the development of the plan, considerations of alternative plans and public proposals, the decision to add and placement of a 63rd district, regional malapportionment, attorney communications and time sheets, and documents intended for use in motions now pending before the Panel. See id. As for the 2012 Assembly Plan, the plaintiffs request non-public *6 documents and information concerning the redistricting of the districts in New York City and on Long Island. See id. In connection with all of their demands, the plaintiffs request communications between and among legislators, legislative staff members, LATFOR members, LATFOR staff, attorneys, and experts. See id. Finally, the plaintiffs' interrogatories ask the defendants to identify the individuals involved with the 2012 redistricting plans, and, among other information, the motivations behind the drafting of those plans. See id. at 13-15.

DISCUSSION

I. Motion to Compel: Attorney-Client Privilege and Work Product Protection

On June 11, 2012, the Senate Minority filed a motion for an order compelling the defendants to produce "all documents relating to or reflecting the determination of the size of the [New York State] Senate in 2012, including without limitation all attorney-client communications and attorney work product, and to . . . respond to Interrogatories Nos. 5 and 6 in Plaintiffs' Consolidated Initial Discovery Requests."[5] See 6/11/12 Senate Minority Mem. at 1.[6] The Senate Minority argues that the Senate Majority waived its attorney-client privilege and work product protection when it released to the public (and later relied upon in state court) *7 a January 5, 2012 memorandum from attorney Michael A. Carvin to New York State Senators Dean Skelos and Michael Nozzolio[7] (the "2012 Carvin Memorandum") discussing the appropriate size of the Senate following the 2010 Census. See 6/11/12 Senate Minority Mem. at 3-5; see also 2012 Carvin Memorandum, Ex. 2 to Decl. of Eric Hecker in Supp. of Senate Minority Mot. to Compel (June 11, 2012) ("6/11/12 Hecker Decl."), DE #391-2.[8]

5 In Plaintiffs' Consolidated Initial Discovery Requests, Interrogatory 5 requests that the defendants "[i]dentify the reasons why a 63rd Senate district was added in 2012," and Interrogatory 6 requests that the defendants "[i]dentify the reasons why a different Senate size (i.e., other than 63 Senate districts) was not adopted in 2012." See Pl. Disc. Requests at 13.

6 The Lee Intervenors joined the Senate Minority's motion to compel, see Letter from Grace Yang to the Court (June 11, 2012) at 1, DE #392, incorporating by reference a letter-brief submitted in connection with the April 20, 2012 Order to Show Cause. See Letter Brief Regarding 4/27/12 Senate Majority Response (May 4, 2012), DE #363. Because the letter brief does not alter this Court's analysis, and relies on legislative privilege waiver arguments, it is not further described in connection with the instant motion to compel.

7 Senator Skelos is Majority Leader and President Pro Tempore of the New York State Senate and Senator Nozzolio is a member of LATFOR. Both are named as defendants in this lawsuit.

8 Although the Senate Minority's initial moving papers purport to seek a compulsion order against "defendants" generally, see, e.g., 6/11/12 Senate Minority Mem. at 1, its reply memorandum makes clear that its waiver argument is limited to the Senate Majority, see generally Reply Mem. of Law in Further Supp. of the Senate Minority's Mot. to Compel Regarding Waiver of Attorney-Client and Work Product Privileges Regarding the Senate Size (July 2, 2012) ("7/2/12 Senate Minority Reply"), DE #425, and no other defendant has responded substantively to the motion to compel. See Assembly Minority Letter (June 25, 2012), DE #403 ("express[ing no] opinion" as to the motion to compel).

More specifically, the Senate Minority asserts that the Senate Majority effectuated a subject-matter waiver of the attorney-client privilege with respect to documents related to the determination of the Senate size in the current redistricting cycle because (1) it "affirmatively chose" to release the memorandum on the LATFOR website, "actively represent[ing] to the public that the analysis in the Carvin Memorandum is *the reason* why a 63rd Senate district was added in 2012," see 6/11/12 Senate Minority Mem. at 5 (emphasis in original); and (2) "expressly and repeatedly relied" on the memorandum in Cohen v. Cuomo, 19 N.Y.3d 196 (N.Y. 2012), a state lawsuit that involved an unsuccessful challenge, under the New York State Constitution, to the addition of the 63rd Senate district. See 6/11/12 Senate Minority Mem. at 5. Citing the Second Circuit's decisions in United States v. Bilzerian, 926 F.2d 1285, *8 1292 (2d Cir. 1991), and In re County of Erie, 546 F.3d 222, 228 (2d Cir. 2008) ("Erie II"), the Senate Minority argues that "[b]asic rules of fairness dictate that the Senate Minority must be allowed to test the veracity of Defendants' claim that they increased the size of the Senate for the purportedly neutral reason that the 'most faithful' reading of the New York Constitution required them to do so." See 6/11/12 Senate Minority Mem. at 4, 6.[9]

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9 The Senate Minority argues, in passing, that Rule 502 of the Federal Rules of Evidence, which governs disclosures of privileged materials in "federal proceedings," Fed. R. Evid. 502, is inapplicable. See 6/11/12 Senate Minority Mem. at 7. This Court agrees that Rule 502 does not apply.

The Senate Majority levies a series of arguments in opposition. See Senate Majority Defendants' Opp. to the Senate Minority's Mot. to Compel Privileged Commc'ns and Work-Product with Respect to the Size of the State Senate (June 25, 2012) ("6/25/12 Senate Majority Opp."), DE #405. First, the Senate Majority argues that because the 2012 Carvin Memorandum was never intended to be confidential, the attorney-client privilege and work product protection do not attach to the document, and therefore its publication does not constitute a waiver of those privileges. See id. at 8. Second, citing In re von Bulow, 828 F.2d 94, 102 (2d Cir. 1987), and John Doe Co. v. United States, 350 F.3d 299, 306 (2d Cir. 2003), the Senate Majority avers, in the alternative, that even if the publication of the 2012 Carvin Memorandum waived the privilege, the waiver is limited to the memorandum itself, since it was used only defensively in the Cohen case, and was not affirmatively relied

upon in that (or the instant) litigation. See 6/25/12 Senate Majority Opp. at 10-18. Third, the Senate Majority asserts that documents and information regarding the Senate size are not relevant to the issues now before the
9 Panel. See id. at 18-19. Finally, the Senate Majority argues that, in any event, *9 the documents and information sought are protected against compelled disclosure by an absolute legislative privilege. See id. at 19-24.

In a reply filed on July 2, 2012, the Senate Minority counters that the issue of the Senate size is "not just relevant but central" to the instant case, see 7/2/12 Senate Minority Reply at 1; that Senator Skelos caused the 2012 Carvin Memorandum to be posted on the LATFOR website "to give reviewing courts . . . the false impression that the decision to add a 63rd district was based in good-faith on his counsel's legal advice," see id. at 4; that the legal advice contained in the 2012 Carvin Memorandum was the "centerpiece of the Senate Majority's defense in Cohen," see id. at 5, and "will be at the center of the Senate Majority's defense in this case," see id. at 6; and that in these circumstances, fairness counsels in favor of allowing the Senate Minority to investigate the " *real* legal advice" that attorney Carvin provided to the Senate Majority. See id. at 10 (emphasis in original). Finally, the Senate Minority notes that the Senate Majority failed to offer "any evidence supporting [its] conclusory assertion" that the 2012 Carvin Memorandum was not intended to be confidential. See id. at 3.

A. Legal Standards

1. Attorney-Client Privilege

"The attorney-client privilege protects confidential communications between client and counsel made for the purpose of obtaining or providing legal assistance." In re Cnty. of Erie, 473 F.3d 413, 418 (2d Cir. 2007) ("Erie I") (citing United States v. Constr. Prods. Research, Inc., 73 F.3d 464, 473 (2d Cir. 1996)). The attorney-client privilege "exists for the purpose of encouraging full and truthful communications between an attorney and his
10 client and *10 'recognizes that sound legal advice or advocacy serves public ends and that such advice or advocacy depends upon the lawyer's being fully informed by the client.'" In re von Bulow, 828 F.2d at 100 (citing Upjohn Co. v. United States, 449 U.S. 383, 389 (1981)). It is the burden of the proponent of the privilege to establish its applicability, and courts should construe assertions of privilege narrowly, sustaining the privilege "only where necessary to achieve its purpose." See Erie I, 473 F.3d at 418 (citing Fisher v. United States, 425 U.S. 391, 403 (1976); In re Grand Jury Proceedings, 219 F.3d 175, 182 (2d Cir. 2000)).

To substantiate a claim of attorney-client privilege, the proponent must establish three elements: "(1) a communication between client and counsel that (2) was intended to be and was in fact kept confidential, and (3) was made for the purpose of obtaining or providing legal advice." See Erie I, 473 F.3d at 419 (citing Constr. Prods. Research, 73 F.3d at 473). As relevant here, a communication intended for publication is "not intended to be confidential[,] . . . and therefore [is] not within the privilege." See Robbins & Myers, Inc. v. J.M. Huber Corp., 274 F.R.D. 63, 83-84 (W.D.N.Y. 2011) (citing, *inter alia*, In re von Bulow, 828 F.2d at 102; United States v. Tellier, 255 F.2d 441, 447 (2d Cir. 1958); 5 McCormick on Evidence § 91 at 408 (Kenneth S. Broun, 6th ed. 2006)); see also In re Chevron Corp., 650 F.3d 276, 290 (3d Cir. 2011) (stating that where "communications [are] not made 'in confidence[,]' . . . they [are] not privileged to begin with, and there [is] no privilege to waive by their disclosure."). And, in this Circuit, the publication of a non-confidential attorney-client communication does not create an inference that related communications or earlier drafts were similarly not intended to be confidential. See In re Grand Jury Subpoena Duces Tecum Dated Sept. 15, 1983, 731 F.2d
11 1032, 1037 (2d Cir. 1984). Lastly, in order for the attorney-client *11 privilege to apply, "the predominant purpose" of the communication must be "to render or solicit legal advice." Erie I, 473 F.3d at 420 (citing United States v. Int'l Bus. Machs. Corp., 66 F.R.D. 206, 212 (S.D.N.Y. 1974)); see also id. at 421.

Even where the privilege does attach to a communication, "[a] client may . . . by his actions impliedly waive the privilege or consent to disclosure." In re von Bulow, 828 F.2d at 101 (citations omitted). It is well established in this Circuit that a party may not use the privilege as both a sword and a shield. See Bilzerian, 926 F.2d at 1292 (holding that "[a] defendant may not use the privilege to prejudice his opponent's case or to disclose some selected communications for self-serving purposes") (citing In re Von Bulow, 828 F.2d at 103). The question whether there has been an implied waiver is best "decided on a case-by-case basis, and depends primarily on the specific context in which the privilege is asserted." See In re Grand Jury Proceedings, 219 F.3d at 183; see also John Doe Co., 350 F.3d at 302 (citations omitted). To that end, courts have identified three related but slightly different species of implied waiver: "when a client testifies concerning portions of the attorney-client communication, . . . when a client places the attorney-client relationship directly at issue, . . . and when a client asserts reliance on an attorney's advice as an element of a claim or defense . . . ." See Erie II, 546 F.3d at 228 (quoting with approval Sedco Int'l S.A. v. Cory, 683 F.2d 1201, 1206 (8th Cir. 1982)). At issue here are the first and third forms of waiver.

First, courts have recognized that fairness counsels in favor of a subject-matter waiver where a party selectively discloses otherwise privileged communications in a manner that prejudices the opposing party in a litigation. See In re von Bulow, 828 F.2d at 101-02 ("[I]t has been established law for a hundred years that when the client waives the privilege by *12 testifying about what transpired between her and her attorney, she cannot thereafter insist that the mouth of the attorney be shut. From that has grown the rule that testimony as to part of a privileged communication, in fairness, requires production of the remainder.") (citations omitted). To effectuate a waiver, the selective disclosure must have occurred in an adversarial context, i.e., one that has the potential to cause legal prejudice to the proponent's adversary. See John Doe Co., 350 F.3d at 306; In re von Bulow, 828 F.2d at 102 ("[W]e hold therefore that the extrajudicial disclosure of an attorney-client communication -- one not subsequently used by the client in a judicial proceeding to his adversary's prejudice -- does not waive the privilege as to the undisclosed portions of the communication."); see also In re Kidder Peabody Secs. Litig., 168 F.R.D. 459, 470 (S.D.N.Y. 1996) (finding a waiver where defendant "made the invocation of [an attorney-drafted investigative] report and its conclusions a leitmotif of its approach both in judicial fora and in other 'judicial'-type contexts").

Second, courts have held that "the privilege may implicitly be waived" or forfeited, on a subject-matter basis, "when [a] defendant asserts a claim that in fairness requires examination of protected communications." See Bilzerian, 926 F.2d at 1292 (citations omitted). For example, a forfeiture may result when a party, in pressing an element of its claim or defense, places in issue the advice of counsel or, more broadly, "'when a party uses an assertion of fact to influence the decisionmaker while denying its adversary access to privileged material potentially capable of rebutting the assertion.'" See Erie II, 546 F.3d at 229 (quoting John Doe Co., 350 F.3d at 306); OneBeacon Ins. Co. v. Forman Int'l Ltd., No. 04 Civ. 2271(RWS), 2006 WL 3771010, at *10 (S.D.N.Y. Dec. 15, 2006); Falise v. Am. Tobacco Co., 193 F.R.D. 73, 84 (E.D.N.Y. 2000); Bowne of N.Y. City, Inc. v. AmBase Corp., 150 F.R.D. *13 465, 488 (S.D.N.Y. 1993). Although an advice-of-counsel defense will not result in forfeiture unless the proponent relies on privileged advice, see Erie II, 546 F.3d at 229, courts within this Circuit, relying on Bilzerian, have reaffirmed the broader principle that forfeiture of the privilege may result where the proponent asserts a good faith belief in the lawfulness of its actions, even without expressly invoking counsel's advice. See MBIA Ins. Corp. v. Patriarch Partners VIII, LLC, No. 09 Civ. 3255, 2012 WL 2568972, at *7 (S.D.N.Y. July 3, 2012) (citing Arista Records, LLC v. Lime Grp., LLC, No 06 Civ. 5936(KMW), 2011 WL 1642434, at *2-3 (S.D.N.Y. Apr. 20, 2011) (quoting approvingly Leviton Mfg. Co. v. Greenberg Traurig LLP, No. 09 Civ. 8083(GBD)(THK), 2010 WL 4983183, at *3 (S.D.N.Y. Dec. 6, 2010))). "In sum, . . . 'it would be unfair for a party asserting contentions [of good faith] to then rely on its privileges to

deprive its adversary of access to material that might disprove or undermine the party's contentions.'" Arista Records, 2011 WL 1642434, at *3 (alterations in original) (quoting Newsmarkets Partners, LLC v. Sal. Oppenheim Jr. & Cie. S.C.A., 258 F.R.D. 95, 106 (S.D.N.Y. 2009)).

2. Work Product Protection

The work product protection, as partially codified in Rule 26(b)(3) of the Federal Rules of Civil Procedure, is a qualified privilege for "documents and tangible things that are prepared in anticipation of litigation or for trial by or for another party or its representative." See Fed. R. Civ. P. 26(b)(3)(A); see also United States v. Nobles, 422 U.S. 225, 237-38 (1975); United States v. Ghavami, No. 10 Cr. 1217(KMW)(JCF), 2012 WL 2090800, at *4 (S.D.N.Y. June 5, 2012). The work product protection also extends to "intangible work product," including "an attorney's analysis made in anticipation of litigation, but which has not *14 been memorialized." See Ghavami, 2012 WL 2090800, at *5 (citing Hickman v. Taylor, 329 U.S. 495, 505, 509-11 (1947)).

The work product protection is "'distinct from and broader than the attorney-client privilege,'" see In re Grand Jury Proceedings, 219 F.3d at 190 (quoting Nobles, 422 U.S. at 238 & n.11), and encompasses both "opinion" work product and "fact" work product, the former relating to the mental impressions of counsel and the latter relating to factual investigations and technical analyses. See In re Grand Jury Subpoena Dated July 6, 2005, 510 F.3d 180, 183 (2d Cir. 2007) (citing In re Grand Jury Subpoena Dated Oct. 22, 2001, 282 F.3d 156, 161 (2d Cir. 2002); United States v. Adlman, 134 F.3d 1194, 1197 (2d Cir. 1998)). However, even some work product that is "factual" on its face may fall within the rubric of "opinion" work product if it is the result of the "selective judgment" of counsel. See SEC v. Nadel, No. CV 11-215(WFK)(AKT), 2012 WL 1268297, at *7 (E.D.N.Y. Apr. 16, 2012) (quoting SEC v. Sentinel Mgmt. Grp., Inc., No. 07 C 4684, 2010 WL 4977220, at *9 (N.D. Ill. Dec. 2, 2010)); see also Upjohn, 449 U.S. at 400.

The proponent of the privilege bears the "heavy burden" to establish its existence. See In re Grand Jury Subpoena Dated July 6, 2005, 510 F.3d at 183. A document is prepared in anticipation of litigation, and therefore entitled to work product protection, "if in light of the nature of the document and the factual situation in the particular case, the document can fairly be said to have been prepared or obtained because of the prospect of litigation." See Adlman, 134 F.3d at 1202 (citations and internal alterations omitted). In order to successfully invoke the enhanced protection for opinion work product, the proponent has the added burden of demonstrating "'a real, rather than speculative, concern' that the [work product] will reveal *15 counsel's thought processes 'in relation to pending or anticipated litigation.'" See In re Grand Jury Subpoena Dated July 6, 2005, 510 F.3d at 183-84 (quoting In re Grand Jury Subpoenas Dated Mar. 19, 2002 & Aug. 2, 2002, 318 F.3d 379, 386 (2d Cir. 2003)).

Even where the applicability of the protection has been established, fact work product "may be ordered disclosed upon a showing of substantial need," while opinion work product "is entitled to virtually absolute protection." See Ghavami, 2012 WL 2090800, at *5 (citations omitted); see also P. & B. Marina, Ltd. P'ship v. Logrande, 136 F.R.D. 50, 57 (E.D.N.Y. 1991) (Weinstein, J.), aff'd, 983 F.2d 1047 (2d Cir. 1992). Specifically, a party seeking discovery may obtain materials constituting fact work product when it can show that the materials at issue are "otherwise discoverable under Rule 26(b)(1)" and that that party "has a substantial need for the materials to prepare its case and cannot, without undue hardship, obtain their substantial equivalent by other means." See Fed. R. Civ. P. 26(b)(3). However, even where fact work product is discoverable, courts "must protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of a party's attorney or other representative concerning the litigation." See Fed. R. Civ. P. 26(b)(3)(B). Thus, courts in this Circuit have required a "highly persuasive showing" of need to overcome assertions of opinion work product protection. See In re Grand Jury Proceedings, 219 F.3d at 190-91 (quoting Adlman, 134 F.3d at 1204); Nadel,

2012 WL 1268297, at *6 (citing Upjohn, 449 U.S. at 401; United States v. Jacques Dessange, Inc., No. S2 99 CR 1182 DLC, 2000 WL 310345, at *2 (S.D.N.Y. Mar. 27, 2000)); Gruss v. Zwirn, 276 F.R.D. 115, 127 (S.D.N.Y. 2011) (citing Allied Irish Banks v. Bank of Am., N.A., 240 F.R.D. 96, 105 (S.D.N.Y. 2007)). *16

As is the case with the attorney-client privilege, a party may waive the work product protection on a subject-matter basis. See The Shinnecock Indian Nation v. Kempthorne, 652 F.Supp.2d 345, 365-66 (E.D.N.Y. 2009). However, "courts generally permit discovery of work product based on implied or subject-matter waiver only where the privileged communications have been put at issue or when the defendant seeks to exploit the doctrine for a purpose inconsistent with the privilege." See id. (collecting cases). Further, in order to constitute a waiver, the "disclosure must substantially increase the opportunities for potential adversaries to obtain the information." See Ghavami, 2012 WL 2090800, at *5 (quoting United States v. Stewart, 287 F.Supp.2d 461, 468 (S.D.N.Y. 2003)) (citations and internal alterations omitted).

B. Analysis

Several of the plaintiffs to this litigation have challenged the sufficiency of the defendants' assertions of privilege, and/or have requested an *in camera* inspection by the Court to assess the validity of the claims of privilege. See *supra* pp. 27-29. The Court addresses those issues in Parts II and III below. This section considers the argument advanced by the Senate Minority, and joined by the Lee Intervenors, that the publication of the 2012 Carvin Memorandum worked a forfeiture of the attorney-client privilege and work product protection with respect to all materials concerning the determination of the size of the Senate following the 2010 Census.

As a preliminary matter, the Senate Majority does not invoke either the attorney-client privilege or work product protection with respect to the 2012 Carvin Memorandum. Instead, it argues that the document was never intended to be kept confidential, and that therefore the *17 attorney-client privilege does not apply and the publication of the memorandum does not result in a subject-matter waiver. See 6/25/12 Senate Majority Opp. at 8. In support of this argument, the Senate Majority notes that the memorandum was posted on the LATFOR website the day after it was drafted, and was intended to serve as a *"public* explanation . . . of the methodology used to determine the size of the Senate for the Senate Plan." See id. (emphasis in original). This was done, the Senate Majority states, "in the interest of promoting open government and transparency in redistricting." See id. at 2.

The Senate Majority's assertion of non-confidentiality is consistent with public statements made by Senator Nozzolio (a member of the Senate Majority) soon after the publication of the 2012 Carvin Memorandum. Specifically, at a January 10, 2012 LATFOR public meeting, Senator Nozzolio, faced with a challenge from Senator Martin Malavé Dilan (also a defendant and LATFOR member, and a member of the Senate Minority), described the origins of the memorandum:

SENATOR DILAN: I want to know how last Friday at 5:00 p.m. in a very obscure spot of the LATFOR Senate website a new policy memo appears without ratification of this panel. I want to know how that happens and who authorized that. I would like to know if that attorney is a staff member of LATFOR or is he an outside consultant.

SENATOR NOZZOLIO: Senator Dilan, you're referring to a memo from an attorney named Michael [Carvin] who has been retained by this task force as -- he was retained by this task force in 2002 and in 1992 and it's my understanding that Attorney [Carvin] placed a memo after analyzing the tenets of the New York State [C]onstitution and of which it was his responsibility as counsel to this task force to -- that that report or analysis, if you will, just as he made an analysis in 2002, was placed on the task force [web site] in the same protocols that were established 10 years ago. . . . It's my understanding that the attorney for this

18 *18 task force placed -- in placing his memo on the LATFOR website and analyzed [alternative proposals] and dealt with them in his memorandum. His recommendation is based on his analysis of the New York State [C]onstitution. . . . *It was done by the attorney and that analysis was placed for the public to review on the LATFOR website. Whether it was 5:00 or -- at night or 5:00 in the morning, it was placed on the website when it was completed and that analysis is for everyone to review.*

See Tr. of Pub. LATFOR Hr'g (Jan. 10, 2012) at 16-18 (emphasis added), Ex. 2 to Decl. of Senator Martin Malavé Dilan (July 2, 2012) ("Dilan Decl."), DE #427-1.

Although the Senate Majority's assertion that the 2012 Carvin Memorandum was intended for public review is contained in an unsworn memorandum of law and is unsupported by any affidavits, the circumstances surrounding the publication of the memorandum, including the aforesaid discussion at the public LATFOR meeting, support the claim of non-confidentiality. To be sure, some indicia on the face of the document tend to point in the opposite direction.[10] Nevertheless, where, as here, the would-be proponent of the privilege declines to assert it over a document that the client published almost immediately after its creation, there appears to be no reason in law or logic to require the "proponent" to "prove the negative" -- i.e., to offer proof of non-confidentiality.

10 For example, the memorandum was addressed from an attorney, Michael Carvin, to Senators Skelos and Nozzolio on firm letterhead, and purports to provide requested advice. See 2012 Carvin Memorandum at 1. However, although no notation reflecting intended confidentiality (e.g., "attorney-client communication" or "confidential") is affixed to the document, the memorandum does not, by its terms, evince any intent that it be published. See id.

As the 2012 Carvin Memorandum was not privileged, its posting on the LATFOR website cannot be said to constitute a selective waiver of the attorney-client privilege or work *19 product protection. Nevertheless, a subject-matter waiver by forfeiture can occur even in the absence of disclosure of privileged communications.[11] Here, the Senate Minority does not contend that the Senate Majority has asserted an advice-of-counsel defense. Rather, it argues that the 2012 Carvin Memorandum was the "centerpiece of the Senate Majority's defense in Cohen" and *"will be* at the center of the Senate Majority's defense in this case." See 7/2/12 Senate Minority Mem. at 5-6 (emphasis added). The Senate Minority's waiver argument assumes a litigation strategy that its opponent has not yet pursued in this case. Accordingly, the Court denies the motion to compel without prejudice to a renewed motion in the event the Senate Minority's prediction proves to be accurate.

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11 Mindful of the fact that the strategic non-assertion of the attorney-client privilege may allow a party to avoid a finding of selective waiver, the Court, in conducting its *in camera* inspection of documents withheld as privileged by the Senate Majority, see generally *infra* pp. 61-62, will consider the possibility that such conduct may cause a forfeiture.

II. Motion for a Protective Order: Legislative Privilege

On June 18, 2012, the Senate Majority, Assembly Majority, and Assembly Minority each filed motions for protective orders to prevent the compelled disclosure of documents and information covered by the legislative privilege. See 6/18/12 Assembly Majority Mem.; 6/18/12 Senate Majority Mem.; 6/18/12 Assembly Minority Mem. For the reasons stated below, the Court defers decision on the defendants' motions pending its completion of an *in camera* review of withheld documents.

A. Background

The Court begins its analysis with a discussion of the factual context in which the claims of privilege arise. The parties have submitted multiple declarations to provide the *20 Court with an overview of the structure and operations of LATFOR.[12] See Decl. of Debra A. Levine-Schellace (Apr. 27, 2012) ("4/27/12 Levine-Schellace Decl."), Ex. A to 4/27/12 Geremia Decl., DE #336-1; Decl. of Roman Hedges in Supp. of the Assembly Majority Defendants' Mot. for a Protective Order on the Ground of Legislative Privilege (June 18, 2012) ("6/18/12 Hedges Decl."), DE #393-1; Dilan Decl. From these submissions, a few core facts emerge.

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12 In Rodriguez v. Pataki, the lawsuit relating to the redistricting of the New York State Legislature following the 2000 Census, the court authorized a deposition of Mark Burgeson, the Special Assistant to then LATFOR Co-Chair Skelos, in order to better understand the operations of LATFOR. See Rodriguez v. Pataki, 293 F.Supp.2d 305, 309 (S.D.N.Y. 2003), aff'd, 293 F.Supp.2d 315 (S.D.N.Y. 2003); see also Hr'g Tr. at 8 (Sept. 3, 2003) ("9/3/03 Tr."), Ex. 2 to Objections of Defendant Senator Joseph L. Bruno to the Decision and Order of Magistrate Judge Maas Dated Sept. 10, 2003 (Sept. 17, 2003) ("9/17/03 Bruno Objections"), DE #259 in Rodriguez v. Pataki, Nos. 02 Civ. 618 (RMB)(JMW)(JGK)(FM), 02 Civ. 3239 (RMB)(JMW)(JGK)(GM).

LATFOR was established pursuant to Chapter 45 of the New York State Laws of 1978, and "has all of the powers of a legislative committee." See 4/27/12 Levine-Schellace Decl. ¶¶ 2-3 (citing N.Y. Legis. Law § 83-m). LATFOR is comprised of six members, including four legislator appointees and two non-legislator appointees.[13] See N.Y. Legis. Law § 83-m(2).[14] The two current Co-Chairs of LATFOR, Senator Nozzolio and Assemblyman *21 McEneny, also jointly employ a staff to assist with the performance of the task force's operations, and such employees "are considered employees of the legislature for all purposes." See 4/27/12 Levine-Schellace Decl. ¶¶ 2, 4 (citing N.Y. Legis. Law § 83-m(4), (12)).

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13 The members of LATFOR for the redistricting cycle following the 2010 Census are: (1) Co-Chairman Senator Michael F. Nozzolio (Senate Majority), (2) Co-Chairman Assemblyman John J. McEneny (Assembly Majority), (3) Senator Martin Malavé Dilan (Senate Minority), (4) Assemblyman Robert Oaks (Assembly Minority), (5) Dr. Roman Hedges (Assembly Majority Appointee), and (6) Welquis R. Lopez (Senate Majority Appointee). See LATFOR Website, available at http://www.latfor.state.ny.us/members/ (last visited Aug. 10, 2012)

14 New York Legislative Law provides:

> The legislative task force on demographic research and reapportionment is hereby continued, consisting of six members of whom two shall be appointed by the temporary president of the senate, two by the speaker of the assembly and one each by the minority leader of the senate and the minority leader of the assembly. The appointments shall be of members of the respective houses of the legislature, except that one member appointed by the temporary president of the senate and one member appointed by the speaker of the assembly shall not be members of the legislature. A member of the senate appointed to the task force by the temporary president of the senate and a member of the assembly appointed to the task force by the speaker of the assembly shall be designated by each to serve as the co-chairmen of the task force.

N.Y. Legis. Law § 83-m(2).

By statute, LATFOR's responsibilities include "engag[ing] in such activities as its Co-Chairs deem necessary or appropriate in . . . assisting the Legislature in preparing and formulating reapportionment plans," and "hold[ing] public and private hearings in connection with proposed reapportionment plans for the [S]enate, [A]ssembly, and [C]ongressional districts in New York."[15] See 4/27/12 Levine-Schellace Decl. ¶ 3 (citing N.Y. Legis. Law §
22 *22 83-m(3), (10)); 6/18/12 Hedges Decl. ¶ 2 (citing N.Y. Legis. Law § 83-m(3)).

15 New York Legislative Law specifically provides that "the primary function" of LATFOR is "to compile and analyze data, conduct research for and make reports and recommendations to the legislature, legislative commissions and other legislative task forces." See N.Y. Legis. Law § 83-m(5). The statute further provides that "[t]he task force shall engage in such research studies and other activities as its co-chairmen may deem necessary or appropriate in the preparation and formulation of a reapportionment plan for the next ensuing reapportionment of [S]enate and [A]ssembly districts and [C]ongressional districts of the state and in the utilization of census and other demographic and statistical data for policy analysis, program development and program evaluation purposes for the legislature." See N.Y. Legis. Law § 83-m(3).

To carry out its duties, LATFOR functions for eight years out of every decade as a non-partisan body, collecting and storing election data in computerized databases and working with data from the U.S. Census Bureau. See 4/27/12 Levine-Schellace Decl. ¶ 5 (citing N.Y. Legis. Law § 83-m(1)(a) & (c)); 6/18/12 Hedges Decl. ¶ 3. However, after each decennial Census, LATFOR establishes four separate partisan redistricting offices, one each for the Senate Majority, Senate Minority, Assembly Majority, and Assembly Minority. See 4/27/12 Levine-Schellace Decl. ¶ 5; 6/18/12 Hedges Decl. ¶ 3. In the current redistricting cycle, the four separate offices were reportedly established in April 2011. See 4/27/12 Levine-Schellace Decl. ¶ 6; 6/18/12 Hedges Decl. ¶¶ 4, 6.

It it undisputed that the 2012 Senate Plan "was developed exclusively within the Senate [M]ajority redistricting office of LATFOR." See 4/27/12 Levine-Schellace Decl. ¶ 7. The drafters of the 2012 Senate Plan are "employees of LATFOR and work[ed] exclusively for the Senate [M]ajority redistricting office during the time that they draft[ed] the plan," id. ¶ 5, "work[ing] exclusively under the direction of Senate Majority Leader Skelos, LATFOR Co-Chair Senator Nozzolio, and Senators Skelos' and Nozzolio's Senate staff." Id. ¶ 7.[16] And,
23 *23 while drafting the plan, the mapmakers "consulted with various Republican Senators -including Senate Majority Leader Skelos and Chairman Nozzolio[,]" and received "input from the public and from the Senate [M]inority." See id. [17]

16 Pursuant to the Panel's April 20, 2012 Order to Show Cause, the Senate Majority submitted, *in camera* and *ex parte*, a letter identifying those individuals who drew the 2012 Senate Plan. See 4/27/12 Senate Majority Resp. at 6.

17 The declaration of Senator Dilan of the Senate Minority confirms the contention of the Senate Majority that the drafting process for the 2012 Senate Plan was completed exelusively within the Senate Majority LATFOR offiee. See Dilan Decl. ¶ 4. Senator Dilan alleges:

Although I am a member of LATFOR, I was consistently and continually shut out of the process of drawing the new Senate districts. The Senate Majority drafted its own plans for the new Senate lines without consulting me, and LATFOR never had a formal meeting at which the new lines were presented to me and voted upon until March 14, 2012, *after* the plan was introduced in the Legislature and had gone to the printer as a bill. I therefore had no real opportunity to comment on the Senate lines. In fact, despite the fact that I am a LATFOR member and should have been intimately involved in the crafting of the Senate and Assembly maps and in deciding to recommend the LATFOR staff's maps to the state Legislature, I learned that LATFOR had made its recommendations to the Legislature, and learned what those recommendations were, at the same time as the media.

With respect to the drafting of the 2012 Assembly Plan, Dr. Roman Hedges, a defendant and LATFOR member, states that "beginning in April 2011, [he] worked out of a separate Assembly Majority redistricting office located in the Alfred E. Smith State Office Building in Albany, New York." See 6/18/12 Hedges Decl. ¶ 6. He further notes that, while formulating the plan, he and his staff "began to work exclusively with the Democrats . . . in connection with their formulation of a 2012 redistricting plan." See id. ¶ 7. Moreover, "[his] communications with and assistance to the Democratic Assembly members and staff [were] *24 kept
24 confidential from the other members of LATFOR who were working with either the Senate Majority, Senate Minority or Assembly Minority in assisting them with formulating 2012 Redistricting Plans[,]" and "their dealings with the groups they were working with were not shared with [him] or [his] staff." See id.

Lastly, it is clear that, apart from the four partisan redistricting offices, LATFOR continued to maintain, after the creation of the partisan LATFOR offices, an independent "technical staff," whose members performed work that was separate from the partisan offices and yet was related to both the Assembly and Senate redistricting processes. See LATFOR Emails, Bates Nos. Senate Minority ("SM") 0001-0273, Ex. 2 to Decl. of Eric Hecker in Opp. to Senate Majority Mot. for a Protective Order (July 2, 2012) ("7/2/12 Hecker Decl."), DE #428-1.

B. The Parties' Submissions

1. Affirmative Motions

In the lead brief filed in support of a protective order, the Senate Majority claims an absolute privilege against the disclosure of documents or information concerning the legislative activities of legislators or their staffs. See 6/18/12 Senate Majority Mem. at 4-12. In short, the Senate Majority argues that because the Supreme Court has held that the Speech or Debate Clause of the United States Constitution, see U.S. Const., Art. I § 6, affords federal lawmakers an absolute protection against liability and compelled discovery and testimony, and because courts have held that the federal constitutional immunity is "on a parity" with the state legislative common law analogue in (non-discovery) civil contexts, see State Employees Bargaining Agent Coalition v. Rowland, 494
25 F.3d 71, 83 (2d Cir. 2007), it follows that a state *25 lawmaker's common law privilege against compelled discovery and testimony is similarly absolute. See 6/18/12 Senate Majority Mem. at 5-6.

Relying on remarks by Magistrate Judge Frank Maas during telephone conferences in Rodriguez v. Pataki, the litigation concerning the 2002 New York State redistricting cycle, the Senate Majority also contends that, in the last redistricting cycle, "plaintiffs were categorically barred from deposing legislators and their agents," and that, even though Judge Maas allowed the plaintiffs to depose Mark Burgeson, the Special Assistant to LATFOR Co-Chairman Skelos, "the Magistrate Judge concluded that the legislative privilege barred plaintiffs from deposing him on 'the reasons why he and others in the Senate [M]ajority redistricting office drew the lines for particular Senate districts in the ways that they did.'" See 6/18/12 Senate Majority Mem. at 8 (citing Rodriguez v. Pataki, Nos. 02 Civ. 618RMBFM, 02 Civ. 3239RMBFM, 2003 WL 22109902, at *1 (S.D.N.Y.

Sept. 11, 2003), aff'd, 293 F.Supp.2d 313 (S.D.N.Y. 2003); Rodriguez v. Pataki, 293 F.Supp.2d 305, 309 (S.D.N.Y. 2003), aff'd, 293 F.Supp.2d at 315; 9/3/03 Tr. at 11). In the Senate Majority's view, because the Consolidated Discovery Requests served on the defendants in the instant litigation "go to the very heart of Senators' confidential communications, deliberations, and motives," see 6/18/12 Senate Majority Mem. at 10, the failure to recognize an absolute legislative privilege here would "necessarily expose legislators to burdensome and intrusive discovery in a myriad of contexts." See id. at 11. And, "[s]ince the discovery sought by plaintiffs here creates precisely the same litigation burdens and distractions that led the Supreme Court and the Second Circuit to immunize state legislators against injunctive suits, the legislators must also be immunized from such burdensome and intrusive discovery." Id. at 17. *26

In the alternative, the Senate Majority argues that even assuming that the legislative privilege is qualified, discovery is nevertheless barred under the five-factor balancing test set forth by Judge Maas in Rodriguez, 280 F.Supp.2d at 100-01.[18] See 6/18/12 Senate Majority Mem. at 24. Among other reasons, the Senate Majority argues that "legislators' motivations, political or otherwise, are entirely irrelevant" to the claims in the case. See id. at 24-26.[19] The Senate Majority further contends that the claim of legislative privilege should be upheld because any relevant evidence exists in the public record, there is " *no* serious federal issue at stake," the government is not a plaintiff, and to allow discovery here would "chill the willingness of legislators, their aides, and LATFOR staff to deliberate freely about legislative matters . . . ." See id. at 26-27 (emphasis in original).

18 See *infra* p. 37 (listing the five Rodriguez factors).

19 See *infra* pp. 54-57 (addressing relevance arguments).

The Assembly Minority endorses the reasoning of the Senate Majority, and additionally argues, as a matter of New York state law, and under the Speech or Debate Clauses of the federal and New York state constitutions, see 6/18/12 Assembly Minority Mem. at 2-3, that it is entitled to a protective order to avoid "chill[ing] the free flow of information between lawmakers and mak[ing] them reluctant to exchange information or brainstorm with colleagues." See id. at 6. Like the Assembly Minority, the Assembly Majority joins in the arguments of the Senate Majority, but focuses on those elements of the plaintiffs' claims aimed at the 2012 Assembly Plan. See 6/18/12 Assembly Majority Mem. at 1-2. Although the Assembly Majority's memorandum provides little by way of supplemental legal analysis, it is *27 notable for its inclusion of a declaration of non-legislator LATFOR member Hedges, who likewise complains of the "chilling effect" that compelled disclosure would have on his and his staff's communications with Assembly members. See 6/18/12 Hedges Decl. ¶ 9.[20]

20 The Governor defendants have not weighed in on these discovery issues, as it is undisputed that they played no role in drawing the lines of the New York State legislature. See Governor Defendants' Letter in Response to Apr. 20, 2012 Order to Show Cause (Apr. 27, 2012), DE #329.

2. Oppositions

On July 2, 2012, the Senate Minority, along with the Drayton, Lee, and Ramos Intervenors, filed oppositions to the defendants' motions for protective orders. See Senate Minority Defendants' Mem. of Law in Opp. to Defendants' Mot. for a Protective Order (July 2, 2012) ("7/2/12 Senate Minority Opp."), DE #426; Plaintiffs-Intervenors Donna K. Drayton, et al. Mem. in Opp. to the Senate Majority, the Assembly Majority, and the Assembly Minority Defendants' Mots. for a Protective Order (July 2, 2012) ("7/2/12 Drayton Opp."), DE #423; Ramos Intervenors' Mem. of Law in Opp. to Defendant[] Senate Majority's Mot. for a Protective Order (July 2, 2012) ("7/2/12 Ramos Opp."), DE #430; Lee Intervenors' Mem. of Law Regarding Disc. Mots. (July 2, 2012) ("7/2/12 Lee Opp."), DE #431.

The Senate Minority argues, in short, that the defendants' motions for protective orders should be denied because "the law is plain that any legislative privilege is, at best, a qualified privilege that yields to the need for disclosure where, as here, important federal interests are at stake." See 7/2/12 Senate Minority Opp. at 1; see id. at 1 n.1 (noting that the Senate Minority's arguments, while addressed to the Senate Majority, should be applied as against all *28 defendants). In the alternative, the Senate Minority argues that any qualified legislative privilege has been waived. See id. at 1-2. With respect to the first point, the Senate Minority avers that the Senate Majority improperly conflates the absolute legislative immunity (from civil suit) with the qualified legislative privilege (against disclosure). See id. at 2. Further, the Senate Minority notes that in Rodriguez, Judge Maas explicitly ruled that the legislative privilege is "not absolute," and is, "at best, one that is qualified," see id. at 12 (citing Rodriguez, 280 F.Supp.2d at 95, 100), and must give way to the need for disclosure based on the five Rodriguez factors. See id. at 14-18; see also *infra* p. 37 (five Rodriguez factors).

Moreover, according to the Senate Minority, even if the legislative privilege were to apply, it has been waived for four reasons. See 7/2/12 Senate Minority Opp. at 19-25. First, it argues that the continued presence of Senator Skelos in this litigation waives his legislative privilege because fairness prohibits him from "affirmatively represent[ing] to the Court that the Senate plan 'promotes traditional redistricting policies' . . . , [while] refus[ing] to explain what the Senate plan actually was designed to do." See id. at 19-20 (citing Powell v. Ridge, 247 F.3d 520 (3d Cir. 2001)). Second, the Senate Minority argues that, just as the publication of a similar memorandum authored by attorney Carvin in 2002 (the "2002 Carvin Memorandum") was found to effectuate a waiver of the legislative privilege in Rodriguez, 2003 WL 22109902, at *2, the publication of the 2012 Carvin Memorandum waived legislative privilege as to documents relating to the size of the Senate. See 7/2/12 Senate Minority Opp. at 20. Third, the Senate Minority argues that the Senate Majority waived its legislative privilege by producing an inadequate privilege log. See id. at 21-23. Fourth, the Senate Minority asserts that the Senate Majority waived its legislative privilege because "it has asserted [it] with *29 respect to numerous documents that are not even arguably privileged." See id. at 23-25.

The Lee Intervenors' opposition largely echoes the arguments of the Senate Minority and the other intervenors, see 7/2/12 Lee Opp. at 2-4, but adds that waiver in the context of legislative privilege does not require an "explicit and unequivocal renunciation of the privilege." See id. at 3 (citing Almonte v. City of Long Beach, No. CV 04-4192(JS)(JO), 2005 WL 1796118, at *3-4 (E.D.N.Y. July 27, 2005) ("Almonte I"), recons. denied, 2005 WL 1971014 (E.D.N.Y. Aug. 16, 2005)).

Responding only to the motion of the Senate Majority, the Ramos Intervenors similarly challenge the sufficiency of the Senate Majority's privilege logs, but also contend that the Senate Majority should produce, in redacted form, those portions of the documents in its privilege logs that "merely convey factual information and data," as well as "any communications with non-state employee consultants." See 7/2/12 Ramos Opp. at 12.

The Drayton Intervenors oppose the protective-order motions of all defendants, and request an *in camera* inspection of all documents as to which the legislative privilege has been claimed. See 7/2/12 Drayton Opp. at 3; see Decl. of Joan P. Gibbs in Opp. to the Senate Majority, Assembly Majority and the Assembly Minority Mots. for a Protective Order (July 2, 2012) ¶ 8, DE #423-1.

3. Replies

The Senate Majority raises a series of challenges in reply. First, citing State Employees, 494 F.3d at 83, the Senate Majority argues that there is no "good reason" not to extend an absolute evidentiary privilege to state legislators. See Senate Majority Defendants' Reply in Further Support of their Motion for a Protective Order ("7/9/12 Senate Majority *30 Reply") at 3-6, DE #442. Second, the Senate Majority asserts that in Rodriguez,

Judge Maas "[u]ltimately [r]ecognized an [a]bsolute [l]egislative [p]rivilege.'" See id. at 6 (citing Rodriguez, 293 F.Supp.2d at 309, aff'd, 293 F.Supp. 2d at 315). Third, the Senate Majority criticizes the plaintiffs' reliance on deliberative process privilege case law, including the argument that "the legislative privilege does not apply when motive is relevant." See 7/9/12 Senate Majority Reply at 7 & n.4, 8. Fourth, the Senate Majority repeats its argument that, even under a qualified legislative privilege, the Rodriguez factors weigh in favor of honoring the privilege. See id. at 9-18.

Finally, the Senate Majority addresses the plaintiffs' waiver arguments, asserting, in turn, (1) that the Senate Majority did not waive its legislative privilege by participating in this litigation because all of the Senate Majority defendants were sued in their official capacities, and did not "voluntarily intervene[] in their personal capacities"; (2) that Judge Maas never reached the question of waiver of legislative privilege as to the 2002 Carvin Memorandum; (3) that the Senate Majority's privilege log provides sufficient detail under applicable legal standards; and (4) that the fact that some of the documents on the Senate Majority's privilege logs had been shared with a representative of the Senate Minority should not be construed to render those documents outside the privilege or to waive the privilege over other documents in the Senate Majority's privilege logs, which were completed "under enormous time pressure." See id. at 18-22 & n.14.

The Assembly Majority, replying to the arguments of the only party that focused on its motion for a protective order, cites the purported weakness of the Drayton Intervenors' claims, and argues that the balance tips against
31 "any judicial jettisoning of the legislative privilege *31 doctrine vis-à-vis the Assembly Majority Defendants." See generally Assembly Majority Defendants' Reply Mem. of Law in Supp. of Mot. for a Protective Order on the Ground of Legislative Privilege ("7/9/12 Assembly Majority Reply"), DE #439.

In its reply, the Assembly Minority substantially reiterates the arguments of the other defendants, emphasizes that allowing discovery would sharply chill legislative deliberations and, in that regard, supplies the Court with declarations of defendants Robert Oaks and Brian Kolb. See generally Assembly Minority Reply in Supp. of Mot. for Protective Order (July 9, 2012) ("7/9/12 Assembly Minority Reply"), DE #440; see also Decl. of Robert Oaks (July 6, 2012), DE #440-1; Decl. of Brian M. Kolb (July 5, 2012), DE #440-2.

C. Legal Standard: Protective Order

The Senate Majority, Assembly Majority, and Assembly Minority each request a protective order pursuant to Rule 26(c) of the Federal Rules of Civil Procedure. Rule 26(c) provides that, on a motion by a party, "[t]he court may, for good cause, issue an order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense . . . ." Fed. R. Civ. P. 26(c)(1). The Court's authority to issue protective orders is broad, and "[t]he touchstone of the court's power under Rule 26(c) is the requirement of 'good cause.'" See In re Zyprexa Injunction, 474 F.Supp.2d 385, 415 (E.D.N.Y. 2007) (Weinstein, J.) (citing Seattle Times Co. v. Rhinehart, 467 U.S. 20, 34-35 (1984); 8 Charles A. Wright & Arthur R. Miller, Fed. Prac. & Proc. § 2035 (2d ed. 1994)). In determining whether the party seeking a protective order has established good cause, the Court must balance "the need for information against the injury that might result if uncontrolled disclosure is compelled." See id. (citing Pansy v. Borough of Stroudsburg, 23 F.3d 772, 787 (3d Cir. 1994)). And, while a
32 *32 party may show good cause by "'demonstrating a particular need for protection,'" see Duling v. Gristede's Operating Corp., 266 F.R.D. 66, 71 (S.D.N.Y. 2010) (citing Cipollone v. Liggett Grp., Inc., 785 F.2d 1108, 1121 (3d Cir. 1986)), courts in this Circuit have noted that "'[b]road allegations of harm, unsubstantiated by specific examples or articulated reasoning, do not satisfy the Rule 26(c) test.'" See id. (quoting Schiller v. City of N.Y., 04 Civ. 7922 KMK JCF, 04 Civ. 7921 KMK JCF, 2007 WL 136149, at *5 (S.D.N.Y. Jan. 17, 2007)). It is with this standard in mind that the Court turns to the defendants' motions for protective orders.

D. Legal Background: Legislative Privilege

The parties' submissions invoke the related, but distinct, concepts of legislative immunity, legislative privilege, and the deliberative process privilege. As the defendants' motions seek protective orders solely on the ground of legislative privilege, a brief delineation of the three protections is warranted.

1. Historical Foundations

The concepts of legislative privilege and legislative immunity developed in sixteenth-and seventeenth-century England as a means of curbing monarchical overreach, through judicial proceedings, in Parliamentary affairs. See generally United States v. Johnson, 383 U.S. 169, 177-80 (1966); Tenney v. Brandhove, 341 U.S. 367, 372 (1951). The early American republic, recognizing the importance of preventing executive and judicial interference in legitimate legislative activity, included similar provisions both in the United States Constitution and in constitutions of the various states. See Tenney, 341 U.S. at 372-73; see also United States v. Gillock, 445 U.S. 360, 369 (1980). The federal Speech or Debate Clause, enshrined in Article I, Section 6, of the United
33 States Constitution, provides that *33 "Senators and Representatives[,] . . . for any Speech or Debate in either House, . . . shall not be questioned in any other Place." U.S. Const. art. I, § 6.

The Speech or Debate Clause reflects two related purposes: (1) avoiding executive or judicial interference in the functioning of the legislature, and (2) enhancing legislative deliberative independence. See Gillock, 445 U.S. at 369 (citing Eastland v. U.S. Servicemen's Fund, 421 U.S. 491, 502-03 (1975)). As a general matter, the clause is guided by the principle "that it [is] not consonant with our scheme of government for a court to inquire into the motives of legislators." Tenney, 341 U.S. at 377 (quoting Fletcher v. Peck, 10 U.S. 87, 130 (1810)). Instead, "[s]elf-discipline and the voters must be the ultimate reliance for discouraging or correcting such abuses." Id. at 378. Therefore, courts have interpreted the Speech or Debate Clause to provide members of Congress with absolute immunity from suit as well as from compelled discovery or testimony. See, e.g., United States v. Rayburn House Office Bldg., 497 F.3d 654, 662 (D.C. Cir. 2007) ("If the testimonial privilege under the Clause is absolute and there is no distinction between oral and written materials within the legislative sphere, then the non-disclosure privilege for written materials . . . is also absolute, and thus admits of no balancing.") (citations omitted) (citing Brown & Williamson Tobacco Corp. v. Williams, 62 F.3d 408, 421 (D.C. Cir. 1995)).

By its terms, the Speech or Debate Clause applies only to federal legislators. And while most states -- including New York, see N.Y. Const. art. III, § 11 -- have ratified similar provisions in their constitutions, federal courts are not bound by those state protections where, as here, the plaintiffs have asserted federal claims. See Rodriguez, 280 F.Supp.2d at 95 (citing Gillock, 445 U.S. at 370). In the interest of comity, however, federal
34 courts in civil cases *34 have extended absolute legislative immunity to state legislators to the same extent as to federal legislators. See Tenney, 341 U.S. at 788-89; State Employees, 494 F.3d at 83 (holding that state legislative immunity in suits brought under 42 U.S.C. § 1983 is "on a parity" with federal immunity provided under the Speech or Debate Clause) (quoting Johnson, 383 U.S. at 180); see also Star Distribs., Ltd. v. Marino, 613 F.2d 4, 9 (2d Cir. 1980). However, unlike federal constitutional legislative immunity, state legislative immunity in federal question cases is governed by federal common law. See Tenney, 341 U.S. at 372; Gillock, 445 U.S. at 371-72 & n.10 (citing Lake Country Estates, Inc. v. Tahoe Regional Planning Agency, 440 U.S. 391, 404 (1979)).

2. State Legislative Immunity

The Supreme Court has held that state legislators are afforded absolute immunity from civil liability -- warranting dismissal from suit -- for a wide array of legislative acts within "the sphere of legitimate legislative activity." See Bogan v. Scott-Harris, 523 U.S. 44, 46 (1998) (citing Tenney, 341 U.S. at 376); see also United States v. Helstoski, 442 U.S. 477, 488-89 (1979) (broadly defining "legislative acts" as those that are "generally done in [the legislature] in relation to the business before it") (quoting United States v. Brewster, 408 U.S. 501, 512 (1972); Johnson, 383 U.S. at 177); MINPECO, S.A. v. Conticommodity Servs., Inc., 844 F.2d 856, 860 (D.C. Cir. 1988) (defining the legislative sphere as including the preparation of statements for inclusion in a subcommittee report); Morris v. Katz, No. 11-CV-3556 (JG), 2011 WL 3918965, at *4-5 (E.D.N.Y. Sept. 4, 2011) (noting that legislative immunity is to be construed broadly) (collecting cases).

35 Legislative immunity applies both to legislators and -- in a more limited fashion -- to *35 legislative staffs, officers, and other employees. See United States v. Gravel, 408 U.S. 606, 621 (1972); Rodriguez, 280 F.Supp.2d at 95; Marylanders for Fair Representation, Inc. v. Schaefer, 144 F.R.D. 292, 298-99 (D. Md. 1992) (citing Dombrowski v. Eastland, 387 U.S. 82, 85, 87 (1967); Tenney, 341 U.S. at 378)). Moreover, legislative immunity has been held to apply to non-legislators whose "acts [are] both: (1) substantively legislative, *i.e.*, acts that involve policy making; and (2) procedurally legislative, *i.e.*, passed by means of established legislative procedures." State Employees, 494 F.3d at 89-90 (citations and internal quotations omitted). Finally, courts decline to find a waiver of legislative immunity from liability absent an "explicit and unequivocal renunciation of the protection." See United States v. Biaggi, 853 F.2d 89, 103 (2d Cir. 1988) (citing Helstoski, 442 U.S. at 490-91, which noted in dicta that testifying before a grand jury and voluntarily producing documents did not constitute a waiver of immunity from liability).

3. State Legislative Privilege

State legislative privilege in federal question cases protects state legislators and their staffs from compelled disclosure of documentary and testimonial evidence with respect to actions within the scope of legitimate legislative activity. See Kay v. City of Rancho Palos Verdes, No. CV 02-03922 MMM RZ, 2003 WL 25294710, at *9-11 (C.D. Cal. Oct. 10, 2003); see also Rodriguez, 280 F.Supp.2d at 93-94, 101 (broadly defining the scope of legitimate legislative activity to include preliminary fact-finding and bill-drafting activities, since, "[a]s every high school student knows, the process of drafting legislation is also an important part of how a bill becomes law."). The legislative privilege is governed by federal common law, as applied through Rule 501 of the Federal Rules of Evidence. See Rodriguez, *36 280 F.Supp.2d at 93-94. The privilege must be "strictly construed and accepted 'only to the very limited extent that permitting a refusal to testify or excluding relevant evidence has a public good transcending the normally predominant principle of utilizing all rational means for ascertaining the truth.'" See id. (citing Trammel v. United States, 445 U.S. 40, 50 (1980)).

36

Legislative privilege is related to, but distinct from, the concept of legislative immunity. See Rodriguez, 280 F.Supp.2d at 95. Specifically, as further discussed *infra* pp. 45-54, while "common law legislative immunity for state legislators is absolute," see Rodriguez, 280 F.Supp.2d at 95 (citing Bogan, 523 U.S. at 46), the legislative privilege for state lawmakers is, "at best, one which is qualified." See Rodriguez, 280 F.Supp.2d at 100 (citing In re Grand Jury, 821 F.2d 946, 957 (3d Cir. 1987); In re Grand Jury Subpoena Dated Aug. 9, 2000, 218 F.Supp.2d 544, 553 (S.D.N.Y. 2002)); see also East End Ventures, LLC v. Inc. Vill. of Sag Harbor, No. CV 09-3967(LDW)(AKT), 2011 WL 6337708, at *2 (E.D.N.Y. Dec. 19, 2011); ACORN v. Cnty. of Nassau, No. CV 05-2301(JFB)(WDW), 2007 WL 2815810, at *2 (E.D.N.Y. Sept. 25, 2007) ("ACORN I"), aff'd, 2009 WL 2923435 (E.D.N.Y. Sept. 10, 2009) ("ACORN II"); Manzi v. DiCarlo, 982 F.Supp. 125, 129 (E.D.N.Y. 1997).[21]

37 *37

21 The Second Circuit's holding in State Employees, 494 F.3d at 90, does not alter this conclusion. As relevant here, State Employees stands for the limited proposition that legislative immunity applies both to actions for damages and to actions for injunctive relief. See id. at 88 (citing Star Distribs., 613 F.2d at 8-9). Contrary to the contention of the Senate Majority, see 6/18/12 Senate Majority Mem. at 4-12, the decision in State Employees did not hold that the legislative privilege is absolute. Indeed, to the extent that State Employees addressed discovery, it simply held that discovery into legislative motives is irrelevant when making the threshold determination as to whether a challenged activity is indeed "legislative," entitling an individual to assert the immunity. See State Employees, 494 F.3d at 90 (citing Bogan, 523 U.S. at 54).

To determine whether the legislative privilege precludes disclosure, a court must balance the interests of the party seeking the evidence against the interests of the individual claiming the privilege. See ACORN I, 2007 WL 2815810, at *2 (citing Rodriguez, 280 F.Supp.2d at 96). The court in Rodriguez identified five factors to aid in this determination, including:

> (i) the relevance of the evidence sought to be protected; (ii) the availability of other evidence; (iii) the "seriousness" of the litigation and the issues involved; (iv) the role of the government in the litigation; and (v) the possibility of future timidity by government employees who will be forced to recognize that their secrets are violable.

280 F.Supp. 2d at 101 (citing In re Franklin Nat'l Bank Secs. Litig., 478 F.Supp. 577, 583 (E.D.N.Y. 1979) (Weinstein, J.) (setting forth factors in the context of the "official information privilege")).[22] In performing this balancing, it is important to bear in mind that *38 the legislative privilege protects a *process*. As such, it 38 encompasses legislative work product and confidential deliberations (including communications even as between political *adversaries),* extends to staffs (and retained experts),[23] and, where the balance weighs in favor of nondisclosure, protects against both compelled document discovery and testimony. However, whether the assertion of the legislative privilege will support the issuance of a protective order depends in large part on a functional analysis of the roles of the individuals made privy to a given communication, document, or other piece of information. See ACORN II, 2009 WL 2923435, at *5-6.

22 This Court recognizes that, since Rodriguez, at least one court in this District has held that the legislative privilege does not apply in situations where "the legislative deliberations are among the central issues in the case." See East End Ventures, 2011 WL 6337708, at *3 (citing, *inter alia,* Conte v. Cnty. of Nassau, No. CV 06-4746(JFB)(ETB), 2009 WL 1362784, at *5 (E.D.N.Y. May 15, 2009); Mr. & Mrs. "B" v. Bd. of Educ. of Syosset Cen. Sch. Dist., 35 F.Supp.2d 224, 230 (E.D.N.Y. 1998)). This central-issue exception is based on case law arising under the related deliberative process privilege, which "protects the decisionmaking processes of the *executive branch* in order to safeguard the quality and integrity of governmental decisions." See Rodriguez, 280 F.Supp.2d at 97-98 (quoting A. Michael's Piano, Inc. v. FTC, 18 F.3d 138, 147 (2d Cir. 1994)) (emphasis added). Like the legislative privilege, the deliberative process privilege is a "qualified privilege which may be overcome upon a showing that the adverse party's need for disclosure outweighs the interest in confidentiality," see Rodriguez, 280 F.Supp.2d at 98; however, its protections are decidedly less robust. See East End Ventures, 2011 WL 6337708, at *4 (collecting cases). Although many courts have conflated the two privileges, the existence of rule-swallowing exceptions like the central-issue exception is an obvious, but not exclusive, reason to differentiate them. Indeed, "[w]ere [the central-issue exception] a basis for denying a defendant's legislative privilege claim, there would be few, if any, cases in which state legislators could shield their personal thought processes from view." See Rodriguez, 280 F.Supp.2d at 99. As a result, this Court declines to import the broad exceptions of the deliberative process privilege into the present analysis. In this Court's view, absent a waiver, the appropriate approach is to perform the five-factor balancing, with the centrality of the legislative deliberations to the litigation serving as a persuasive, but not dispositive, factor.

23 As further explained *infra* pp.42-43 in the discussion of waiver, courts have held that the privilege attaches to confidential communications between legislators, their staffs, and "experts retained by them to assist in their legislative functions." See ACORN II, 2009 WL 2923435, at *5-6 (citing Almonte v. City of Long Beach, 478 F.3d 100, 107 (2d Cir. 2007) ("Almonte II")).

E. Waiver

Having established the qualified nature of the legislative privilege, the Court turns to a threshold issue raised by the parties: whether the legislative privilege has been waived. In this case, the parties opposing the motions for protective orders raise four separate grounds for finding waiver of the legislative privilege: (1) defendants' continued voluntary participation in *39 this action, (2) disclosure of otherwise privileged material, (3) improper assertions of privilege, and (4) inadequacy of the proffered privilege logs. The Court addresses the first three grounds here, and the fourth in Part III below.

1. Voluntary Participation

The Senate Minority argues that Senator Skelos, "[b]y declining to seek dismissal on legislative immunity grounds, . . . voluntarily injected himself into these proceedings," and has thereby waived the protection of the legislative privilege. See 7/2/12 Senate Minority Opp. at 19-20. The Senate Minority relies -- as it did in the Rodriguez litigation -- on the Third Circuit's decision in Powell v. Ridge, 247 F.3d at 525 (holding that defendant-intervenors, "Legislative Leaders" of the Pennsylvania General Assembly, were not entitled to assert legislative privilege because they were "self-made defendants" who had not sought the "complete remedy" of legislative immunity). The defendants counter that Powell is distinguishable from this case because the legislators here did not voluntarily intervene but rather were sued in their official capacities; the Panel has denied defendants' motions to dismiss; and Powell involved a question of legislative immunity, not legislative privilege. See 7/9/12 Senate Majority Reply at 19; 7/9/12 Assembly Minority Reply at 13-14. Although, as discussed below, none of these distinctions is persuasive, the Court nevertheless rejects the notion that the defendants' participation in this lawsuit, standing alone, automatically waives the legislative privilege in all respects.

As an initial matter, Powell is not distinguishable on the ground that the defendants here are involuntary participants in this litigation. While the defendants have not sought to assert legislative immunity, it is available 40 to them as a complete defense. See State *40 Employees, 494 F.3d at 87-88.[24] Hence, the mere fact that the defendants in this case were sued in their official capacities does not provide adequate grounds to reject the plaintiffs' waiver arguments. Moreover, insofar as no defendant has sought dismissal on the basis of legislative immunity from suit, the Panel's denials of the defendants' dispositive motions have no bearing on the waiver issue. Finally, the defendants should not be heard to distinguish Powell on the ground that that case involved a claim of legislative immunity; after all, in moving for protective orders, the defendants highlight the purported parity between the privilege and the immunity, and the key question here is whether, by failing to assert the immunity, the privilege, in fairness, has been forfeited.

24 The Senate Majority correctly notes that in Rodriguez, Judge Maas faced an identical argument, and "decline[d] . . . to find" that the failure to assert legislative immunity waived legislative privilege. See Rodriguez, 280 F.Supp.2d at 103; see also 9/3/03 Tr. at 5-7, aff'd, 293 F.Supp.2d 313, 314-15 (S.D.N.Y. 2003). However, in so ruling, Judge Maas relied on Goldberg v. Town of Rocky Hill, 973 F.2d 70 (2d Cir. 1992), which dealt with the availability of legislative immunity for municipalities under 42 U.S.C. § 1983. See 9/3/03 Tr. at 7. In the intervening years since Rodriguez, the Second Circuit has explicitly rejected the application of Goldberg in the context of state legislators sued in their official capacities. In State Employees, a case involving state-level legislators, the Second Circuit distinguished Goldberg and similar cases on the ground that while local officials sued in their official capacities were not entitled to assert

legislative immunity because a section 1983 suit was a *de facto* suit against the municipality, "claims for injunctive relief against defendant state officials, sued in their official capacities, may be barred by the doctrine of legislative immunity" because a suit against a *state* legislator in his or her official capacity is not a *de facto* suit against the state. See State Employees, 494 F.3d at 86-88.

In any event, this Court concludes that the defendants' failure to assert legislative immunity from suit should not be construed to waive the evidentiary privilege of state legislators. First, because legislative immunity and legislative privilege are distinct concepts, it makes good sense to keep them untethered in the context of waiver. Second, the focus must *41 be on fairness to the parties, notwithstanding any claim of immunity. The decision of a legislator to defend himself or herself and to forgo invoking absolute legislative immunity should, however, cut against the legislator in the Rodriguez balancing analysis. Indeed, the "role of the government in the litigation" is one of the five Rodriguez factors, and if the role of the government (here, the state legislators) is not only direct, but voluntary, then, as a matter of fairness, the defendants' claims of privilege against compelled disclosure must be weakened.

2. Remaining Waiver Arguments

The Court now considers whether the legislative privilege has been waived through other means, including selective disclosure and improper assertions of privilege.

It is well settled that the legislative privilege "'is a personal one and may be waived or asserted by each individual legislator.'" See ACORN I, 2007 WL 2815810, at *2 (quoting Marylanders for Fair Representation, 144 F.R.D. at 298). It follows, then, that a legislator cannot assert or waive the privilege on behalf of another legislator. See Almonte I, 2005 WL 1796118, at *3 n.2 (quoting A Helping Hand, LLC v. Baltimore Cnty., Md., 295 F.Supp.2d 585, 590 (D. Md. 2003)) . Unlike a waiver of legislative immunity, the waiver of the privilege need not be "explicit and unequivocal," see id. at *3-4, and may occur either in the course of the litigation when a party testifies as to otherwise privileged matters, or when purportedly privileged communications are shared with outsiders. See Trombetta v. Bd. of Educ., Proviso Twp. High Scb. Dist. 209, No. 02 C 5895, 2004 WL 868265, at *5 (N.D. Ill. Apr. 22, 2004) (noting that legislative privilege "is waivable and is waived if the purported legislator testifies, at a deposition or otherwise, on supposedly privileged matters") (citing Alexander v. Holden, 66 F.3d 62, 68 n.4 (4th Cir. 1995); Virgin Islands v. Lee, 755 F.2d *42 514, 520 n.7 (3d Cir. 1985); Marylanders for Fair Representation, 144 F.R.D. at 298); see also Comm. for a Fair & Balanced Map v. Ill. State Bd. of Elections, No. 11 C 5065, 2011 WL 4837508, at *10 (N.D. Ill. Oct. 12, 2011) ("As with any privilege, the legislative privilege can be waived when the parties holding the privilege share their communications with an outsider.") (citing ACORN I, 2007 WL 2815810, at *4). Importantly, courts have been loath to allow a legislator to invoke the privilege at the discovery stage, only to selectively waive it thereafter in order to offer evidence to support the legislator's claims or defenses. See Comm. for a Fair & Balanced Map, 2011 WL 4837508, at *11 (subpoenaed non-party state legislators "cannot invoke the privilege as to themselves yet allow others to use the same information against plaintiffs at trial"). Accordingly, once the privilege is invoked, the Court should not later allow the proponent of the privilege to strategically waive it to the prejudice of other parties.

The law is clear that a legislator waives his or her legislative privilege when the legislator publicly reveals documents related to internal deliberations. Rodriguez, 2003 WL 22109902, at *3. Moreover, although in this Circuit communications between legislators and "experts retained by them to assist in their legislative functions" are subject to the qualified privilege, see ACORN II, 2009 WL 2923435, at *6 (citing Almonte II, 478 F.3d at 107), communications with "knowledgeable outsiders" -- e.g., lobbyists -- fall outside the privilege. See Rodriguez, 280 F.Supp.2d at 101. Further, courts have indicated that communications with technical

employees who "provide information to legislators collectively," but who "do not advise a particular legislator as his or her personal staff," at best deserve weak deference in the balancing of competing interests. Id. (citing
43 Fla. Ass'n of Rehab. Facilities v. State of Fla. *43 Dep't of Health & Rehab. Servs., 164 F.R.D. 257, 267 (N.D. Fla. 1995)).[25]

25 In contrast, some out-of-Circuit cases have held that even communications with retained consultants may waive the privilege. See Baldus v. Members of the Wis. Gov't Accountability Bd., Nos. 11-CV-562, 11-CV-1011, 2011 WL 6122542, at *2 (E.D. Wis. Dec. 8, 2011) ("The Legislature has waived its legislative privilege to the extent that it relied on outside [redistricting] experts for consulting services") (citing Comm. for a Fair & Balanced Map, 2011 WL 4837508, at *10 ("Thus, to the extent that [the legislators] relied on reports or recommendations generated by outside consultants to draft the 2011 Map, they waived their legislative privilege as to these documents.")), order clarified, 2011 WL 6385645 (E.D. Wis. Dec. 20, 2011).

Here, the plaintiffs raise three arguments with respect to selective disclosure and improper privilege assertions. First, the Senate Minority argues that the publication of the 2012 Carvin Memorandum effectuated a waiver of the legislative privilege with respect to documents related to the size of the Senate. See 7/2/12 Senate Minority Opp. at 20. Taking a cue from Rodriguez, where the failure to keep the subject of the 2002 Carvin Memorandum "carefully cloistered" was found to have caused a waiver of the privilege with respect to documents related to the size of the Senate, see Rodriguez, 2003 WL 22109902, at *3, this Court discerns no reason to reach a different conclusion in this case, where the exact same course of events came to pass. Nevertheless, out of an abundance of caution, and because the Senate Majority's assertions of attorney-client privilege and work product protection in connection with many of the same documents implicate somewhat different analyses, the Court will defer ruling definitively on the waiver issue until after it has an opportunity to review the documents *in camera*.

Second, the Ramos Intervenors argue that the Senate Majority "waived any applicable legislative privilege with
44 respect to their communications with non-state employee *44 consultants," including Duke University Professor Richard Engstrom. See 7/2/12 Ramos Opp. at 12 & n.3, 13. The Court rejects this waiver argument. Retained consultants who aid legislators in the performance of their legislative duties fall within the scope of the qualified legislative privilege, and any confidential communications involving such consultants and experts are subject to the qualified privilege balancing test. See *supra* p. 38 n. 23.

Third, the Senate Minority argues that the Senate Majority waived its legislative privilege to the extent that it claimed a privilege over documents that either (1) were not confidential deliberations, (2) did not contain privileged information, or (3) were later published to the public. See 7/2/12 Senate Minority Opp. at 24; 7/2/12 Ramos Opp. at 11-12. To that end, the Senate Minority has submitted and referenced various LATFOR emails related to prisoner reallocation data. See generally LATFOR Emails, SM 0001-0273, Ex. 2 to 7/2/12 Hecker Decl, DE #428-1. The Court is unwilling to find on the existing record that the dissemination of these emails waived the privilege as to other documents and communications contained within the Senate Majority's privilege log. The legislative privilege, while qualified, casts a wide net. As such, the mere fact that emails were exchanged between legislators (and staffs) of opposing parties is not dispositive.[26]

26 To the extent that the Senate Majority errantly included within its privilege logs documents that have been made public or were shared with individuals outside the legislative process, it cannot reasonably claim a privilege. As stated in Part III below, the Court directs the defendants to review and revise their privilege logs. See *infra* pp. 62-71. If this review uncovers non-responsive documents, those documents should be removed from the privilege log. If it uncovers responsive documents erroneously claimed to be privileged, those documents should be produced.

45 Therefore, the Court defers ruling on these and other waiver issues until it has an *45 opportunity to perform an *in camera* review of the allegedly privileged documents to determine whether the claim of privilege trumps discovery.

F. Legislative Privilege in Redistricting Cases

Most decisions in redistricting cases involving claims of legislative privilege -- including decisions from within this Circuit -- have recognized a qualified legislative privilege, and have balanced the parties' competing interests when determining if and to what extent the privilege applies and protects against compelled disclosure. See Baldus, 2011 WL 6122542, at *2; Comm. for a Fair & Balanced Map, 2011 WL 4837508, at *7-8; Rodriguez, 280 F.Supp.2d at 100-02; United States v. Irvin, 127 F.R.D. 169, 170, 173-74 (C.D. Cal. 1989). A slim minority of (out-of-Circuit) cases have analyzed the legislative privilege under principles governing legislative immunity. Backus v. South Carolina, No. 3:11-cv-03120-HFF-MBS-PMD (D.S.C. Feb. 9, 2012), Ex. B to 6/18/12 Geremia Decl., DE #395-2; Marylanders for Fair Representation, 144 F.R.D. at 304-05 (Murnaghan, J., and Motz, J.). However, even in Marylanders, two of the three judges on the panel ultimately held that legislative testimonial "immunity" was qualified in the context of redistricting.[27], [28] See id. *46

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27 In Marylanders, on which the Senate Majority relies, a divided three-judge court addressed claims of legislative privilege raised by, among others, legislator defendants, in the context of the 1990 Maryland state redistricting cycle. See 144 F.R.D. at 295-96. Specifically, the case involved a quasi-legislative Redistricting Advisory Committee, comprised of two legislators and three non-legislator private citizens, appointed by the Governor (pursuant to a state constitutional provision) for the purpose of recommending a redistricting plan to the General Assembly. See id. The defendants had asserted legislative immunity in response to discovery demands including interrogatories, document requests, and depositions touching upon the factors used to develop the redistricting plan and the reasons for rejecting alternative plans. See id. The controlling opinion of the court, supported by two of the three judges, held that because " [l]egislative redistricting . . . is not a routine exercise of [legislative] power," and "[i]nevitably . . . involves the self-interest of the legislators themselves," "a less categorical, more flexible approach should be taken to the question of testimonial legislative immunity in shaping the scope of discovery." See id. at 304 (Murnaghan, J., and Motz, J., concurring). Therefore, the court permitted the three private-citizen members of the committee to be "deposed concerning the Committee's deliberations," which "would provide a means for learning pertinent information without impacting upon legislative sovereignty." See id. at 304-05. Moreover, the court deferred ruling on whether the *legislator* members of the committee could be deposed, "until a more complete factual record [was] developed." See id. at 305. However, the entire panel noted that it would "flatly prohibit . . . their depositions from being taken as to any action which they took after the redistricting legislation reached the floor of the General Assembly . . . ." See id. Lastly, the panel also agreed that the legislative privilege (which it referred to as "legislative immunity") "does not . . . extend to certain types of documentation," see id. at 302 (majority op.) (citations omitted); therefore, the panel "required [the defendants] to produce any documents prepared by the Committee during the course of its deliberations which [were] requested by the plaintiffs," subject to other available privileges. The spirit of Marylanders, that a legislator's evidentiary privilege is a qualified one, is thos in accordance with the law in this Circuit and this Court's holding.

28 One other recent redistricting case has deferred decision whether the privilege is absolute or qualified. See Texas v. United States, 279 F.R.D. 24, 33-34 (D.D.C. 2012), vacated in part on other grounds, 279 F.R.D. 176 (D.D.C. 2012).

Having scrutinized the relevant precedent, this Court concludes that the perfunctory ruling in Backus does not provide a persuasive reason to depart from the clear weight of authority holding that the legislative privilege is qualified and subject to a judicial balancing test. Because this Court is not the first to apply the qualified legislative privilege in the redistricting context, it is appropriate to briefly survey how the prior opinions viewed the various factors before applying the balancing test in the present case.

1. 1981 Los Angeles County Redistricting Plan

In 1989, in United States v. Irvin, the Central District of California analyzed the Los Angeles County Board of Supervisors' assertions of privilege during depositions in response to certain questions related to the
47 motivations behind the Board's adoption of a county *47 redistricting plan. See 127 F.R.D. at 170. The plaintiff had asserted claims against the Board under Section 2 of the Voting Rights Act ("VRA"), and sought to compel county officials to answer questions related to "communications occurring between the Supervisors and their staff members during non-public meetings immediately preceding the plan's adoption." See id. The Board challenged the motion, citing the deliberative process privilege. See id. Noting the "paucity of federal case law directly on point," the court outlined eight factors to consider when balancing the interests. Irvin, 127 F.R.D. at 171-73.

Upon balancing the factors, the court concluded that all but two favored disclosure. See id. at 173-74. It first found that the "desirability of accurate fact finding" supported disclosure, "as it would in every case." See id. at 173. The court next held that evidence concerning the Board's decision-making process was relevant and was not otherwise available, a factor that further tipped the balance in favor of disclosure. See id. Moreover, disclosure was warranted because, according to the court, the plaintiff's VRA claims "raise[d] profound questions concerning the validity of the redistricting plan," potentially "implicate[d] intentional or negligent governmental misconduct," and "place[d] in issue the Supervisors' deliberations themselves." Id. at 174 (citations omitted). The court also noted that "the federal interest in enforcement of the Voting Rights Act weighs heavily in favor of disclosure," since the Act itself "requires vigorous and searching federal enforcement." Id.

The court in Irvin found that two factors -- the threat of a chilling effect and the Board's role in the litigation -- "militated against disclosure," but that the weight of these factors was "difficult to gauge." See id. Specifically, the court was unwilling to find that "the occasional instance in which disclosure may be ordered in the civil
48 context [would] add *48 measurably to the inhibitions already attending legislative deliberations." See id. (citing Gillock, 445 U.S. at 373, which held, in the criminal context, that any chilling effect on legislative debate was "speculative" and "minimal"). Therefore, the court in Irvin granted the motion to compel, holding that the deliberative process privilege had to give way to the plaintiff's interests in discovering information regarding the County's redistricting plan. See id.

2. 2002 New York State Redistricting Plan

In Rodriguez, Judge Maas applied a five-factor balancing test in response to the plaintiffs' motion to compel, and determined that the claims of legislative privilege should be sustained in part. First, he found that the plaintiffs' discovery requests with respect to the development of the 2002 redistricting plan were relevant, insofar as they sought evidence of a discriminatory intent in violation of Section 2 of the VRA. See 280 F.Supp.2d at 101-02 ("While evidence of discriminatory animus may not be an essential element of all of the plaintiffs' claims, it certainly is something that can be considered in deciding whether the New York Legislature's 2002 redistricting plans pass judicial muster.") (citing Vill. of Arlington Heights, 429 U.S. at 268; Irvin, 127 F.R.D. at 171). Second, the court found that the defendants had failed to demonstrate that the information sought could have been obtained through another source, further undermining the strength of their claim of privilege. See 280 F.Supp.2d at 102. Third, the court noted that there was "no question" that the case "raise[d] serious charges about the fairness and impartiality of some of the central institutions of our state government," thereby cutting against sustaining the privilege. See id. Fourth, the court found that the state
49 government's central role in the litigation weighed against honoring the *49 privilege. See id. Fifth and finally, because LATFOR contained two outsider non-legislators, the court concluded that disclosure of its operations

would not serve to inhibit legislative deliberations in the future. See id. at 101 (noting that communications between legislators and non-legislators in LATFOR were "more akin to a conversation between legislators and knowledgeable outsiders, such as lobbyists, to mark up legislation -- a session for which no one could seriously claim privilege.").

Judge Maas ultimately held that "the defendants' qualified legislative privilege was overcome to the extent that the plaintiffs sought information concerning the 'operations' of [LATFOR]," but that the privilege supported nondisclosure "to the extent that the plaintiffs sought documentation reflecting the thought processes of individual legislators 'which took place outside LATFOR or after the proposed [2002] redistricting plan reached the floor of the Legislature.'" See Rodriguez, 2003 WL 22109902, at *1 (citing Rodriguez, 280 F.Supp.2d at
50 103).[29] *50

29 The Senate Majority vigorously asserts that Judge Maas, shortly after issuing his written opinion of July 28, 2003, 280 F.Supp.2d 89, "self-correct[ed]" his purported error and recognized an absolute legislative privilege. See 7/9/12 Senate Majority Reply at 7; 6/18/12 Senate Majority Mem. at 9. A review of the record in Rodriguez reveals the fallacy of this argument. To be sure, in the September 3, 2003 conference call cited by the Senate Majority, Judge Maas did in fact note that, "at the time that [he] drafted the [July 28, 2003] decision, [he] didn't contemplate the scenario . . . that LATFOR had, in effect, four subsets in addition to the entity itself, one of which was a . . . separate [S]enate [M]ajority office." See 9/3/03 Tr. at 7-8. However, Judge Maas qualified his statement, adding that "[e]xactly how that shakes out, frankly, I'm not certain," id. at 8, since it was a "somewhat confusing area." Id. Moreover, Judge Maas offered a "guess" that he would not allow the deposition of legislator-defendants (whose depositions were, in any event, never noticed), but noted that it was a closer question with respect to LATFOR staff. See id. at 11. In fact, in a September 11, 2003 conference call with the parties, Judge Maas indicated that LATFOR employees could be deposed to the extent that they had not been "detailed" to one of the four partisan LATFOR offices. See Hr'g Tr. Sept. 11, 2003 ("9/11/03 Tr.") at 13-14, Ex. 4 to 9/17/03 Bruno Objections. Furthermore, the Senate Majority ignores the fact that Judge Maas reaffirmed the qualified nature of the legislative privilege in a written opinion issued one week after the September 3, 2003 conference call. See Rodriguez, 2003 WL 22109902, at *3 (assessing whether plaintiffs had established a substantial need for certain documents, so as to warrant disclosure of documents withheld based on legislative privilege).

After conducting an *in camera* inspection, Judge Maas made specific rulings as to three categories of withheld documents. First, to the extent that Judge Maas held that "requests by Republican legislators to adjust the lines of their districts" were protected from disclosure by the legislative privilege, such protection was warranted only because plaintiffs "ha[d] not established a substantial need" for those documents, with the exception of a single document utilizing racial terms, for which "the qualified privilege must yield to the plaintiffs' need for information." See id., at *2-3. Second, alluding to the 2002 Carvin Memorandum, Judge Maas held that the Senate Majority had waived its privilege as to documents reflecting the Senate size, an issue that it had not sought to keep "carefully cloistered within the confines of its separate redistricting office." See id. at *3. Third, Judge Maas held that expert reports submitted to the United States Department of Justice as a part of LATFOR's VRA Section 5 submission were not covered by the privilege because the documents were prepared by "LATFOR's experts, not the Senate Majority's experts." See id. at *4.

As for depositions, Judge Maas concluded that, on balance, legislators and their staffs -- including those individuals who were "detailed" to one of the four partisan redistricting offices -- were protected by the qualified privilege, but that "anybody other than . . . a legislator or that legislator's individual aid[e] . . . is
51 somebody who's potentially subject to *51 being questioned . . . ." See 9/11/03 Tr. at 14. Importantly, and contrary to the Senate Majority's assertions, Judge Maas never found an absolute legislative privilege.

3. 2011 Illinois State Redistricting Plan

In Committee for a Fair and Balanced Map, the Northern District of Illinois applied the five-factor balancing test from Rodriguez in the context of the 2011 Illinois congressional redistricting plan. 2011 WL 4837508, at *7-10 (citing, *inter alia*, Rodriguez, 280 F.Supp.2d at 101; ACORN II, 2009 WL 2923435, at *2). The plaintiffs in that case had served a number of subpoenas on certain non-parties -- including the Illinois House of Representatives, the state Senate and House redistricting committees, various legislators, and legislative staff members -- seeking four broad categories of documents related to the development of the state's 2011 Congressional district map. See id. at *2.[30] In response, select legislative non-parties filed a motion to quash the subpoenas, citing legislative immunity and legislative privilege. See id. Denying the motion, the court first held that there was no common law "absolute immunity for non-party state lawmakers that protects them from producing documents in federal redistricting cases[,]" and that the non-parties' privilege claims were "best analyzed under the doctrine of legislative privilege." See id. at *7.

30 Specifically, the plaintiffs sought "(1) information concerning the motives, objectives, plans, reports, and/or procedures used by lawmakers to draw the 2011 Map; (2) information concerning the identities of persons who participated in decisions regarding the 2011 Map; (3) the identities of experts and/or consultants retained to assist in drafting the 2011 Map and contractual agreements related thereto; and (4) objective facts upon which lawmakers relied in drawing the 2011 Map." See Comm. for a Fair & Balanced Map, 2011 WL 4837508, at *2.

The court then performed the Rodriguez balancing analysis. See id. at *7-10. The court first noted that the
52 seriousness of the claims favored disclosure based on the "profound *52 questions about the legitimacy of the redistricting process and the viability of the 2011 Map." Id. at *8. The court further stated that the direct involvement of non-party legislators in the drawing of the map supported disclosure, as well as the fact that "the decisionmaking process . . . [itself was] the case," insofar as the plaintiffs had alleged intentional racial and partisan discrimination. See id. However, the court found that the evidence sought was "relevant, [but] not central" to the case, and that the "[p]laintiffs already had considerable information at their fingertips," both factors militating against disclosure. See id.

Moreover, the court concluded that the final factor -- i.e., the threat of a chilling effect on legislative deliberations -- weighed against disclosure and in favor of sustaining the claim of legislative privilege. See id. at *9. Specifically, the court noted that, as a general matter, "the need for confidentiality between lawmakers and their staff is of utmost importance." Id. at *8. Moreover, the court found, "[i]n the redistricting context, full public disclosure would hinder the ability of party leaders to synthesize competing interests of constituents, special interest groups and lawmakers, and draw a map that has enough support to become law." Id.

The court therefore held that "the legislative privilege shields from disclosure pre-decisional, non-factual communications that contain opinions, recommendations or advice about public policies or possible legislation," but not "facts or information available to lawmakers at the time of their decision." Id. at *10. As such, the court determined that the plaintiffs' document requests with respect to the motives, plans, reports, or procedures utilized in drafting the plan, as well as the identities of individuals who participated in the decision-making process, were protected from disclosure by the legislative privilege. See id. Nevertheless, the court also
53 held that the identities of retained experts and consultants used in *53 the redistricting process were not privileged, nor were the objective facts upon which the legislators relied in the map-making process. See id.

4. 2011 Wisconsin Redistricting Plan

In Baldus v. Members of the Wisconsin Government Accountability Board, a case involving challenges to the 2011 Wisconsin state redistricting plans, the court addressed claims of legislative privilege by the Wisconsin Assembly and Senate, neither of which was a party to the case. See 2011 WL 6122542, at *1. Specifically, the Assembly and Senate sought to quash subpoenas served on an outside redistricting expert retained by the state legislature and on a legislative aide to the Senate Majority Leader. See id. at *1. Both subpoenas requested documents used in drawing the redistricting plans and requested that the individuals sit for depositions. See id.

The court, relying on Committee for a Fair and Balanced Map, 2011 WL 4837508, denied the motions to quash, holding that the legislative privilege did not prevent disclosure. See Baldus, 2011 WL 6122542, at *2. First, the court held that the legislature had waived the privilege insofar as it "relied on . . . outside experts for consulting services" in developing its plan. See id. at *2. Second, the court noted that "even without that waiver," the qualified legislative privilege yielded, based on the plaintiff's showing of need. See id. Applying the same five factors utilized in Rodriguez, the court concluded that "the highly relevant and potentially unique nature" of the evidence outweighed any future chilling effect on legislative deliberations, and that the
54 seriousness of the case and the government's direct role in crafting *54 the plan also weighed in favor of disclosure. See id. [31]

31 The court subsequently reaffirmed its ruling in a clarifying opinion, see Baldus v. Members of the Wis. Gov't Accountability Bd., Nos. 11-CV-562 JPS-DPW-RMD, 11-CV-1011 JPS-DPW-RMD, 2011 WL 6385645 (E.D. Wis. Dec. 20, 2011), and later imposed sanctions on the legislature's attorneys -- "those ultimately responsible for the sandbagging, hide-the-ball trial tactics" -- for failure to cooperate with the court's discovery orders. See Baldus v. Members of Wis. Gov't Accountability Bd., 843 F.Supp.2d 955, 960 (E.D. Wis. 2012).

This Court, like nearly every court to address the issue in the redistricting context, concludes that state legislators enjoy only a qualified evidentiary privilege.

G. Application of Balancing Test

Before the Court proceeds with the requisite balancing analysis, it bears mention that LATFOR's operations during the current redistricting cycle were in many ways similar to its operations in the 2000 Census redistricting cycle. See 6/18/12 Hedges Decl. ¶¶ 4-7; 4/27/12 Levine-Schellace Decl. ¶ 5. If the process differed in any way, it was simply as a matter of degree. See generally Dilan Decl. With that in mind, the Court provides a preliminary balancing, and orders the Senate Majority to provide to the Court, for *in camera* inspection, all documents for which the Senate Majority has asserted the legislative privilege. The Assembly Majority and Assembly Minority are directed to produce, for *in camera* inspection, the documents described below. The Court defers its rulings on discoverability of specific documents until after it has completed its review.

1. Relevance

The first factor in the balancing analysis concerns the relevance of the evidence sought to be protected. The defendants in general, and the Senate Majority in particular, vigorously dispute the relevance of the requested
55 information and documents, arguing, among other *55 things, that "legislators' motivations, political or otherwise, are entirely irrelevant." See 6/18/12 Senate Majority Mem. at 24. Plaintiffs counter that the discovery sought is relevant to the "central" issues in the case: "whether the Senate Majority made an *honest and good faith effort* to construct [nearly equipopulous] districts," see 7/2/12 Senate Minority Opp. at 15 (citations omitted), and whether the redistricting plan for each house of the New York State Legislature "discriminated against racial minority communities . . . ." See 7/2/12 Ramos Opp. at 7; 7/2/12 Drayton Opp. at 6.

It is not the function of this Court, in assessing relevance for purposes of discovery, to decide issues of admissibility or resolve potentially dispositive disputes.[32] Suffice it to say, "[r]elevant information need not be admissible" to be discoverable, see Fed. R. Civ. P. 26(b)(1); indeed, "[t]he deposition-discovery regime set out by the Federal Rules of Civil Procedure is an extremely permissive one to which courts have 'long accorded a broad and liberal treatment . . . .'" In re Subpoena Issued to Dennis Friedman, 350 F.3d 65, 69 (2d Cir. 2003) (Sotomayor, J.) (citations omitted); accord Garcia v. Benjamin Grp. Enter. Inc., 800 F.Supp.2d 399, 403 (E.D.N.Y. 2011). This Court has been vested with broad discretion to manage discovery. See In re Subpoena Issued to Dennis Friedman, 350 F.3d at 69; Garcia, 800 F.Supp.2d at 403; see also Favors, 2012 WL 1802073, at *15. As an exercise of that discretion, and for the reasons that follow, the Court rejects the defendants' relevance challenge under Rule 26(b)(1), without deciding whether the discovery sought is ultimately *56 admissible. See Garcia, 800 F.Supp.2d at 404. 56

32 Those disputes are currently pending before the Panel in connection with the defendants' pending motions for summary judgment. See, e.g., Senate Majority's Mem. in Supp. of Mot. for Summary Judgment (June 29, 2012) at 10, 16, DE #420-2; Senate Majority's Reply in Supp. of Mot. for Summary Judgment (Aug. 3, 2012) at 2, DE #468.

In support of their demand for discovery relating to the defendants' purpose or intent, the plaintiffs cite the Supreme Court's decision in Reynolds v. Sims, wherein the Court held that "a State [must] make an honest and good faith effort to construct districts, in both houses of its legislature, as nearly of equal population as is practicable." 377 U.S. 533, 577 (1964); see, e.g., 7/2/12 Senate Minority Opp. at 15. The Senate Majority dismisses this pronouncement as "isolated language" of the Supreme Court, see 7/9/12 Senate Majority Reply at 10, and ignores the fact that the Panel presiding over this case has adopted that language as the applicable legal standard for testing Equal Protection challenges to redistricting plans. See Favors, 2012 WL 1802073, at *9 (quoting Reynolds, 377 U.S. at 577). Furthermore, the plaintiffs have also asserted violations of Section 2 of the VRA, as well as racial and ethnic discrimination in violation of the Equal Protection Clause. See generally id. Rodriguez and other opinions involving similar claims in redistricting cases have rebuffed comparable relevance challenges to discovery demands. See Baldus, 2011 WL 6122542, at *1 (noting that in claims "under both the Voting Rights Act and the Equal Protection Clause[,] . . . proof of a legislative body's discriminatory intent is relevant and extremely important as direct evidence"); Rodriguez, 280 F.Supp.2d at 102 ("While evidence of discriminatory animus may not be an essential element of all of plaintiffs' claims, it certainly is something that can be considered in deciding whether the New York Legislature's 2002 redistricting plans pass judicial muster.") (citing Vill. of Arlington Heights, 429 U.S. at 268; Irvin, 127 F.R.D. *57 at 171).[33] 57

33 In contending that subjective motivations are irrelevant, the Senate Majority argues that "New York City districts are *under*populated relative to upstate districts in terms of the only population that matters when assessing a one-person, one-vote claim: citizen population." 6/18/12 Senate Majority Mem. at 25. In other words, the Senate Majority urges the Court to use Citizen Voting Age Population data ("CVAP") to assess whether the malapportionment complained of injured the plaintiffs. Whatever the Panel's ultimate disposition of this argument, this Court does not regard it as sufficient to block discovery of otherwise relevant information. First, because the New York State Constitution requires that legislative districts be apportioned based upon the "whole number of persons" rather than citizens, see N.Y. Const. art. 3, §§ 4, 5, 5-a, the Second Circuit in 2010 upheld the dismissal of a claim that the plaintiffs' "votes were diluted by the inclusion of aliens for the purposes of apportionment." Loeber v. Spargo, 391 F.App'x 55, 58 (2d Cir. 2010) (Pooler, Sack and Raggi, JJ.), cert. denied sub nom. Van Allen v. Spargo, 131 S.Ct. 2934 (2011). That is, the Court of Appeals declined to utilize CVAP in determining whether the plaintiffs had suffered any injury. See id.

Second, the legislation pursuant to which the 2012 Senate Plan was enacted expressly provides that the apportionment of the districts was based not on CVAP, but "on the basis of the number of inhabitants of the state[,]" according to the 2010 Census. See 7/2/12 Drayton Opp. at 13 (citing 2012 New York State Redistricting Plan, S. 6696, A. 9525, art. 8 §

123 (N.Y. 2012) (enacted)). Indeed, when this Court sought to obtain CVAP data from LATFOR, for the purpose of conducting a VRA analysis of the parties' proposed Congressional plans, the Court was informed that LATFOR did not maintain such data. Therefore, the Court does not regard the defendants' CVAP argument as a reason to bar discovery.

For the foregoing reasons, this Court likewise concludes that the relevance factor weighs in favor of disclosure, including with respect to information relating to the Senate size, which is "inextricably intertwined" with the plaintiffs' Equal Protection malapportionment claims. See 7/2/12 Senate Minority Reply at 2.

2. Availability of Other Evidence

The second balancing factor also supports disclosure in this case. The defendants, hanging their hats on the purported irrelevance of legislative intent in relation to the plaintiffs' claims, argue that any information needed to prove the VRA and Equal Protection claims here is already located in the public record, and that therefore this second factor tips in favor of *58 honoring the privilege and granting them protective orders. See 6/18/12 Senate Majority Mem. at 26-27; 7/9/12 Assembly Majority Reply at 3-4, 8. As stated above, however, the internal legislative process is highly relevant to all of the plaintiffs' claims. See *supra* pp. 54-57. And, while LATFOR has indeed produced substantial material on its website -- including maps, analyses, data, and memoranda -- such evidence may provide only part of the story. To the extent that the information sought by the plaintiffs relates to non-public, confidential deliberations that occurred within LATFOR or one of the partisan LATFOR redistricting offices, or between legislators, their staffs, and retained experts, such information likely cannot be obtained by other means. See Rodriguez, 280 F.Supp.2d at 102. Therefore, this factor militates in favor of disclosure.

3. Seriousness of the Claims

As for the third balancing factor, it is indisputable that racial and malapportionment claims in redistricting cases "raise serious charges about the fairness and impartiality of some of the central institutions of our state government," and thus counsel in favor of allowing discovery. See id.; see also Baldus, 2011 WL 6122542, at *2; Comm. for a Fair & Balanced Map, 2011 WL 4837508, at *8. The defendants suggest that the viability of the plaintiffs' claims (or the existence of defenses to the claims) should bear on this factor. See 6/18/12 Senate Majority Mem. at 27; 7/9/12 Senate Majority Reply at 17; 7/9/12 Assembly Majority Reply at 8. However, the question presented here is whether the litigation and the issues therein are of a *serious type*, not whether the claims will ultimately prevail. See ACORN II, 2009 WL 2923435, at *4 (defining the "seriousness of the litigation" in relation to "the civil rights implicated"); Rodriguez, 280 F.Supp.2d at 102. To hold otherwise would distort this *59 factor -- intended to give due consideration to some of the most invidious forms of government malfeasance -- into a threshold question that would, in most cases, cut off the balancing test before it begins. The seriousness of the claims in this case further tips the balance toward disclosure.

4. The Role of the Government

With regard to the fourth factor, the state government's role in the instant litigation is direct, and the motives and considerations behind the 2012 Senate and Assembly Plans, to a large degree, "[are] the case." See Comm. for a Fair & Balanced Map, 2011 WL 4837508, at *8 (citations omitted). Hence, the fourth factor also weighs against issuance of a protective order. Indeed, insofar as the central issues in this case ask whether the Senate Majority failed to make an "honest and good faith" effort to create equipopulous districts, or otherwise violated the Equal Protection Clause, and whether the Assembly Majority failed to create multiple majority-minority Black districts in violation of Section 2 of the VRA, the subjective decision-making process remains at the core

of the plaintiffs' claims. And, as stated above, the fact that the legislators here have declined to assert legislative immunity weakens their claims of qualified privilege. Therefore, the legislature's direct role in the litigation supports overcoming the privilege.

5. Future Timidity

Fifth and finally, although allowing discovery here may not create a specific legislative chill in future redistricting cases in New York, it may inhibit full and frank deliberations in analogous legislative activity. On the one hand, any chilling effect on legislative debate in the redistricting context is mitigated by the fact that
60 New York State has now passed a new law *60 designed to ensure a more independent redistricting process. See Redistricting Reform Act of 2012, S. 6736, A. 9557 (N.Y. 2012) (enacted). This new scheme, which contemplates a constitutional amendment and supporting legislation, will create an "independent redistricting commission" comprised entirely of non-legislators. See id. As a result, any depositions of, for example, the mapmakers in this case are unlikely to inhibit legislative deliberations in future redistricting cycles: the independent redistricting commission will more closely resemble Judge Maas' view of the intended structure of LATFOR, which was "more akin to a conversation between legislators and knowledgeable outsiders, such as lobbyists, to mark up legislation -- a session for which no one could seriously claim privilege." See Rodriguez, 280 F.Supp.2d at 101. Further, the Court agrees with the Senate Minority that allowing discovery in this case is unlikely to dissuade citizens from serving on a prestigious committee. See 7/2/12 Senate Minority Opp. at 18 (citing Marylanders for Fair Representation, 144 F.R.D. at 305 n.23 (Murnaghan, J., and Motz, J.)). Moreover, the Senate Majority's fear that discovery here would "chill the willingness of . . . LATFOR staff" to engage in full and frank deliberations, see 6/18/12 Senate Majority Mem. at 27, ignores the fact that the court in Rodriguez declined to extend protection to LATFOR staff not detailed to a partisan redistricting office; significantly, under the contemplated scheme for future redistricting in New York, LATFOR will not play a role in the process. Therefore, as applied to redistricting, the threat of a chilling effect would be minimal.

Nevertheless, allowing discovery to draw back the legislative curtain has the potential, outside the redistricting context, to deter legislators from open and honest deliberations with one another, with their staffs, and with
61 retained experts, for fear that any such communications *61 will be discoverable in future litigation. It is not sufficient to argue, as the Senate Minority does, see 7/2/12 Senate Minority Opp. at 18, that because redistricting presents a unique legislative situation, allowing discovery here will not weaken the legislative privilege in other areas of public policy and debate within the legislative branch. Indeed, the declarations of Assemblymen Kolb and Oaks and LATFOR member Hedges all emphasize a potential chill. And, as reflected in the statements of Senator Dilan, there apparently *was* a chill in legislative deliberations since the previous redistricting cycle, lending credence to the defendants' warnings.

In the end, while the five factors here generally support overcoming the privilege, the threat of inhibiting legislative deliberations hangs in the air. Consequently, the prudent course is for the Court to perform an analysis of the allegedly privileged documents, *in camera,* prior to ruling as to the specific documents (or categories of documents) over which the privilege has been invoked. See ACORN II, 2009 WL 2923435, at *5 (explaining that *in camera* review and subsequent production of any "documents [that] reveal that racial considerations played any role in the legislative deliberations . . . will ensure that the factors relating to the qualified legislative privilege are properly balanced"); Rodriguez, 2003 WL 22109902, at *3 (finding, after an *in camera* review, that a memorandum between a redistricting expert and a legislator that discussed racial considerations should be produced over a claim of legislative privilege); see also In re Grand Jury, 821 F.2d at 959 (citing Kerr v. United States District Court, 426 U.S. 394, 406 (1976)). It is only in this way that the Court

can make the contextual investigation necessary to weigh the claim of privilege against the need for disclosure,
62 and to determine whether the defendants have established the requisite good cause to justify the *62 issuance of protective orders.

Therefore, the Court orders the Senate Majority to produce all of the documents in its privilege log over which it claims legislative privilege. Moreover, to the extent that the Assembly Majority and Assembly Minority have withheld responsive documents relating to Assembly districts in Nassau County, those documents should be produced as well for *in camera* inspection. **III. Privilege Logs**

Lastly, the Court addresses an issue that relates to each of the asserted privileges: whether the defendants' privilege logs are adequately detailed under the governing rules and case law.

A. The Parties' Submissions

While the plaintiffs' challenges to the privilege logs focus on those of the Senate Majority, their arguments, fairly read, are not so limited. See 7/2/12 Senate Minority Opp. at 1 n.1 (noting that its arguments are directed at all defendants); 7/2/12 Drayton Opp. at 3, 16 (challenging all defendants' reliance on "conclusory, stereotypical statements" and the failure to specifically establish their claims of privilege). The defendants all reply that their respective privilege logs comply with the relevant law. See 7/9/12 Senate Majority Reply at 20-22; 7/9/12 Assembly Majority Reply at 9 n.6; 7/9/12 Assembly Minority Reply at 15. For the reasons that follow, the Court finds that the entirety of the privilege logs of the Senate Majority, the final segment of the privilege logs of the Assembly Majority, and certain entries of the Assembly Minority's log are inadequate, and therefore directs those parties to file revised privilege logs, with the particulars detailed below. Moreover, all
63 defendants are *63 directed to file personnel lists and supplemental affidavits as described herein.

B. Legal Standard

Where, as here, challenges have been lodged against the withholding of allegedly privileged documents, the production of a privilege log that satisfies the requirements of the Federal and Local Rules is insufficient, standing alone, to defeat those challenges;[34] in addition, the proponent of the privilege bears the burden of establishing, for each document, "those facts that are essential elements of" the claimed privilege or privileges. See Safeco Ins. Co. of Am. v. M.E.S., Inc., -- F.R.D. --, 2011 WL 6102014, at *3 (E.D.N.Y. Dec. 7, 2011) (quoting Bowne, 150 F.R.D. at 470); see also Rodriguez, 280 F.Supp.2d at 103 (finding that a privilege log was inadequately detailed despite its compliance with the "minimal burdens" of the Federal and Local Rules); A.I.A. Holdings, S.A. v. Lehman Bros., Inc., No. 97 Civ. 4978(LMM), 2002 WL 31385824, at *6 (S.D.N.Y. Oct. 21, 2002) ("If the assertions of privilege [in a privilege log] are challenged and the dispute cannot be resolved informally, the withholding party then has to submit evidence, by way of affidavit, deposition testimony or otherwise, establishing only the challenged elements of the applicable privilege or protection, *64
64 with the ultimate burden of proof resting with the party asserting the privilege or protection.") (citing von Bulow v. von Bulow, 811 F.2d 136, 144 (2d Cir. 1987); In re Grand Jury Subpoena Dated Jan. 4, 1984, 750 F.2d 223, 224 (2d Cir. 1984); Bowne, 150 F.R.D. at 470).

34 Rule 26(b)(5)(A) of the Federal Rules of Civil Procedure provides that "[w]hen a party withholds information otherwise discoverable by claiming that the information is privileged or subject to protection as trial-preparation material, the party must (i) expressly make the claim; and (ii) describe the nature of the documents, communications, or tangible things not produced or disclosed -- and do so in a manner that, without revealing information itself privileged or protected, will enable other parties to assess the claim." Fed. R. Civ. P. 26(b)(5)(A). In this District, Local Civil Rule 26.2(a)(2)(A) further provides that a privilege log must include, for each document, "(i) the type of document . . . ; (ii)

the general subject matter of the document; (iii) the date of the document; and (iv) the author of the document, the addressees of the document, and any other recipients, and, where not apparent, the relationship of the author, addressees, and recipients to each other[.]" S.D.N.Y./E.D.N.Y. Local Civil Rule 26.2(a)(2)(A).

In assessing the adequacy of privilege logs, courts ask whether, "as to each document, [the privilege log] sets forth specific facts that, if credited, would suffice to establish each element of the privilege . . . ." See Safeco, 2011 WL 6102014, at *3 (quoting Golden Trade S.r.L. v. Lee Apparel Co., Nos. 90 Civ. 6291 (JMC), 90 Civ. 6292 (JMC), 92 Civ. 1667 (JMC), 1992 WL 367070, at *5 (S.D.N.Y. Nov. 20, 1992)). Additionally, to facilitate a judicial determination of privilege, the Court may require, through affidavits or testimony, additional information, "such as the relationship between the individuals listed in the log and the litigating parties, the maintenance of confidentiality, and the reasons for any disclosures of the document to individuals not normally within the privileged relationship . . . ." See Bowne, 150 F.R.D. at 474 (quoted with approval in Constr. Prods. Research, 73 F.3d at 473); see also Davis v. City of New York, No. 10 Civ. 699(SAS)(HBP), 2012 WL 612794, at *5 (S.D.N.Y. Feb. 27, 2012) (citing Johnson Matthey, Inc. v. Research Corp., 01 Civ. 8115(MBM) (FM), 2002 WL 31235717, at *3 (S.D.N.Y. Oct. 3, 2002)), recons. denied, 2012 WL 2005826 (S.D.N.Y. June 4, 2012); A.I.A. Holdings, 2002 WL 31385824, at *6 (denying a motion to compel where defendant subsequently "submitted affidavits . . . that fill in the 'gaps' asserted by plaintiff" with respect to the challenged privilege log).

Courts in this Circuit have long held that the "fail[ure] to include sufficiently descriptive information [in a privilege log] may result in waiver of the privilege." See Weiss v. Nat'l Westminster Bank, PLC, 242 F.R.D. 33, 65 66 (E.D.N.Y. 2007) (citing OneBeacon Ins. *65 Co., 2006 WL 3771010, at *6; Constr. Prods. Research, 73 F.3d at 473; Chase Manhattan Bank, N.A. v. Turner & Newall, PLC, 964 F.2d 159, 166 (2d Cir. 1992); Grossman v. Schwarz, 125 F.R.D. 376, 386-87 (S.D.N.Y. 1989); NextG Networks of NY, Inc. v. City of New York, No. 03 Civ. 9672RMBJCF, 2005 WL 857433, at *2 (S.D.N.Y. Apr. 13, 2005); Bowne, 150 F.R.D. 465, 474-75 (S.D.N.Y. 1993)). At the same time, however, courts must remain mindful of the burden and cost of preparing privilege logs when assessing challenges and ordering remedies. See A.I.A. Holdings, 2002 WL 31385824, at *5-6 (quoting ECDC Envtl. L.C. v. N.Y. Marine & Gen. Ins. Co., 96 Civ. 6033(BSJ)(HBP), 1998 WL 614478, at *3-4 (S.D.N.Y. June 4, 1998)).

C. Analysis

Measured against these legal principles, the privilege logs of the Senate Majority, Assembly Majority, and Assembly Minority are deficient to varying degrees, and must be revised to the extent indicated below.

1. The Defendants' Privilege Logs

The Senate Majority, whose privilege logs contain 6,732 items purportedly covered by some combination of the attorney-client privilege, work product protection, and legislative privilege, denotes, for each document, the "author, recipient (if applicable), date, the basis for the privilege assertion, the type of document, and the general subject matter" of the document. See 7/9/12 Senate Majority Reply at 21; see generally Senate Majority Privilege Logs, Ex. 1 to 7/2/12 Hecker Decl., DE #428-1. For nearly every document, the subject matter is noted to be related to "redistricting issues." See generally id. In addition to its privilege logs, the Senate 66 Majority also served personnel lists, which identify, for each individual, his or her *66 name, "department" (e.g., Senate, Assembly, LATFOR, Caliper or law firm), and position (e.g., legislator, staff, attorney, or consultant). See Privilege Log Personnel Lists, at 409-12, Ex. 1 to 7/2/12 Hecker Decl., DE #428-1.[35]

35 Pursuant to a court order, the Senate Majority submitted, under seal and *ex parte*, a more detailed personnel list, which included, among other information, a description of each individual's job responsibilities in connection with the 2010 Census redistricting cycle. See *infra* p. 70.

The Assembly Majority's logs, which were entered into ECF in nine segments, see Letter from C. Daniel Chill to the Court (Aug. 6, 2012), DE #473; Assembly Majority Privilege Logs, DE #474-482, assert the attorney-client privilege, work product protection, and legislative privilege, and denote for each document the date, Bates reference number, document type and description, author, addressees, copyees, and the type of privilege asserted. See generally Assembly Majority Privilege Logs. For all but one of the privilege log installments (hereinafter, the "Final Installment"), the "document type/description" column reflects the document title or e-mail subject line. See id. However, the Final Installment, which contains no Bates reference numbers, simply states, for each of the 1,605 documents on that particular log, that the document contains "[i]nformation relating to redistricting," without any substantive description. See generally Final New York State Assembly Majority Privilege Log (June 25, 2012), DE #481. Additionally, each of the Assembly Majority's privilege logs contains a personnel list stating whether the individual was, e.g., a member of the "New York State Assembly Majority" or "LATFOR Assembly Majority." See Assembly Majority Privilege Log Installment One (June 18, 2012) at 8, DE #474.

67 The Assembly Minority's log, submitted in a single installment spanning eighteen *67 pages, asserts only the legislative privilege, and sets forth, for each document, the document format, date, sender, recipient, subject (or description), and specific privilege asserted. See generally Assembly Minority Privilege Log (Aug. 6, 2012), DE #485. The subject/description field includes, as applicable, a file name, subject line, or document description. See id. While some entries contain substantive descriptions (see, e.g., March 7, 2011 Email from Darren McGeary to T. Kraus regarding "Inquiry about Nassau-Suffolk and Massapequa[]," Assembly Minority Privilege Log at 9), others simply state that a document relates to "Redistricting" (see, e.g., January 25, 2012 Letter from John McEneny to Robert Oaks regarding "Redistricting," Assembly Minority Privilege Log at 6). Unlike the Senate Majority and Assembly Majority, the Assembly Minority did not submit a personnel list. See Letter from Jennifer K. Harvey to the Court (Aug. 6, 2012) ("8/6/12 Harvey Ltr.") at 1, DE #484.

2. Document Descriptions

The document descriptions within the Senate Majority's privilege logs, the Final Installment of the Assembly Majority's privilege log, and various entries within the Assembly Minority's privilege log are inadequate to allow either the plaintiffs or this Court to determine whether a given privilege applies. Indeed, the insufficiency of the aforesaid logs is starkly apparent when compared to many entries in the privilege log of the Assembly Minority and to all of the earlier installments (and the supplemental installment) of the Assembly Majority's privilege logs.

As a preliminary matter, it is insufficient for the Senate Majority to describe each document as "relating to" (or "regarding") "redistricting issues." See generally Senate Majority Privilege Logs. It is similarly insufficient for

68 the Assembly Majority's Final *68 Installment to describe every one of its documents as containing " [i]nformation relating to redistricting," see generally Final Assembly Majority Privilege Log, or for the Assembly Minority to describe certain documents as discussing, simply, "[r]edistricting." See generally Assembly Minority Privilege Log. This is a redistricting case. Presumably, all responsive documents will in some way relate to "redistricting issues." What is *specifically* at issue is whether the documents discuss race or ethnicity; the size of the Senate; Assembly districts in Nassau County; district line-placement; alternative proposals; or the under- or overpopulation of districts or regions. See, e.g., Erie I, 473 F.3d at 421-22 (court lists six broad categories describing "the general subject matter of the document," within the meaning of Local Civil Rule 26.2 counterpart in the Western District of New York).

Moreover, given today's litigation technology, there is no good reason why privilege logs should not include -- where to do so would not itself reveal privileged or protected information, see SEC v. Beacon Hill Asset Mgmt. LLC, 231 F.R.D. 134, 145 (S.D.N.Y. 2004) -- other readily accessible metadata for electronic documents, including, but not limited to: addressee(s), copyee(s), blind copyee(s), date, time, subject line, file name, file format, and a description of any attachments. Indeed, the Assembly Majority's privilege logs and the Assembly Minority's privilege log contain some such information, and Judge Maas likewise ordered that subject lines be included in the parties' privilege logs in the Rodriguez case. See Hr'g Tr., Aug. 27, 2003 ("8/27/03 Tr."), at 16, Ex. 10 to 9/17/03 Bruno Objections. The defendants herein should now revise their privilege logs to include all such readily accessible (and often automated) metadata and descriptive information to the extent such
69 information has *69 not already been provided.[36]

36 However, where merely listing the subject line, file name, or document title would result in "vague, confusing, or conclusory descriptions," see Davis v. City of N.Y., 10 Civ. 0699(SAS), 2011 WL 1742748, at *3 (S.D.N.Y. May 5, 2011), it is the defendant's obligation to supplement its privilege log with an affidavit or description of general subject matter sufficient to establish its claim of privilege. And, to the extent that a document falls within one or more of the broad categories outlined above, the category or categories should be identified in the privilege logs.

While the Court is thus unable to resolve the parties' pending discovery disputes on the basis of the information contained in the defendants' privilege logs, the Court nevertheless, in its discretion, declines to hold that the defendants thereby waived all their privilege claims. See Davis, 2011 WL 1742748, at *4; see also Reino De Espana v. Am. Bureau of Shipping, No. 03CIV3573LTSRLE, 2005 WL 1813017, at *13-14 (S.D.N.Y. Aug. 1, 2005). Instead, the Court directs the Senate Majority, Assembly Majority, and Assembly Minority to submit revised privilege logs, and, where appropriate, evidentiary submissions, that cure the inadequacies described above. Insofar as the challenges to the 2012 Assembly Plan are now limited to Nassau County, the Assembly Majority and Assembly Minority need only supplement their privilege logs with respect to documents that discuss or pertain to Assembly districts in Nassau County. All privilege logs shall be served and filed with the Court in both static (e.g., PDF) and native (e.g., Excel) file formats.

Finally, although this Memorandum and Order defers decision on the issue of waiver, the Court echoes the warning of Judge Shira A. Scheindlin of the Southern District of New York in Davis v. City of New York, and cautions the defendants "to reassess [their] assertion of all privileges carefully prior to resubmitting the logs,"
70 or risk a broad finding of waiver. See Davis, 2011 WL 1742748, at *4. *70

3. Personnel Lists

A detailed privilege log is necessary, but not sufficient, to sustain a claim of privilege. There is ample case law in this Circuit for the "unremarkable proposition that a communication is not protected by legislative privilege if it was made in the presence of someone who was not a legislator and was not an agent of a legislator." See 7/9/12 Senate Majority Reply at 20 n.13 (citing Almonte I, 2005 WL 1796118, at *3). Additionally, it is " [o]bviously[the case that] when communications between a party and her attorney occur in the presence of a third party, the [attorney-client] privilege may be waived," unless the third party was an "agent of the attorney" (e.g., an accountant or translator). See NXIVM Corp. v. O'Hara, 241 F.R.D. 109, 138 (N.D.N.Y. 2007) (citations omitted). Hence, the functional roles and relationships between those individuals involved in the 2010 Census redistricting cycle are of paramount importance in determining whether either privilege applies.

In that connection, on July 12, 2012, the Court directed the Senate Majority to produce, under seal and *ex parte*, a letter and revised personnel list, providing detailed information as to the relationships between those individuals listed on their privilege logs. See Order (July 12, 2012), DE #447. Having reviewed the Senate Majority's submission, the Court concludes that much of the information reflected in that revised personnel list is not itself protected by any privilege. Therefore, all defendants are directed to serve and file personnel lists that include, for each individual listed in their respective privilege logs, the job title, supervisor (including, for legislative staff, the name of the relevant legislator), and whether the individual worked within one of the four partisan LATFOR offices during the 2010 Census redistricting cycle. In addition, the defendants are directed to serve and file supplemental affidavits for each *71 individual identified as LATFOR staff (including staff within
71 the four partisan offices), describing in detail his or her roles and responsibilities in connection with the 2010 Census redistricting cycle. Finally, where the attorney-client privilege is asserted, defendants are to provide evidentiary submissions establishing its applicability.

CONCLUSION

For the reasons stated above, the Court denies without prejudice the Senate Minority's motion to compel, and defers decision on the motions for protective orders filed by the Senate Majority, Assembly Majority, and Assembly Minority, pending the Court's completion of an *in camera* inspection of documents.

The defendants are directed to produce, by August 17, 2012, the following documents for *in camera* inspection: The Senate Majority is directed to produce all documents listed in its privilege logs; the Assembly Majority and Assembly Minority are directed to produce all documents listed in their privilege logs relating to Assembly districts in Nassau County. The documents produced for *in camera* inspection are to be provided in both hard copy and in electronic format. The Court will issue a separate order with further instructions regarding the protocol for electronic production.

Further, the Senate Majority, Assembly Majority, and Assembly Minority are each directed to file, by August 20, 2012, a revised privilege log and personnel list that cure the defects identified in Part III of this Memorandum and Order, along with a supplemental affidavit regarding redistricting responsibilities for each LATFOR staff member, and evidentiary submissions to support any claims of attorney-client privilege.

Any objections to this Memorandum and Order shall be served and filed by August 24, *72 2012. The
72 production of documents for *in camera* inspection and the production of privilege logs and personnel lists are not stayed in the interim.

SO ORDERED. Dated: Brooklyn, New York

August 10, 2012

ROANNE L. MANN

UNITED STATES MAGISTRATE JUDGE

See Dilan Decl. ¶ 4 (emphasis in original). He further alleges that "[t]his practice was starkly different from LATFOR's practices in the 1980's, 1990's, and even in 2002." Id.

Persily Affidavit, the Recommended Plan complies with all constitutional and statutory requirements, as well as with the terms of the Three-Judge Panel's order charging this Court with the duty to prepare and propose a congressional redistricting plan for the State of New York. Furthermore, whatever its effects on the political process, the Recommended Plan was prepared according to neutral principles, pursuant to a process aimed at ensuring both the reality and appearance of judicial impartiality. *3

3

BACKGROUND

I. The Instant Action

On November 17, 2011, plaintiffs Mark A. Favors, Howard Leib, Lillie H. Galan, Edward A. Mulraine, Warren Schreiber, and Weyman A. Carey ("Plaintiffs"), registered voters in the State of New York, filed the instant voting rights action against defendants Andrew M. Cuomo, as Governor of the State of New York; Eric T. Schneiderman, as Attorney General of the State of New York[1]; Robert J. Duffy (Lieutenant Governor of the State of New York), as President of the New York State Senate; Dean G. Skelos, as Majority Leader and President Pro Tempore of the New York State Senate; John L. Sampson, as Minority Leader of the New York State Senate; Sheldon Silver, as Majority Leader of the New York State Assembly; Brian M. Kolb, as Minority Leader of the New York State Assembly; the New York State Legislative Task Force on Demographic Research and Reapportionment ("LATFOR")[2]; and the six members of LATFOR: Assemblyman John J. McEneny, Assemblyman Robert Oaks, Dr. Roman Hedges, State Senator Michael F. Nozzolio, State Senator Martin Malavé Dilan, and Welquis R. Lopez (collectively, "Defendants").[3] See *4 generally Complaint (Nov. 17, 2011) ("Compl."), DE #1.

4

[1] Plaintiffs voluntarily dismissed all claims against the Attorney General on December 28, 2011, see Plaintiffs' Notice of Voluntarily Dismissal (Dec. 28, 2011), Electronic Case Filing ("ECF") Docket Entry ("DE") #40, and the dismissal was granted on January 10, 2012. See Order (Jan. 10, 2012).

[2] LATFOR is comprised of two members of the New York State Senate, two members of the New York State Assembly, and two appointed non-legislators, one selected by the President Pro Tempore of the State Senate and one selected by the Speaker of the State Assembly. See Memorandum and Order (Mar. 8, 2012) ("3/8/12 M&O") at 4, DE #219.

[3] For ease of reference: (1) Governor Cuomo and Lt. Governor Duffy will be referred to as the "Governor Defendants"; (2) State Senator Skelos and LATFOR members Nozzolio and Lopez will be referred to collectively as the "Senate Majority Defendants"; (3) State Senator Sampson and State Senator and LATFOR member Dilan will be referred to collectively as the "Senate Minority Defendants"; (4) Assemblyman Silver and LATFOR members McEneny and Roman Hedges will be referred to collectively as the "Assembly Majority Defendants"; and (5) Assemblyman Kolb and LATFOR member Oaks will be referred to collectively as the "Assembly Minority Defendants."

Additionally, four sets of individuals have intervened in the matter as plaintiffs pursuant to Rule 24 of the Federal Rules of Civil Procedure, including: (1) Donna Kaye Drayton, Edwin Ellis, Aida Forrest, Gene A. Johnson, Joy Woolley, and Shelia Wright (the "Drayton Intervenors"); (2) Juan Ramos, Nick Chavarria, Graciela Heymann, Sandra Martinez, Edwin Roldan, and Manolin Tirado (the "Ramos Intervenors"); (3) Linda Lee, Shing Chor Chung, Jung Ho Hong, and Julia Yang (the "Lee Intervenors"); and (4) Linda Rose, Everet Mills, Anthony Hoffman, Kim Thompson-Werekoh, Carlotta Bishop, Carol Rinzler, George Stamatiades, Josephine Rodriguez, and Scott Auster (the "Rose Intervenors"). Their respective motions to intervene were granted as unopposed on February 14 and 21, 2012. See Order Granting Motions to Intervene (Feb. 14, 2012); Order Denying Motion to Dismiss and Granting Motion to Intervene (Feb. 21, 2012).

Plaintiffs allege that Defendants' failure to adjust New York's state legislative and federal congressional districts in accordance with the results of the 2010 Census violates their rights under the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution (Count I); the Due Process Clauses of the Fifth and Fourteenth Amendments to the United States Constitution (Count II); Article I, Section 2 of the United States Constitution (Count III); Article III, Sections 4 and 5 of the New York State Constitution (Count IV); the *5 New York Prisoner Reallocation Law[4] (Count V); and the Voting Rights Act of 1965, 42 U.S.C. § 1973(f) (Count VI), based on the failure to comply with the Prisoner Reallocation Law. See Compl. ¶¶ 106-155. Plaintiffs further seek a declaratory judgment that Defendants' failure to adjust the malapportioned districts has deprived Plaintiffs and all citizens of New York equal protection and due process in violation of the United States Constitution (Count VII). See id. ¶¶ 156-158.

4 Plaintiffs have since voluntarily dismissed, without prejudice, their claims under the New York Prisoner Reallocation Law. See Plaintiffs' Notice of Voluntary Dismissal (Jan. 30, 2012), DE #66; Order (Feb. 1, 2012) (dismissing Counts V and VI of Plaintiffs' Complaint).

Accordingly, Plaintiffs seek a judgment declaring the current state and congressional districts invalid, declaring that Plaintiffs' rights have been violated as alleged, appointing a Special Master to draw new districts in compliance with the law, ordering LATFOR to cooperate with the Special Master, ordering the redrawing of the district map, and awarding attorney's fees. See Compl. at 32-33.

On December 2, 2011, plaintiffs requested that the Honorable Dora L. Irizarry, the District Judge assigned to the case, convene a three-judge court pursuant to 28 U.S.C. § 2284 and 42 U.S.C. § 1973c. See Plaintiffs' Letter to Judge Irizarry (Dec. 2, 2011), DE #2. Judge Irizarry subsequently ordered the parties to show cause why such a panel should not be convened. See Order to Show Cause (Dec. 6, 2011). While the Governor Defendants did not oppose the convening of a three-judge panel, a number of Defendants requested that the Court delay such empanelment until the resolution of dispositive motions. See Assembly Majority Defendants' Response to Order to Show Cause (Dec. 8, 2011), DE #9; Assembly Minority *6 Defendants' Response to Order to Show Cause (Dec. 9, 2011), DE #16; Defendant Oaks' Response to Order to Show Cause (Dec. 9, 2011), DE #20. Events in the Northern District of New York, however, heightened the need for a three-judge panel.

In United States of America v. New York, 10-CV-1214 (N.D.N.Y.) (Feb. 9, 2012), Exh. to Plaintiffs' Letter (Feb. 10, 2012), DE #72, Chief Judge Gary L. Sharpe of the United States District Court for the Northern District of New York issued an order that advanced the date for New York's congressional primary election as a means of ensuring compliance with the requirements of the Uniformed and Overseas Citizens Absentee Voting Act of 1986, 42 U.S.C. §§ 1973ff-1973ff-7, as amended by the Military and Overseas Voter Empowerment Act, and ordered the candidate petitioning period for New York's congressional primary elections to begin on March 20, 2012. As a result of these developments, Judge Irizarry found it necessary to request a three-judge panel prior to deciding Defendants' motions to dismiss. See Request to Appoint Three-Judge Panel and Special Master Pursuant to 28 U.S.C. § 2284(b) (Feb. 13, 2012), DE #73. On February 14, 2012, Chief Judge Dennis G. Jacobs of the United States Court of Appeals for the Second Circuit appointed two Second Circuit judges, the Honorable Reena Raggi and the Honorable Gerard E. Lynch, to serve with Judge Irizarry on the three-judge panel (the "Three-Judge Panel" or the "Panel"). See Designation of Three-Judge Panel (Feb. 14, 2012), DE #74. On February 21, 2012, the Panel referred the task of creating a redistricting plan to the undersigned magistrate judge, and denied Defendants' motions to dismiss with an opinion to follow.[5] See Docket Entry Referral Order *7 (Feb. 21, 2012).

5 That opinion was issued on March 8, 2012. See 3/8/12 M&O, DE #219.

The Three-Judge Panel then held a hearing on February 27, 2012, at which it set forth procedures for the court-based redistricting process. See Minute Entry Regarding Hearing Before the Three-Judge Panel (Feb. 27, 2012) ("2/27/12 Panel Minute Entry"). The Panel's rulings were outlined in a formal referral order issued the following day. See Order of Referral to Magistrate Judge (Feb. 28, 2012) ("2/28/12 Order of Referral"), DE #133. The Order limited the task before this Court to the redistricting of the State's congressional districts, reserving for a later date the question of whether the Court "must intervene to reapportion the State Senate and Assembly Districts." See id. at 2.

In addition, the Panel's Order delineated the responsibilities and powers of the undersigned magistrate judge. First, the Panel directed this Court to "adhere to, and, to the extent possible, reconcile" a number of guidelines, including: (a) "divid[ing] the state into 27 congressional districts in accordance with the 2010 federal Census and applicable law"; (b) creating districts that are "substantially equal in population"; (c) ensuring that the districts are "compact, contiguous, respect political subdivisions, and preserve communities of interest"; and (d) complying with 42 U.S.C. § 1973(b) and with all other applicable provisions of the Voting Rights Act. See 2/28/12 Order of Referral at 3. Moreover, the Panel empowered the undersigned to "consider other factors and proposals submitted by the parties, which, in the magistrate judge's view, are reasonable and comport with the Constitution and applicable federal and state law." Id. at 3.

The Three-Judge Panel also authorized the undersigned to retain a redistricting consultant, Dr. Nathaniel
8 Persily, Professor of Law at Columbia University, to assist in *8 preparing the redistricting plan. The Panel directed LATFOR to "cooperate fully in providing to the magistrate judge, and to any experts, technical advisors, or consultants assisting her, immediate and unrestricted access to information, data, facilities, and technical support, as well as any additional assistance that may facilitate and expedite the work of the magistrate judge." Id. at 4.

The Panel instructed this Court, in preparing its redistricting plan, to "consider any proposals, plans, and comments either already submitted or to be submitted by all parties and intervenors in the action," and authorized the undersigned to "invite additional submissions, hold hearings, take testimony, and take whatever steps she deems reasonably necessary to develop the plan contemplated by this Order." Id. at 4. The undersigned was further authorized to "recommend a new plan" or to "incorporate all or parts of extant or newly proposed plans" submitted either by "the parties or interested members of the public." Id.

Finally, the Panel ordered this Court to submit its Report and Recommendation by March 12, 2012, ordered the parties to file any objections by noon on March 14, 2012, and set a hearing on the Report and Recommendation for March 15, 2012. Id. at 6.

II. Developing the Proposed Plan

Meanwhile, on February 27, 2012, at a proceeding immediately following the hearing before the Three-Judge Panel, this Court set a schedule for the parties to file their proposed redistricting plans and then to file responses or objections both to one another's proposals and to the statewide plan released by a non-party, the public
9 advocacy organization Common Cause *9 (the "Common Cause Plan"). See Minute Entry (Feb. 27, 2012), DE #129.[6] In a subsequent order, this Court set forth detailed technical requirements for the submission of plans and proposals to the Court, and developed an online submission system to allow members of the public to file proposed plans and comments. See Order (Feb. 28, 2012) ("2/28/12 Order"), DE #134. Further, the Court arranged to have the docket made accessible free of charge and available to the public via the website of the United States District Court for the Eastern District of New York.

6 Although not expressly addressed in the Panel's Minute Entry, the Common Cause Plan had been referenced during the earlier hearing before the Panel.

The parties submitted their proposed redistricting plans on February 29, 2012, including four statewide redistricting plans and three partial plans. See Persily Aff. ¶ 61. The statewide plans included those of the Senate Majority Defendants, the Assembly Majority Defendants, the Assembly Minority Defendants, and the Rose Intervenors. See id. ¶ 63. The partial plans included those of the Lee Intervenors, the Ramos Intervenors, and the Drayton Intervenors. See id. ¶ 64. The Ramos and Drayton plans were each modified versions of the "Unity Plan," "a nonpartisan plan created as a joint effort of four voting rights' advocacy organizations for the protected groups of New York City." See Transcript of Public Hearing, March 5, 2012 ("3/5/12 Tr.") at 24, DE #221. The Plaintiffs, the Governor Defendants, and the Senate Minority Defendants did not submit proposed plans to the Court.

10 Non-parties were invited to submit proposed plans on or before March 2, 2012, see *10 2/28/12 Order, and the Court received and considered thirteen non-party statewide plans[7] and six non-party partial plans.[8] See Persily Aff. ¶¶ 66-67. Additionally, parties and non-parties were directed to file any comments on the proposed plans - including both the party plans and the Common Cause Plan - on or before March 2, 2012. See 2/28/12 Order at 1-2. Eight sets of parties filed responses and objections.[9] The public response, embodied in 61 comments submitted through the Court's online submission system, was voluminous, passionate, and thoughtful. See Order Regarding Public Submissions (Mar. 12, 2012), DE #222.

7 The non-party statewide plans included those from Common Cause, as well as individuals Connor Allen, David Harrison, Michael Danish, Andrew C. White, Vincent Flynn, Elijah Reichlin-Melnick, Robert Silverstein, Philip Smith, David Gaskell, Jesse Laymon, Michael Fortner, and Adaina D. Brown. See Persily Aff. ¶ 66; Order Regarding Public Submissions (Mar. 12, 2012), DE #222.

8 The non-party partial plans included those from the Citizens Alliance for Progress, Concerned Citizens of Fort Greene and Clinton Hill, Keith L.T. Wright (Chairman of the New York County Democratic Committee), Representative Yvette D. Clarke (Congresswoman from New York's 11th Congressional District) the Orthodox Alliance for Liberty, and Ruben Diaz. See Persily Aff. ¶ 67; Order Regarding Public Submissions (Mar. 12, 2012), DE #222.

9 See Assembly Majority Defendants' Response to Proposed Redistricting Plans (Mar. 2, 2012), DE #165; Plaintiffs' Memorandum of Law in Response to Parties' Proposed Congressional Redistricting Plans(Mar. 2, 2012) ("Pl. 3/2/12 Mem."), DE #166; Lee Intervenors' Response to Congressional Redistricting Plans (Mar. 2, 2012), DE #167; Senate Majority Defendants' Response to Proposed Congressional Redistricting Plans (Mar. 2, 2012), DE #170; Rose Intervenors' Memorandum on Other Parties' Proposed Maps (Mar. 2, 2012) ("Rose 3/2/12 Mem."), DE #171; Assembly Minority Defendants' Letter Responding to Proposed Congressional Districts (Mar. 2, 2012), DE #172; Ramos Intervenors' Objections to Proposed CD Plans (Mar. 3, 2012), DE #173; Drayton Intervenors' Letter to Court Regarding Congressional Maps (Mar. 3, 2012), DE #174.

At a four-hour public hearing convened by this Court on March 5, 2012, the parties advocated for their respective proposed plans and against the competing proposed plans. See Minute Entry (Mar. 5, 2012) ("3/5/12
11 Minute Entry"), DE #183; see generally 3/5/12 Tr. *11 Additionally, the Court heard from nineteen members of the public, including one sitting Congresswoman, two town mayors, a sitting Assembly Committeeman, and numerous community leaders, public interest advocates, and concerned citizens.[10] See 3/5/12 Minute Entry; 3/5/12 Tr.

10 Nine speakers addressed issues related to the existing 12th Congressional District. See 3/5/12 Tr. at 120-35, 139-42. Four speakers advocated for preserving communities of interest within the existing 11th Congressional District, including that district's sitting Congresswoman, Representative Yvette D. Clarke. See id. at 17-23, 144-47, 154-58. Two speakers, representing separate Asian-American interest groups, advanced their support for the Unity Map. See id. at 135-44. Two sitting mayors, representing villages within the 18th Congressional District, requested that the Court's plan retain the town of Greenburgh within that district. See id. at 158-62. One individual argued on behalf of the Latino community in northern Manhattan, the Bronx, and Queens. See id. at 116-20. Finally, Sean Coffey, a representative of Common Cause, advocated adoption of the Common Cause Plan. See id. at 147-52.

Taking the various viewpoints and suggested plans into account, the Court fashioned its own proposed plan (the "Proposed Plan") with the assistance of its redistricting consultant, and publicly released that plan for comment on March 5, 2012, in the form of an Order to Show Cause why the Proposed Plan should not be recommended for adoption by the Three-Judge Panel. See Order to Show Cause (Mar. 5, 2012), DE #184. Thereafter, starting on March 6, 2012 and continuing to date, the parties and interested members of the public have responded to the Proposed Plan. As described more fully in the Persily Affidavit, of the parties, only the Senate Majority Defendants, the Rose Intervenors, the Ramos Intervenors, and the Drayton Intervenors submitted substantive responses to the Court's Order to Show Cause. See Persily Aff. ¶¶ 143-147.[11] Approximately 400 non-party members of the public also filed comments *12 on the Court's Proposed Plan, in the form of detailed replies, letters to the Court, and petitions, see id. ¶¶ 148-153, and countless concerned citizens have been telephoning the Court's chambers to express their views.[12]

11 The Assembly Majority Defendants, the Senate Minority Defendants, and the Assembly Minority Defendants each expressed no comment about the Proposed Plan. See Assembly Majority Defendants' Response to Order to Show Cause (Mar. 6, 2012) ("Assembly Maj. Def. OTSC Resp."), DE #185; Senate Minority Defendants' Response to Order to Show Cause (Mar. 6, 2012), DE #187; Assembly Minority Defendants' Response to Order to Show Cause (Mar. 7, 2012) ("Assembly Min. Def. OTSC Resp."), DE #193. No response was forthcoming from Plaintiffs, the Governor Defendants, or the Lee Intervenors.

12 The written non-party responses included, but were not limited to, submissions on behalf of Voting Rights for All, discussing, *inter alia*, proposed districts in the Bronx and Manhattan; Hakeem Jeffries, Karim Camara, and Concerned Citizens of Fort Greene-Clinton Hill, discussing Proposed District 8; and Lincoln Restler, discussing Proposed District 7. See Persily Aff. ¶¶ 149-153.

After considering each of those objections, and balancing the need for each proposed modification against competing considerations, the Court modified its Proposed Plan where it deemed warranted. See generally Persily Aff. ¶¶ 154-159. The result of that process is the Court's Recommended Plan, which is attached to the Persily Affidavit at Appendix A.

DISCUSSION

As explained above, the Three-Judge Panel set forth detailed instructions in its Referral Order to guide this Court in the redistricting process. See 2/28/12 Order of Referral at 3-4. First, the Recommended Plan must comport with the constitutional requirements of population equality and the Equal Protection Clause. See id. at 3. Second, the Recommended Plan must comply with the mandates of the Voting Rights Act of 1965, avoiding the twin ills of minority vote dilution and retrogression. See id. Third, the Recommended Plan must follow the traditional redistricting principles of compactness, contiguity, respect for political subdivisions, *13 and preservation of communities of interest. See id. Lastly, the Plan may incorporate additional factors where appropriate and in accordance with the law. See id. This section of the Report and Recommendation will review the existing law with respect to each of these requirements, will measure the Recommended Plan

against those factors, and will discuss the extent to which permissive factors were employed. Based on the analysis below, this Court respectfully recommends that the Three-Judge Panel adopt the Recommended Plan in its entirety.

I. Constitutional Constraints on Redistricting

A. Equal Population

Consistent with the Panel's Order of Referral, the Recommended Plan satisfies the requirement of substantial population equality. Article I, Section 2 of the United States Constitution provides that the United States House of Representatives "shall be composed of Members chosen . . . by the People of the several States," and that "[r]epresentatives . . . shall be apportioned among the several States . . . according to their respective Numbers." U.S. Const. art. I, § 2. The Supreme Court has interpreted this provision to mean that "as nearly as is practicable one man's vote in a congressional election is to be worth as much as another's." See Wesberry v. Sanders, 376 U.S. 1, 7-8 (1964). As a result, courts must "make a good-faith effort to achieve precise mathematical equality." Kirkpatrick v. Preisler, 394 U.S. 526, 530-31 (1969). Indeed, a court-drawn plan is "held to higher standards than a state's own plan" with respect to population equality. Chapman v. Meier, 420 U.S. 1, 26 (1975). As such, a court's "paramount objective" when faced with the task of redrawing
14 malapportioned congressional districts is to achieve absolute population equality. See Karcher *14 v. Daggett, 462 U.S. 725, 732 (1983) (citing, *inter alia*, White v. Weiser, 412 U.S. 783, 793 (1973)). Therefore, any variances in population between districts must be justified, and the Supreme Court has been loath to allow even *de minimis* variations in congressional redistricting plans. See Karcher, 462 US. at 731-32; White, 412 U.S. at 790 n.8; Kirkpatrick, 394 U.S. at 533.

Based on the total New York population according to the 2010 Census, the ideal population for each of the new 27 congressional districts is 717,707.48 persons. See Persily Aff. ¶ 103. The increase from the 2000 Census's ideal district population of 654,360 to the 2010 ideal of 717,707 required each district to gain population. See id. ¶ 104. Moreover, the extent of the population deviations varied considerably among the districts, from a population shortfall of 105,869 in Existing District 28 to a shortfall of only 4,195 in Existing District 8. See id. ¶ 105, Table I.

In the Recommended Plan crafted by the Court, fourteen districts contain 717,707 persons, and thirteen districts contain 717,708 persons. See id. ¶ 106. Therefore, the Recommended Plan achieves "zero deviation," and meets the constitutional standard of population equality. See id.

B. Racial Gerrymandering

The Recommended Plan also comports with the requirements of the Fourteenth Amendment to the United States Constitution, which prohibits both intentional and excessive uses of race in redistricting. See Shaw v. Reno, 509 U.S. 630, 658 (1993). First, the Equal Protection Clause prevents state actors engaged in redistricting from purposefully discriminating against a racial group by diluting its vote. See City of Mobile v.
15 Bolden, 446 *15 U.S. 55, 66 (1980). Second, the Supreme Court has held that a redistricting plan violates the Equal Protection Clause where race is a "predominant factor motivating [a] decision to place a significant number of voters within or without a particular district." Miller v. Johnson, 515 U.S. 900, 916 (1995). Courts have held that race was a "predominant factor" in redistricting plans where "traditional race-neutral districting principles" were subordinated to considerations of race. Id. Additionally, courts in this district have applied these mandates to court-drawn plans. See PRLDEF, 796 F.Supp. at 692.

Here, the Recommended Plan neither purposefully dilutes the vote of citizens on account of race, nor does it contain any districts drawn predominantly on the basis of race. See Persily Aff. ¶ 107. Therefore, the Recommended Plan comports with the requirements of the Fourteenth Amendment.

II. Statutory Constraints on Redistricting: the Voting Rights Act

The Three-Judge Panel's Order of Referral directs that the Recommended Plan "comply with 42 U.S.C. § 1973(b) and with all other applicable provisions of the Voting Rights Act." See 2/28/12 Order of Referral at 3. Sections 2 and 5 of the Voting Rights Act of 1965 are designed to protect against two principal problems: minority vote dilution and retrogression in the electoral position of minorities. As explained below, the Recommended Plan complies with the requirements of the Voting Rights Act, and "neither retrogresses nor dilutes the vote of any citizens on account of race." See Persily Aff. ¶ 108.

A. Section 2: Vote Dilution

Section 2 of the Voting Rights Act ("VRA"), 42 U.S.C. § 1973, is designed to protect against, among other
16 things, redistricting that has the effect of diluting the voting power of *16 racial or language minority groups, which may occur through over-concentration ("packing") or excessive dispersion ("cracking") of those groups within or across voting districts. See Persily Aff. ¶ 17. Section 2 provides:

> (a) No voting qualification or prerequisite to voting or standard, practice or procedure shall be imposed or applied by any State or political subdivision in a manner which results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color, or in contravention of the guarantees set forth in section 1973b(f)(2) of this title, as provided in subsection (b) of this section.
> (b) A violation of subsection (a) of this section is established if, based on the totality of the circumstances, it is shown that the political processes leading to nomination or election in the State or political subdivisions are not equally open to participation by members of a class of citizens protected by subsection (a) of this section in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice. The extent to which members of a protected class have been elected to office in the State or political subdivision is one circumstance which may be considered: *Provided,* That nothing in this section establishes a right to have members of a protected class elected in numbers equal to their proportion in the population.

42 U.S.C. § 1973 (emphasis in original). Section 2 claims apply equally to state-drawn and court-drawn redistricting plans. See Rodriguez I, 2002 WL 1058054, at *4; PRLDEF, 796 F.Supp. at 688.

In order to determine whether there has been minority vote dilution in violation of Section 2, a court must analyze whether the plaintiff challenging the redistricting plan has met the multi-prong test set forth in
17 Thornburg v. Gingles, 478 U.S. 30, 50 (1986). The Gingles *17 factors require a plaintiff to establish that, within a challenged district,[13] (1) the minority group is "sufficiently large and geographically compact to constitute a majority"[14]; (2) the minority group is "politically cohesive"; and (3) the majority votes "sufficiently as a bloc to enable it -in the absence of special circumstances . . . - usually to defeat the minority's preferred candidate." Id. at 51.

[13] Although the Gingles opinion itself dealt with only multi-member districts, the Supreme Court, in Growe v. Emison, 507 U.S. 25, 40 (1993), extended the application of the Gingles test to single-member districting.

14 See Bartlett v. Strickland, 556 U.S. 1, 20 (2009) (requiring a minority group to constitute a majority of a potential district to establish a Section 2 claim). However, as explained in the Persily Affidavit, a Section 2 analysis raises challenging questions with respect to methods of classifying and measuring the size of minority groups. See Persily Aff. ¶¶ 24-32. To address this challenge, the Office of Management and Budget has set forth guidelines for civil rights enforcement, and the Supreme Court has applied an approach consistent with the those guidelines. See Georgia v. Ashcroft, 539 U.S. 461, 473 n.1 (2003).

If a plaintiff fails to establish these factors, then compliance with Section 2 does not require the creation of a new majority-minority district. However, if a plaintiff establishes each of the three Gingles factors, the court must then determine whether, under the "totality of the circumstances," the relevant minority group in the challenged district has "less opportunity . . . to elect representatives of their choice," Gingles, 478 U.S. at 36 (quoting Section 2), taking into consideration a wide array of historical, political, and procedural factors. See Persily Aff. ¶ 20 n.1. One factor that cuts against a finding of improper vote dilution is "proportionality," which occurs when "minority groups constitute effective voting majorities in a number of . . . districts substantially proportional to their share in the population." Johnson v. De Grandy, 512 U.S. 997, 1024 (1994). Nevertheless,
18 the mere fact of *18 proportionality with respect to one minority group does not insulate a state from a Section 2 challenge where, in seeking to achieve proportionality, a redistricting plan has the effect of diluting the voting strength of another minority group. See Persily Aff. ¶ 21.

B. Section 5: Retrogression

Section 5 of the VRA requires certain "covered" jurisdictions to obtain advance clearance from either the United States Department of Justice ("DOJ") or the United States District Court for the District of Columbia before implementing any change in a "standard, practice, or procedure with respect to voting." See 42 U.S.C. § 1973c. The Supreme Court has held that a new municipal, state, or congressional redistricting plan qualifies as such a change. See Beer v. United States, 425 U.S. 130, 133 (1976); see also Rodriguez v. Pataki, 308 F.Supp.2d 346, 358 (S.D.N.Y. 2004) ("Rodriguez II") (three-judge court); Flateau, 537 F.Supp. at 261.

In New York, legislatively enacted voting-related changes in three counties - Bronx, Kings, and New York - are covered by Section 5. See Rodriguez II, 308 F.Supp.2d at 358. However, Section 5 does not apply to court-drawn redistricting plans. See Connor v. Johnson, 402 U.S. 690, 691 (1971). Nevertheless, the Supreme Court has instructed district courts to adhere to the standards set forth in Section 5 and the relevant caselaw when constructing new redistricting plans. See also Abrams v. Johnson, 521 U.S. 74, 96 (1997) (citing McDaniel v. Sanchez, 452 U.S. 130, 149 (1981)).

By its terms, Section 5 requires that redistricting plans must neither have "the purpose nor . . . the effect of denying or abridging the right to vote on account or race, or color, or [language minority]." 42 U.S.C. §
19 1973c(a). The "purpose" standard prohibits redistricting *19 motivated by "any discriminatory purpose" (rarely applicable in the court-drawn setting), id. § 1973c(c), while the "effect" standard prohibits changes "that would lead to a retrogression in the position of racial minorities with respect to their effective exercise of the electoral franchise." Beer, 425 U.S. at 141. The Voting Rights Act Reauthorization Act of 2006 further clarifies that

> [a]ny voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting that has the purpose of or will have the effect of diminishing the ability of any citizens of the United States on account of race or color, or in contravention of the guarantees set forth in section 1973b(f)(2) of this title, to elect their preferred candidates of choice denies or abridges the right to vote within the meaning of subsection (a) of this section.

42 U.S.C. § 1973c(b).

In short, to determine whether retrogression has occurred, courts must ascertain whether a particular redistricting plan has the effect of "diminishing [minorities'] ability . . . to elect their preferred candidates of choice." Id. This requires the Court to compare the new plan with a "benchmark" plan. See Reno v. Bossier Parish Sch. Bd., 520 U.S. 471, 478 (1997).

C. Analysis of the Recommended Plan

In formulating both its Proposed Plan and its Recommended Plan, the Court and its redistricting consultant reviewed and compared the racial data revealed in the 2010 Census, as well as the submissions and objections of parties and non-parties, and drew on Dr. Persily's personal expertise from prior redistricting efforts in New York. See Persily Aff. ¶ 109. With respect to Section 2 compliance, the Recommended Plan "maintains the
20 majority-minority *20 districts in the [e]xisting [p]lan," which was enacted by the state legislature in 2002 (the "Existing Plan"); however, given "the loss of two districts, the need to reach population equality in every district, and the different rates of growth of different racial groups, some change in district demographic statistics was unavoidable." Id. ¶ 111. With respect to districts touching the three counties covered by Section 5, the Recommended Plan "keeps the demographic composition of the districts largely the same . . . ." Id. ¶ 115.

As more fully explained in the Persily Affidavit, the Recommended Plan avoids retrogression and dilution in all three covered counties. First, in the Bronx, the Recommended Plan adds one more majority-Hispanic voting age population ("VAP") congressional district to the state's total, and otherwise retains substantially similar demographic compositions in the county's three additional districts. See Persily Aff. ¶¶ 116-118. Second, New York County retains two districts with significant minority populations, neither of which experiences retrogression or dilution under the Recommended Plan. See id. ¶¶ 119-121. Third, despite differential rates of population growth among racial and ethnic groups in Kings County (Brooklyn), the Recommended Plan is neither diluting nor retrogressive.[15] See id. ¶¶ 122-126.

15 Given the population shifts in Kings County, a few points deserve mention. Notably, all of the multi-district plans submitted to the Court -- including the Unity Map proffered by the Drayton, Lee, and Ramos Intervenors -- reflect districts with declines in minority population shares similar to the Recommended Plan. See Persily Aff. ¶ 122. However, although the Recommended Plan's Proposed District 9 experienced a decrease from 57.5% to 55.0% Black VAP share, and Proposed District 8 experienced a decrease in its Black VAP share from 64.8% to 56.0%, both districts remain majority-Black, and any diminution in voting power is a product of "differential rates in population growth." See id.

Lastly, under the Recommended Plan, the districts in Queens County, which is not covered by Section 5,
21 comply with Section 2 of the VRA, and now include Proposed District *21

6, a new compact district in central Queens that is majority-minority (at 60.1% minority VAP) and plurality-Asian (at 38.8% VAP). See id. ¶¶ 127-129.

III. Traditional Redistricting Principles

The Three-Judge Panel directed the Court to create districts that, to the extent possible, are "compact, contiguous, respect political subdivisions, and preserve communities of interest." See 2/28/12 Order of Referral at 3. Furthermore, the Panel authorized the undersigned to "consider other factors and proposals submitted by the parties, which, in the magistrate judge's view, are reasonable and comport with the Constitution and applicable federal and state law." Id. These traditional redistricting factors arise from two primary sources: state policy and caselaw involving charges of racial gerrymandering.

First, with respect to state policy, the Supreme Court has held that "whenever adherence to state policy does not detract from the requirements of the Federal Constitution, . . . a district court should . . . honor state policies in the context of congressional reapportionment." White, 412 U.S. at 795. The Court defined state policy as "the policies and preferences of the State, as expressed in statutory and constitutional provisions or in the reapportionment plans proposed by the state legislature." Id. The New York State Constitution requires that state senate districts "be in as compact form as practicable, . . . and shall at all times consist of contiguous territory," and district lines generally should not divide counties, towns, or blocks. See N.Y. Const. art. III, § 4. Assembly districts, too, must be "of convenient and contiguous territory in as compact form as practicable." Id. § 5. Further, New York State Election Law requires election districts, among other requirements, to "be in
22 compact form . . . ." N.Y. Elec. Law § 4-100(3)(a). And, while the state constitutional *22 provisions are couched in terms of delineating districts for the two bodies of the state legislature, the New York Court of Appeals has made clear that the "standards for State legislative and congressional apportionment are substantially the same." See Schneider v. Rockefeller, 31 N.Y.2d 420, 428 (1972) (quoted in Diaz v. Silver, 978 F.Supp. 96, 127 (E.D.N.Y. 1997)).

Second, violations of redistricting principles, such as the factors enumerated in the Panel's 2/28/12 Order of Referral, may trigger charges of racial gerrymandering in violation of the Equal Protection Clause. As stated above, a redistricting plan violates the Equal Protection Clause where race was a "predominant factor" in redistricting decisions. See Miller, 515 U.S. at 916. Thus, where "the legislature subordinated traditional race-neutral districting principles . . . to racial considerations," a court will find that race was a "predominant factor," and will subject the redistricting plan to strict scrutiny. Id.

Federal courts in New York have recognized a number of these race-neutral redistricting principles, including " (i) compactness, contiguity, and respect for pre-existing political subdivisions . . . ; and (ii) preservation of municipal boundaries, maintenance of the cores of existing districts, communities of interest, and political fairness." Rodriguez I, 2002 WL 1058054, at *4 (citing Miller, 515 U.S. at 918; PRLDEF, 796 F.Supp. at 691).

In drafting its Recommended Plan, the Court applied the mandatory redistricting factors set forth in the Three-Judge Panel's 2/28/12 Order of Referral, and, where appropriate, applied the additional permissive factor of respecting district population "cores." See Persily Aff. ¶¶ 130-142. The following subsections will review each
23 principle in turn. *23

A. Compactness

Compactness is a well-established, traditional redistricting criterion in New York State. Rodriguez I, 2002 WL 1058054, at *4; Diaz, 978 F.Supp. at 126-27; see also N.Y. Const. art. III, §§ 4-5. In addition, the Supreme Court has recognized the importance of compactness in redistricting. See, e.g., Bush v. Vera, 517 U.S. 952, 962 (1996); Shaw v. Hunt, 517 U.S. 899, 905-06 (1996). Nevertheless, courts and experts alike have not accepted any single measure of compactness; "[r]ather, compactness is an aesthetic as well as a geometric quality of districts," drawn from various tests. See Persily Aff. ¶ 38.

Here, the Court's redistricting consultant applied eight different tests for compactness in analyzing the Recommended Plan. See id. ¶ 130, App. D. On the whole, in addition to avoiding irregular shapes, the districts in the Recommended Plan achieve compactness scores "superior to the proposals submitted by the parties and to the Existing Plan." Id. ¶ 130.

B. Contiguity

The second traditional redistricting principle the Panel directed this Court to consider is contiguity. See 2/28/12 Order of Referral at 3. The principle of maintaining district contiguity is well-established. See Shaw v. Reno, 509 U.S. at 647; PRLDEF, 796 F.Supp. at 691. In brief, a district is contiguous when an individual may travel between any two points in a district without crossing through a second district. See Persily Aff. ¶ 43. However, the Supreme Court and courts in New York have also long noted that a body of water bisecting a district does not necessarily violate a state's contiguity standard. See Lawyer v. Dep't of Justice, 521 U.S. 567, 581 n.9 (1997) (recognizing a Florida state court's holding that a body of water did not violate contiguity); Schneider,
24 31 N.Y.2d at 430 (citation omitted). *24

Here, all of the districts in the Recommended Plan are contiguous. See Persily Aff. ¶ 132; see also id. App. A.

C. Respect for Political Subdivisions

The third factor outlined in the Order of Referral involves respecting existing political subdivisions. See 2/28/12 Order of Referral at 3. These subdivisions include the boundaries of counties, cities, towns, and villages. See Miller, 515 U.S. at 908; PRLDEF, 796 F.Supp. at 687. The Supreme Court has noted the practical benefits - both to constituents and their representatives - of including whole political subdivisions within districts. See Bush, 517 U.S. at 974. In addition, avoiding splits within political subdivisions provides administrative benefits during elections. Id.

Here, the Recommended Plan preserves, to the extent practicable, political subdivision boundaries in New York State. Indeed, the Recommended Plan splits fewer counties and towns than the Existing Plan, keeping six additional counties, and five additional towns, whole. See Persily Aff. ¶¶ 133-135, App. J. Therefore, the Recommended Plan shows sufficient respect for the political subdivisions of New York State.

D. Preservation Communities of Interest

The fourth traditional redistricting principle that the Three-Judge Panel identified in its Referral Order was the preservation of communities of interest. See 2/28/12 Order of Referral at 3. Unlike the above-mentioned traditional redistricting principles, however, the New York State Constitution is silent on the issue of communities of interest. Nevertheless, courts in this Circuit have characterized the preservation of communities of interest as "a legitimate goal in creating a district plan." See Diaz, 978 F.Supp. at 123; see also Rodriguez I,
25 2002 WL *25 1058054, at *4. Likewise, the Supreme Court has recognized that respecting "communities defined by actual shared interests" is a traditional redistricting principle. See Miller, 515 U.S. at 916. A community of interest exists "where residents share substantial cultural, economic, political, and social ties." Diaz, 978 F.Supp. at 123. Importantly, nothing in the law precludes the coexistence of distinct communities of interest.

The identification of such communities presents a particularly complex challenge.[16] In Miller v. Johnson, the Supreme Court noted that a state may recognize communities of interest based on racial makeup so long as the state's "action is directed toward some common thread of relevant interests." 515 U.S. at 920. Nevertheless, a state's ability to consider race in defining communities of interest is cabined by equal protection concerns. Id. ("[W]here the State assumes from a group of voters' race that they 'think alike, share the same political interests, and will prefer the same candidates at the polls,' it engages in racial stereotyping at odds with equal protection
26 mandates.") (citing, *inter alia,* Shaw, 509 U.S. at 647). In short, *26 racial considerations may not be a "predominant factor motivating" redistricting decisions. Miller, 515 U.S. at 916. Of course, communities of interest need not be based on race, ethnicity, or nationality - for example, courts have recognized communities of interest based on socioeconomic factors. See Lawyer, 521 U.S. at 581 (recognizing a community of interest

where "[e]vidence indicated that District 21 comprises a predominantly urban, low-income population, . . . whose white and black members alike share a similarly depressed economic condition . . . and interests that reflect it.") (internal citations omitted).

16 As Dr. Persily explained:

> Respecting communities of interest is both an essential and slippery consideration in redistricting proeesses. In one respect, redistricting is *about* representation of communities. Communities that are split between districts often view their voice as diminished. In another respect, arguments based on communities of interest can often be pretexts for incumbency or partisan-related considerations. Moreover, community boundaries are inherently amorphous, contested, shifting and conflicting. By respecting one community's boundaries or some advocates' conception of their community, a redistricting plan might conflict with other advocates' conception of their community or with another community's boundaries.

Persily Aff. ¶¶ 52-53 (numbering omitted).

The challenges of defining and accommodating communities of interest are particularly acute in a region as diverse and dynamic as New York City and its environs. Courts have noted the difficulties in defining single Black, Pan-Asian, and Latino communities of interest. See Diaz, 978 F.Supp. at 124-25. Moreover, in his presentation during the March 5th public hearing, Defendant Roman Hedges, of LATFOR, described the complexities encountered in drawing community-based districts in areas such as the Bronx and Queens, which are characterized by the expansion and overlapping nature of the Hispanic and Asian-American communities:

> There is a tension between expanding the Asian community and expanding the Hispanic community, you can't do both simultaneously . . . . And I think one thing that needs to be added . . . is [that] . . . the problem got a lot harder for a really, really positive good reason. We have a lot less residential segregation than we did ten years ago[, and] that makes districting by community . . . really hard. That's even true for the black communities of New York. They're less residentially segregated than they were 10 years ago. Not as much as the Asians and Hispanic[s], but nevertheless, that's happening. That's positive and it makes these tensions as you are drawing districts harder and harder.

27 *27 3/5/12 Tr. at 84-85.

With these challenges in mind, and recognizing the practical impossibility of accommodating all communities of interest, the Recommended Plan respects "certain widely recognized, geographically defined communities." See Persily Aff. ¶ 137. In the Upstate regions, the Recommended Plan delineates "coherent North Country and Southern Tier districts," and "three compact districts surrounding the large metropolitan areas -- Buffalo, Rochester and the Capitol Cities area"; it also creates a separate lower Hudson Valley district. See id. ¶ 138. In New York City, the Recommended Plan retains the Existing Plan's separation of the East and West Sides of Manhattan, keeps Harlem whole, and keeps the South Bronx almost entirely within one district. See id. ¶ 139. Moreover, the Recommended Plan unites many Asian-American communities in Queens in Proposed District 6, and - responding to suggestions concerning the Proposed Plan - "attempts to unite Fort Greene and Clinton Hill with similar communities of interest" in Proposed District 8. See id. Finally, the Recommended Plan respects communities of interest in the Southern and Northern areas of Long Island. See id. ¶ 140.

E. Other Factors

The Referral Order authorizes this Court to "consider other factors . . . which . . . are reasonable and comport with the Constitution and applicable federal and state law." 2/28/12 Order of Referral at 3. In drafting the Recommended Plan, the Court took into account - to the extent that it did not interfere with the Three-Judge Panel's explicit directives - the preservation of "core constituencies." However, for the reasons stated below, the
28 Court did not consider incumbency in the drafting process. *28

1. Core Constituencies

While not expressly outlined in the Panel's Referral Order, a number of parties and non-parties have urged the Court to maintain the "cores" of existing districts. See Senate Majority Defendants Letter (Feb. 29, 2012) at 1-2 ("Sen. Maj. 2/29/12 Let."), DE #145 at 1-2 (equating core preservation with incumbency protection); Rose Intervenors' Mem. on Proposed Map and its Compliance with Redistricting Principles (Feb. 29, 2012) ("Rose 2/29/12 Mem."), DE #141 at 13-14; Assembly Majority Defendants' Mem. of Law (Mar. 2, 2012) ("Assembly Maj. 3/2/12 Mem.") at 2, DE #153; Rose 3/2/12 Mem. at 5-6, DE #171; Letter of Rep. Yvette D. Clarke (Mar. 7, 2012), at 2-3, DE #222; Letter of Keith L.T. Wright (Mar. 7, 2012), at 2, DE #222. The parties and non-parties advocating for "core" protection proffered four primary justifications: (1) protecting incumbents, (2) preserving communities of interest, (3) deferring to past legislative decisions, and (4) deferring to state policy. Insofar as the first two justifications - and their attendant challenges - are discussed more fully elsewhere in this opinion, this subsection will focus on the justifications based on deference.

a. *Perry* Deference

The first rationale in support of deference asks whether this Court, pursuant to Perry v. Perez, is required to adopt a "least change" approach when redistricting, under which it respects the "cores" of the districts set forth in the Existing Plan enacted ten years ago, long prior to the 2010 Census.

In Perry v. Perez, the Supreme Court held that it was error for a district court to displace "legitimate state policy judgments with the court's own preference" by neglecting a recently enacted, but not DOJ-precleared,
29 legislative redistricting plan. 132 S.Ct. at 941. In *29 so holding, the Court stated that "a district court should take guidance from the State's recently enacted plan" when drafting its own plan, since the state's plan "provides important guidance that helps ensure that the district court appropriately confined itself to drawing interim maps that comply with the Constitution and the Voting Rights Act, without displacing legitimate state policy judgments with the court's own preferences." Id. at 941.

However, the Perry Court also distinguished its facts from those of Balderas v. Texas, where, as here, a three-judge court was faced with an unconstitutional existing congressional district plan and a legislature that had failed to enact a new plan. See id. at 943 (citing Balderas v. Texas, No 6:01cv158, 2001 U.S. Dist. LEXIS 25740 (E.D. Tex. Nov. 14, 2001) (three-judge court) (per curiam), summarily aff'd, 536 U.S. 919 (2002)). In deciding that it would develop a plan based on neutral redistricting principles rather than confining itself to any existing plan, the lower court in Balderas noted that "[f]ederal courts have a limited role in crafting a congressional redistricting plan where the State has failed to implement a plan," but that "those limits are not to be found in the traces of the unconstitutional plan being replaced." Balderas, 2001 U.S.Dist. LEXIS 25740, at *11. The Supreme Court summarily affirmed Balderas, see 536 U.S. 919 (2002), and while its decision in Perry may have distinguished Balderas, it did not disapprove its reasoning. As Perry noted, the Balderas court - much like the Court here - was compelled to create its own plan because "there was no recently enacted state plan to which the District Court could turn." Perry, 132 S.Ct. at 943.

Here, as the Three-Judge Panel held in denying Defendants' motions to dismiss, "it is apparent that the 2010 census results have made the current plan unusable and violative of voters' rights due to population reductions
30 and shifts resulting in unequal districts." 3/8/12 *30 M&O at 10, DE #219. Moreover, "it is clear that there is no legislative redistricting plan in existence as to the congressional districts and none that will be forthcoming soon." Id. at 14. As such, where constitutional infirmities infect the entire Existing Plan, any deference other due under Perry - and by extension to the cores of the Existing Districts - does not apply in this case.

b. *Upham* Deference

The second articulated justification for deference turns on whether core preservation is in fact one of the legislative policies to which the Court must defer under Upham v. Seamon, 456 U.S. 37, 40-43 (1982). As noted *supra,* the New York State Constitution requires state legislatures engaged in redistricting to create compact and contiguous districts that respect certain political subdivisions. See N.Y. Const. art. III §§ 4-5. The New York State Constitution does not, however, mandate that new districts maintain the cores of prior districts. In any event, this Court is not persuaded that there is in fact a consistent state legislative policy of maintaining district cores.

First, dramatic population shifts in the last 30 years have cost New York State a total of twelve congressional seats. Compare Flateau, 537 F.Supp. at 260 (noting New York's decline from 39 to 34 congressional representatives following the 1980 Census), with PRLDEF 796 F.Supp. at 684 (New York's congressional delegation was reduced from 34 to 31 members following the 1990 Census), Rodriguez I, 2002 WL 1058054, at *1 (noting New York's decline to 29 congressional representatives following the 2000 Census), and 3/8/12 M&O at 10 (noting New York's decline from 29 to 27 congressional representatives following the 2010
31 Census). Maintaining cores in the wake of such a decline is, practically speaking, *31 extraordinarily difficult. As such, with each decennial redistricting process comes a new round of constitutionally required and significant changes to the existing lines.

Second, the record suggests that, to the extent that there are in fact district "cores," they are more likely the product of political deal-making - an activity for which courts are ill-suited[17] - than a conscious attempt to advance "core preservation" as a legislative policy. See, e.g., 3/5/12 Tr. at 81 (Defendant Hedges of LATFOR acknowledges that the existing district configurations in Upstate New York were the result of a political compromise in 2002 and not a policy of respecting the districts' prior cores). Nevertheless, in the past, courts in this Circuit have recognized core preservation as a traditional redistricting principle. See Rodriguez I, 2002 WL 1058054, at *4 (citing PRLDEF, 796 F.Supp. at 691).

17 "The federal courts by contrast possess no distinctive mandate to compromise sometimes conflicting state apportionment policies in the people's name." Connor v. Finch, 431 U.S. at 415.

In this case, endeavoring to preserve the cores of the districts from the legislatively brokered 2002 plan was especially challenging, given various "bizarrely shaped districts in the [E]xisting [P]lan," see Persily Aff. ¶ 59. Further, because core preservation is a permissive consideration, it was applied in the Recommended Plan only "[t]o the extent doing so [did] not conflict with the other criteria identified in the [Panel's] Order." See Persily Aff. ¶ 59.

Despite the obstacles noted above, the Recommended Plan achieves substantial core preservation. "Overall, one of the Recommended Plan's districts is comprised of 90% of a prior district, five districts are comprised of between 80% and 90% of a prior district, seven districts are comprised of between 70% and 80% of a prior

32 district, three districts are *32 comprised of between 60% and 70% of a prior district, four districts are comprised of between 50% and 60% of a prior district, and seven districts are comprised of less than 50% of a prior district." Id. ¶ 142.

2. Incumbency

In an argument echoed by the Rose Intervenors, the Senate Majority contends that "incumbency protection is an appropriate factor for the Court to consider in drawing redistricting maps." Sen. Maj. 2/29/12 Let. at 1, DE #145; see Rose 3/2/12 Mem. at 4-5, DE #171. More specifically, those parties complain that the Proposed Plan circulated by the Court on March 5th "violate[d] the New York redistricting principle of . . . respecting incumbent-constituent relationships," Rose Supplemental OTSC Response (Mar. 7, 2012) ("Rose Sup. OTSC Resp.") at 3-4, DE #215, and resulted in two or more incumbents (or "incumbent pairings") in each of several proposed districts. See id. at 5; see also Senate Majority OTSC Response (Mar. 7, 2012) ("Sen. Maj. OTSC
33 Resp.") at 2, DE #192.[18] Plaintiffs, in contrast, *33 have urged this Court to adopt the approach taken by Special Master (now Judge) Robert P. Patterson, Jr., in Flateau v. Anderson, No. 82 Civ. 0876 (VLB) (S.D.N.Y. 1982), and "exclude considering incumbency in preparing its redistricting plans." Pl. 3/2/12 Mem. at 5, DE #166 (citing Flateau Special Master Report at 12-13, DE #100-8).

18 Although the Assembly Majority and Assembly Minority also advocated for protection of incumbents, see Assembly Maj. 3/2/12 Mem. at 5-8, DE #153; Assembly Minority Letter (Feb. 29, 2012) ("Assembly Min. 2/29/12 Let.") at 3, DE #137, they thereafter did not object to the Court's recommending its Proposed Plan to the Three-Judge Panel. See Assembly Maj. Def. OTSC Rep., DE #185; Assembly Min. Def. OTSC Resp., DE #193.

Several of the parties have used the terms "incumbency protection" and "[p]reserv[ation of] the cores of existing districts" interchangeably. See, e.g., Sen. Maj. 2/29/12 Let. at 1, DE #145. While those two concepts may be related, this Court declines to equate them. In fashioning the Recommended Plan, the Court attempted to respect the "cores" of existing districts, to the extent that doing so did not conflict with the factors specifically enumerated by the Three-Judge Panel and afforded greater weight in the caselaw. See generally *supra* pp. 28-32. One may reasonably infer that, while the Court's Recommended Plan reportedly leaves several incumbents outside the boundaries of their existing districts, at least some of those incumbents reside near the fringes of those districts, not their geographical cores.

The Referral Order of the Three-Judge Panel directed this Court to consider and reconcile certain enumerated criteria: equality in population among the districts, compactness, continguity, respect for political subdivisions, preservation of communities of interest, and compliance with the Voting Rights Act. See 2/28/12 Order of Referral at 3. The Panel then afforded this Court discretion to "consider other factors" -- such as incumbency -- if found to be "reasonable" and consistent with "the Constitution and applicable federal and state law." Id.; see also 2/27/12 Panel Minute Entry (Panel directs the parties to submit briefs to the magistrate judge on "[t]he issue of incumb[e]ncy").

The parties thereafter filed written submissions on incumbency, as did several members of the public, who lobbied for protection of their preferred incumbents. See, e.g., Assembly Min. 2/29/12 Let. at 3-4, DE #137; Sen. Maj. 2/29/12 Let. at 1-3, DE #145; Assembly Maj. 3/2/12 Mem. at 2-8, DE #153; Rose 3/2/12 Mem. at 4-5, DE #171; Rose Sup. OTSC Resp. at 1,3-5, DE #215. Additionally, the incumbency issue was a focal point of the March 5th hearing before this Court. See, e.g., 3/5/12 Tr. at 11-17, 56-62, 65-71, 76-78, 82, 88-90, 104, 106-07, 112-13, 115, 146-47, 148-51, 153. After considering and weighing all the competing legal and equitable arguments, the Court concluded that the creation of a redistricting plan that ignored incumbency would enhance both the reality and appearance of judicial impartiality, and would be entirely consistent with

> [W]hile considerations of "political fairness" may well be appropriate in approving a legislative plan, they may not be appropriate for a court fashioning its own apportionment plans, absent an articulated and rational basis in the statutes or Constitution. These considerations are not included in the Court's criteria and I have concluded that I should not use such a criterion as it may place the Court in the tenuous position of appearing to serve partisan political interests. For the same reason, while I recognize that some courts have made allowance for the protection of incumbents in drawing their plans, the plans I submit have not done so.

Flateau Special Master Report, at 13-14, DE #100-8; see also Good v. Austin, 800 F.Supp. 557, 563 (E. & W.D. Mich. 1992) (three-judge court) (court directed Special Master to construct congressional redistricting plan without regard to incumbency).

Furthermore, having analyzed the rationale for judicial unpairing of incumbents, the Court finds it to be overstated. Contrary to the arguments advanced to the Court, see, e.g., Assembly Maj. 3/2/12 Mem. at 7, DE #153; Assembly Min. 2/29/12 Let. at 3, DE #137, an incumbent whose residence happens to fall outside the judicially drawn boundaries of her congressional district will not be deprived of the opportunity to serve her constituents, nor will her constituents be deprived of the opportunity to vote for her (provided she decides to run). The only residency requirement for congressional candidates is that they reside within the state in which the district lies. See U.S. Const. art. I, § 2; 3/5/12 Tr. at 57.[21] Consequently, when, as a result of redistricting, an incumbent finds herself outside her old district and "paired" with another incumbent in a different district, the
37 disappointed incumbent may nevertheless run for *37 re-election in her former district. See 3/5/12 Tr. at 58.

> 21 Indeed, as noted in the Report and Plan of the Special Master in Rodriguez I, No. 02 Civ. 0618 (May 2002) at 16, at least one incumbent did not reside in her district even *prior to* the redistricting plan being drawn in that case.

Accordingly, in the opinion of this judicial officer, courts need not and should not enter the political thicket in the service of preserving incumbent-constituent relationships and congressional seniority. To be sure, the proponents of incumbency protection are probably correct that "people tend to want to live in the communities they represent." 3/5/12 Tr. at 59. But to make that argument, and to complain that "the incumbent shouldn't be handicapped," id. at 67, reveal the concept of incumbency protection for what it is: an attempt to protect the position of the politician, rather than the right of the voters to re-elect a preferred incumbent. If, as the advocates of incumbency protection so urgently argue, incumbents have come to know and understand the concerns of their district, thereby forging relationships with constituents that are worth maintaining, see, e.g., Rose 2/29/12 Mem. at 12, DE #141; Assembly Min. 2/29/12 Let. at 3, DE #137, then an "outdistricted" representative should run for re-election on the basis of that relationship, and not on the particulars of her address. Unlike some parties to this action, who expressed concern that voters should not be "put . . . in the position of having to" weigh whether their interests will be adequately protected by an outdistricted incumbent, see 3/5/12 Tr. at 61, this Court trusts that voters can rationally decide whether to support an incumbent whose home happens to be in an adjoining district.

Finally, in light of the diminishing number of districts, it is undisputed that some incumbent pairings are inevitable. See Assembly Min. 2/29/12 Let. at 3, DE #137; Rose 3/2/12 Mem. at 4, DE #171. Consequently, if the Court were inclined to consider incumbency, it would then have to decide which incumbents should be
38 unpaired. No party *38 has proposed a neutral principle to guide the Court in making such a decision. On the contrary, different parties oppose different incumbent pairings. Not surprisingly, their challenges reflect partisan biases. Compare Rose Sup. OTSC Resp. at 5, DE #215 (complaining that the Proposed Plan of March 5th "pair[s] incumbent Representatives Hochul and Higgins," two Democrats), with Sen. Maj. OTSC Resp. at

34 governing caselaw. Consequently, *34 the Court did not obtain from LATFOR the addresses of any incumbents' residences, see, e.g., Order (Mar. 1, 2012), and the Court's March 5th Proposed Plan, and the subsequently revised Recommended Plan, were both created without regard to incumbency.[19]

19 To this day, the Court does not know where incumbents live, except as reported (in general terms) in the parties' submissions and in the media.

Admittedly, the Supreme Court has identified incumbency protection as a permissible factor in fashioning redistricting maps. See, e.g., Bush, 517 U.S. at 964 (recognizing "incumbency protection, at least in the limited form of avoiding contests between incumbents, as a legitimate state goal") (internal quotation and alteration omitted); Karcher, 462 U.S. at 740 (describing the goal of "avoiding contests between incumbent Representatives" as one of a number of "legitimate objectives that on a proper showing could justify minor population deviations"); White, 412 U.S. at 791 ("[T]he fact that district boundaries may have been drawn in a way that minimizes the number of contests between present incumbents does not in and of itself establish invidiousness.") (citation and internal quotation omitted).[20] And courts in this Circuit have observed that "the powerful role that seniority plays in the functioning of Congress makes incumbency an important and
35 legitimate factor *for a legislature* to consider." *35 Diaz, 978 F.Supp. at 123 (emphasis added); see also Rodriguez II, 308 F.Supp.2d at 370 (legislatively drawn plan reflected permissible policy of limiting incumbent pairing). Nevertheless, it does not follow that a court-drawn redistricting plan must -- or even should -- take incumbency into account. "Many factors, such as the protection of incumbents, that are appropriate in the legislative development of an apportionment plan have no place in a plan formulated by the courts." Wyche v. Madison Parish Police Jury, 769 F.2d 265, 268 (5th Cir. 1985).

20 The parties urging incumbency protection also rely on language in a series of out-of-circuit cases. See Assembly Maj. 3/2/12 Mem. at 6-7, DE #153; Sen. Maj. 2/29/12 Let. at 2, DE #145; Colleton Cnty. Council v. McConnell, 201 F.Supp.2d 618, 647 (D.S.C. 2002) (three-judge court); Smith v. Clark, 189 F.Supp.2d 529, 545 (S.D. Miss. 2002) (three-judge court); Johnson v. Miller, 922 F.Supp. 1556, 1565 (S.D. Ga. 1995) (three-judge court), aff'd sub nom. Abrams v. Johnson, 521 U.S. 74 (1997); Arizonans for Fair Representation v. Symington, 828 F.Supp. 684, 688 (D. Ariz. 1992) (three-judge court), aff'd mem., 507 U.S. 981 (1993); Prosser v. Elections Bd., 793 F.Supp. 859, 871 (W.D. Wis. 1992) (three-judge court); South Carolina State Conf. of Branches of NAACP v. Riley, 533 F.Supp. 1178, 1180-81 (D.S.C.) (three-judge court), aff'd mem., 459 U.S. 1025 (1982).

The advocates of incumbency protection describe it as "state policy," 3/5/12 Tr. at 77, and a "well-established, traditional districting principle in New York," Sen. Maj. 2/29/12 Let. at 1, DE #145, to which the Court should defer in preparing its own redistricting plan. Had the New York State Legislature done its job and passed its own redistricting plan, judicial deference would be paid. See Perry, 132 S.Ct. at 941; see also *supra* pp. 28-30. However, the state legislature has been stalemated since the 2010 Census, and the plan enacted in 2002 was found constitutionally infirm by the Three-Judge Panel. See 3/8/12 M&O at 10, DE #219. In these circumstances, it cannot be said that the Court simply steps into the shoes of the state legislators -- who, by "tradition," regularly engage in the kinds of political deal-making and partisan compromises that are incompatible with the role of a judicial officer. As Judge Patterson explained in refusing to consider "continuity
36 of constituencies" and "political fairness" in crafting New York's congressional redistricting plan in 1982: *36

2, DE# 192 (complaining that Representative Turner, a Republican, is paired in the district of Representative Meeks, a Democrat); see also 3/5/12 Tr. at 113 (accusing adverse parties of making "purely political" choice as to whom to leave paired). In the course of the legislative line-drawing process, lawmakers plainly can and do protect their own; this judge is not convinced that courts should follow that tradition of political horse-trading.

For all of these reasons, the Court has declined to exercise its discretion to consider incumbency in crafting its redistricting plan.

IV. Balancing the Competing Interests

In crafting its Recommended Plan, the Court has remained mindful of the sensitive and weighty nature of its obligation. See Connor, 431 U.S. at 415. Its primary focus, of course, is the law. The Plan must comport with the terms of the Panel's mandate, and ensure compliance with the state and federal Constitutions, the Voting Rights Act, and applicable caselaw. See 2/28/12 Order of Referral at 3. Consistent with the Panel's Order of Referral, the Court has also considered and attempted to reconcile the interests of New York's diverse and dynamic population. See id. at 4. This latter undertaking is usually - and rightly - left in the hands of the
39 political branches. See Connor, 431 U.S. at 415. And yet, where, as here, *39 the legislature fails in its obligation to effectively protect the interests of the electorate, the Court is constrained to intervene in the redistricting process. Id.

This Court undertook a number of steps in order to ensure a full, fair, and open process. First, the court docket was made available to the public free of charge. Second, the Court solicited public comment, which appeared in the form of non-party proposals, detailed objections to the Court's original Proposed Plan, and all manner of correspondence and other communications from interested members of the public. See Order Regarding Public Submissions (Mar. 12, 2012), DE #222.[22] Third, the Court held a lengthy hearing at which parties and non-parties were given the opportunity to present their views. After reviewing all of these comments - written and oral - the Court formulated its Recommended Plan, and, where feasible, incorporated proposed revisions that enhanced the criteria identified by the Panel. See Persily Aff. ¶¶ 143-159.

22 Indeed, as of the filing of this Report and Recommendation, the Court continues to receive telephone calls from passionate voters from districts around the state.

Nevertheless, having taken into consideration all of the party and non-party arguments, the Court remains unable to accommodate all competing interests. The complex and divergent communities of interest in New York complicate any effort to satisfy all requests. That is what makes the outpouring of responses over the course of the redistricting process both heartening and disheartening. It is heartening to see such a vocal and impassioned expression of a broad array of interests from New Yorkers. At the same time, it is disheartening to realize that, in the end, many concerned parties will be disappointed. The Persily Affidavit demonstrates the
40 *40 challenges in making adjustments to a redistricting plan in response to objections:

> The accommodation of any change [in the Court's original Proposed Plan] required the exercise of discretion as to how to offset the suggested change in a manner least likely to be found objectionable to other parties or members of the public. Accommodating any change required the addition and subtraction of individual census blocks between districts in order to maintain precise population equality. This can be quite difficult, especially in densely populated areas, where census blocks often contain hundreds or even thousands of people.

Persily Aff. ¶ 156.

Moreover, standing firm in its commitment to nonpartisanship, the Court remained vigilant in rejecting those objections that were "more in the nature of political lobbying than in the nature of legal argument." PRLDEF, 796 F.Supp. at 695. Reconciling political arguments is not within the Court's ken, nor consistent with its institutional role.

Finally, the Court re-emphasizes the vital importance of procedural fairness in court-drawn redistricting. Here, the Court has opened its eyes and ears to the parties and public, and provided an opportunity for all interested individuals to have input into the redistricting process. In doing so, the Court aimed, as best as possible, to balance all the competing interests. This Court is confident that the process was fair and the result reasonable.

CONCLUSION

For the reasons detailed above, and in the accompanying Persily Affidavit, it is the recommendation of this Court that the Three-Judge Panel adopt the Recommended Plan as the congressional redistricting plan for the State of New York.

41 Pursuant to the Three-Judge Panel's 2/28/12 Order of Referral, any and all objections *41 to this Report and Recommendation must be filed electronically no later than noon on March 14, 2012, and hard copies must be forwarded forthwith to the chambers of each of the three judges.

The Clerk of the Court is respectfully requested to enter this Report and Recommendation and the Persily Affidavit and accompanying Appendices into the ECF system.

SO ORDERED.

Dated: Brooklyn, New York

March 12, 2012

ROANNE L. MANN

UNITED STATES MAGISTRATE JUDGE

Favors v. Cuomo

Decided Mar 19, 2012

DOCKET # 11-CV-5632 (RR)(GEL)(DLI)(RLM)

03-19-2012

MARK A. FAVORS, HOWARD LEIB, LILLIE H. GALAN, EDWARD A. MULRAINE, WARREN SCHREIBER, and WEYMAN A. CAREY, Plaintiffs, DONNA KAYE DRAYTON, EDWIN ELLIS, AIDA FORREST, GENE A. JOHNSON, JOY WOOLLEY, SHEILA WRIGHT, LINDA LEE, SHING CHOR CHUNG, JULIA YANG, JUNG HO HONG, JUAN RAMOS, NICK CHAVARRIA, GRACIELA HEYMANN SANDRA MARTINEZ, EDWIN ROLDAN, MANOLIN TIRADO, LINDA ROSE, EVERET MILLS, ANTHONY HOFFMAN, KIM THOMPSON-WEREKOH, CARLOTTA BISHOP, CAROL RINZLER, GEORGE STAMATIADES, JOSEPHINE RODRIGUEZ, and SCOTT AUSTER, Intervenor-Plaintiffs, v. ANDREW M. CUOMO, as Governor of the State of New York, ROBERT J. DUFFY, as President of the Senate of the State of New York, DEAN G. SKELOS, as Majority Leader and President Pro Tempore of the Senate of the State of New York, SHELDON SILVER, as Speaker of the Assembly of the State of New York, JOHN L. SAMPSON, as Minority Leader of the Senate of the State of New York, BRIAN M. KOLB, as Minority Leader of the Assembly of the State of New York, NEW YORK STATE LEGISLATIVE TASK FORCE ON DEMOGRAPHIC RESEARCH AND REAPPORTIONMENT ("LATFOR"), JOHN J. McENENY, as Member of LATFOR, ROBERT OAKS, as Member of LATFOR, ROMAN HEDGES, as Member of LATFOR, MICHAEL F. NOZZOLIO, as Member of LATFOR, MARTIN MALAVE DILAN, as Member of LATFOR, and WELQUIS R. LOPEZ, as Member of LATFOR, Defendants.

REENA RAGGI

OPINION AND ORDER

2 *2 **REENA RAGGI, United States Circuit Judge,**
GERARD E. LYNCH, United States Circuit Judge,
DORA L. IRIZARRY, United States District Judge:

This three-judge court was convened on February 14, 2012, pursuant to 28 U.S.C. § 2284(a), to address plaintiffs' complaint that defendants' failure to redraw New York's state and federal congressional districts consistent with the results of the 2010 Census deprives them of the ability to vote in upcoming elections in accordance with rights guaranteed by the federal and state constitutions, see U.S. Const. art. I, § 2; N.Y. Const.
3 art. III, §§ 4, 5, and the Voting Rights Act of 1965, see 42 U.S.C. §§ 1973-1973aa-6.[1] Like the *3 census that triggers it, this argument is now raised in federal courts at predictable ten-year intervals. See Rodriguez v. Pataki, No. 02-cv-618, 2002 WL 1058054 (S.D.N.Y. May 24, 2002); Puerto Rican Legal Def. & Educ. Fund, Inc. v. Gantt, 796 F. Supp. 681 (E.D.N.Y. 1992); Flateau v. Anderson, 537 F. Supp. 257 (S.D.N.Y. 1982). In the past, judicial creation of a congressional redistricting plan has spurred the New York legislature to produce its own plan just in time to avoid implementation of the judicial plan. See, e.g., Rodriguez v. Pataki, 308 F. Supp.

2d 346, 357-58 (S.D.N.Y.) (describing state legislature's enactment of congressional redistricting plan shortly after court adoption of special master plan), aff'd, 125 S. Ct. 627 (2004). This time is different. With less than 24 hours until the scheduled March 20, 2012 start of the petitioning process for the June 26, 2012 congressional primaries, the New York legislature has not delineated congressional districts for the state. Accordingly, the court declares New York to be without a congressional redistricting plan that conforms to the requirements of federal law, and it hereby orders defendants to implement the redistricting plan attached as Appendix 1 to this
4 opinion ("Ordered Plan").[2] *4

1 Plaintiffs Mark A. Favors, Howard Leib, Lillie H. Galan, Edward A. Mulraine, Warren Schreiber, and Weyman A. Carey ("Favors Plaintiffs") are registered voters in the State of New York; Leib is also a prospective State Senate candidate. Four sets of individuals intervened as plaintiffs pursuant to Fed. R. Civ. P. 24: (1) Donna Kaye Drayton, Edwin Ellis, Aida Forrest, Gene A. Johnson, Joy Woolley, and Sheila Wright ("Drayton Intervenors"); (2) Linda Lee, Shing Chor Chung, Julia Yang, and Jung Ho Hong ("Lee Intervenors"); (3) Juan Ramos, Nick Chavarria, Graciela Heymann, Sandra Martinez, Edwin Roldan, and Manolin Tirado ("Ramos Intervenors"); and (4) Linda Rose, Everet Mills, Anthony Hoffman, Kim Thompson-Werekoh, Carlotta Bishop, Carol Rinzler, George Stamatiades, Josephine Rodriguez, and Scott Auster ("Rose Intervenors").

Defendants, all sued in their official capacities, are Andrew M. Cuomo, as Governor of the State of New York; Eric T. Schneiderman, as Attorney General of the State of New York; Robert J. Duffy, as President of the State Senate; Dean G. Skelos, as Majority Leader and President Pro Tempore of the State Senate; Sheldon Silver, as Speaker of the State Assembly; John L. Sampson, as Minority Leader of the State Senate; Brian M. Kolb, as Minority Leader of the State Assembly; the New York State Legislative Task Force on Demographic Research and Reapportionment ("LATFOR"); John J. McEneny, as a member of LATFOR; Robert Oaks, as a member of LATFOR; Roman Hedges, as a member of LATFOR; Michael F. Nozzolio, as a member of LATFOR; Martin Malave Dilan, as a member of LATFOR; and Welquis R. Lopez, as a member of LATFOR.

Since filing, plaintiffs have withdrawn a claim that defendants' redistricting failure also violates the New York Prisoner Reallocation Law, see N.Y. Corr. Law § 71(8), making it unnecessary to discuss that claim further. Plaintiffs have also withdrawn their remaining claims against Attorney General Schneiderman.

2 Insofar as plaintiffs also challenge the defendants' failure to draw district lines for New York State Senate and Assembly districts, the parties are directed to appear before the court for a status conference on Wednesday, March 21, 2012, at 3:00 p.m. in the Ceremonial Courtroom to discuss what, if any, further proceedings are necessary in light of the enactment of a legislative redistricting plan for state offices on March 15, 2012.

I. The Undisputed Merits of Plaintiffs' Claim That New York Lacks a Constitutional Congressional Redistricting Plan

Defendants do not seriously dispute plaintiffs' claim that New York is without a constitutional congressional redistricting plan for the 2012 elections.[3] Nor could they. As a result of the relative decline in New York's population reflected in the 2010 Census, the number of congressional districts allotted to the state is reduced from 29 to 27. See Kristin D. Burnett, U.S. Census Bureau, 2010 Census Briefs: Congressional Apportionment 2 (Nov. 2011), available at http://www.census.gov/prod/cen2010/briefs/c2010br-08.pdf; see generally U.S. Const. art. I, § 2, cl. 3; 2 U.S.C. § 2a. Thus, New York cannot operate under its existing congressional districting plan. Rather, it must redraw congressional district lines in order to have representatives seated in the 113th Congress.[4] Further, the state must do so in a way that both (1) conforms to the constitutional mandate that "as nearly as is practicable one man's vote in a congressional election is to be worth as much as another's,"
5 Wesberry v. Sanders, 376 U.S. 1, 7-8 (1964), and (2) adheres to the constitutional prohibition against *5 both intentional and excessive uses of race or ethnicity in redistricting, see Miller v. Johnson, 515 U.S. 900, 916 (1995) (prohibiting use of race or ethnicity as "predominant factor" motivating decision to place significant

number of voters within or without particular district); City of Mobile v. Bolden, 446 U.S. 55, 66 (1980) (holding that redistricting cannot purposefully discriminate against racial group by diluting its vote). Federal law also obligates New York to effect redistricting consistent with the Voting Rights Act, particularly Section 2, which ensures against minority vote dilution, see 42 U.S.C. § 1973, and Section 5, which forbids retrogression in the electoral position of minorities in covered jurisdictions, see id. § 1973c, here including New York, Kings, and Bronx Counties, see 28 C.F.R., pt. 51, App.

[3] To the extent some defendants' Answers dispute the merits of plaintiffs' claim, no defendant has pursued the challenge before this court, and we deem it waived by each defendant's failure to object to the magistrate judge's findings that New York currently has two too many districts, and that those districts are not equally apportioned in light of 2010 census data. See Report and Recommendation at 14 (Mar. 12, 2012), Dkt. Entry 223.

[4] See 2 U.S.C. § 2a(c) (requiring at-large election of representatives if state has more districts than apportioned). Defendants do not propose to hold statewide congressional elections.

No such plan being in place, plaintiffs are entitled to both a declaratory judgment in their favor and relief in the form of a judicially ordered congressional redistricting plan.

II. The Ordered Redistricting Plan

In ordering defendants to implement the attached redistricting plan, we adopt the March 12, 2012 Report of Magistrate Judge Roanne L. Mann in its entirety and the redistricting plan recommended therein, see Report and Recommendation (Mar. 12, 2012), Dkt. Entry 223 ("Report" or "Recommended Plan"). The court's Ordered Plan modifies the Recommended Plan only to the extent noted in the margin.[5] We write here to discuss
6 the *6 process and legal principles informing development of the Ordered Plan, and the court's reasons for rejecting certain objections or complaints about the Recommended Plan from parties and interested members of the public.

[5] In response to submissions from the parties and the public, the court makes the following four changes to the Recommended Plan:

(1) The Brooklyn waterfront extending from the Brooklyn Bridge to the Brooklyn Battery Tunnel is placed in the same district, Ordered District 7, as it was under the existing plan. Two blocks in Sunset Park, Brooklyn, are then moved from Recommended District 7 to Ordered District 10 to achieve constitutionally mandated population equality.

(2) Wyoming County is united in Ordered District 27. The split of Ontario County, which was already split under the Recommended Plan, is reconfigured to ensure that Ordered District 23 achieves population equality.

(3) A zero population census block is moved from Recommended District 23 to Ordered District 27 to unify the Town of Canandaigua.

(4) A census block containing two people is moved from Recommended District 25 to Ordered District 27 to unify the Town of Hamlin. The split of the Town of Clarkson is shifted from the northeast to the southwest in order to achieve population equality.

Maps reflecting these changes are attached as Appendix 2 to the opinion.

A. The Process Employed To Develop the Ordered Plan

1. Defendants' Ripeness Challenge

Rather than challenge the merits of plaintiffs' claim before the three-judge panel or the magistrate judge, defendants questioned its ripeness, moving for dismissal on the ground that state inaction had not yet reached the point where a court could recognize a violation of federal law. We rejected this argument in an electronic order on February 21, 2012, supported by an opinion filed on March 8, 2012. See Order Denying Motions to

Dismiss (Mar. 8, 2012), Dkt. Entry 219.[6] With the petitioning process for the state's congressional elections set
7 to begin on March 20, 2012, and with defendants conceding that no new *7 congressional district plan was imminent, plaintiffs' claim was plainly ripe.[7] Not only did the existing plan—providing for 29 congressional districts that do not comport with either the 2010 Census or the constitutional mandate of "one person, one vote"—clearly violate federal law, but also the court's ability to provide the necessary remedy, a constitutional redistricting plan, in time for the March 20 petitioning process faced significant time challenges. See id. at 7-14.[8]

6 In this order, the court also summarily rejected defendants' challenge to plaintiffs' standing. See Order Denying Motions to Dismiss at 14-17 (Mar. 8, 2012), Dkt. Entry 219.

7 The March 20 date is a product of litigation in the Northern District of New York challenging New York's compliance with the Uniformed and Overseas Citizens Absentee Voting Act of 1986, see 42 U.S.C. §§ 1973ff-1973ff-7, as amended by the Military and Overseas Voter Empowerment Act, Pub. L. No. 111-84, subtitle H, §§ 575-589, 123 Stat. 2190, 2318-2335 (2009). On January 27, 2012, Judge Gary L. Sharpe ordered that New York's date for its non-presidential federal primary elections be moved to June 26, 2012, in order to bring the state into compliance. See United States v. New York, No. 1:10-cv-1214 (GLS/RFT), 2012 WL 254263, at *3 (N.D.N.Y. Jan. 27, 2012). Judge Sharpe then adjusted the rest of New York's election calendar accordingly, setting March 20, 2012, as the first day candidates may collect designating petitions in order to appear on the primary ballot. See United States v. New York, No. 1:10-cv-1214 (N.D.N.Y. Feb. 9, 2012), ECF No. 64 (adopting schedule including March 20, 2012 date for commencement of petition gathering); see also N.Y. Elec. Law § 6-134(4) (requiring designating petitions to be filed within 37-day period); id. § 6-158(4) (setting "eighth Thursday preceding the primary election" as deadline for filing designating petitions).

Defendants acknowledge that petitions must be obtained in the district that the prospective candidate seeks to represent. See Feb. 27, 2012 Hr'g Tr. at 31. Thus, districts must be delineated by the start of the petitioning process.

8 Under ideal circumstances, a court would require at least two months to devise a statewide redistricting plan, "one month for the drawing of the plan and an additional month for hearings and potential modifications to it." Nathaniel Persily, When Judges Carve Democracies: A Primer on Court-Drawn Redistricting Plans, 73 Geo. Wash. L. Rev. 1131, 1148 (2005). This court has had to develop the Ordered Plan in half that time.

2. The Magistrate Judge's Report

8 In order to provide a timely remedy, on February 27, the court referred the task of *8 devising a recommended plan for redrawing New York's congressional districts to Magistrate Judge Mann with instructions to issue a report and recommendation to the court on March 12, 2012.[9] The court further authorized the retention of Dr. Nathaniel Persily as a redistricting expert to assist Magistrate Judge Mann and this court in fashioning redistricting relief.[10] See Order of Referral to Magistrate Judge at 3-4 (Feb. 28, 2012), Dkt. Entry 133.

9 A formal appointment order was entered on February 28, 2012. See Order of Referral to Magistrate Judge (Feb. 28, 2012), Dkt. Entry 133.

10 Dr. Persily, Charles Keller Beekman Professor of Law and Professor of Political Science at Columbia University School of Law, and the author of the article referenced in note 6, supra, is a well recognized expert on redistricting and voting rights. He served as a court-appointed expert in New York's 2002 redistricting, and has served in a similar capacity in connection with redistricting challenges in Connecticut, Georgia, and Maryland. See Aff. of Professor Nathaniel Persily, J.D., Ph.D., App. K (Mar. 12, 2012), Dkt. Entry 223, Attach. 12. Several parties urged and no party opposed Dr. Persily's retention in this case.

Exerting efforts that have been aptly characterized as "Herculean,"[11] Magistrate Judge Mann filed a detailed report and plan recommendation on March 12, supported by Dr. Persily's equally detailed affidavit and accompanying exhibits. The Report is remarkable in several respects. First, and most obviously, it provides this court in two weeks' time with what defendants have been unable—or unwilling—to provide New York State
9 voters in more than a year: a redistricting plan for the state's congressional districts. In doing so, the Report *9 cogently sets forth controlling principles of law, the challenging choices implicated in any redistricting assignment, and the magistrate judge's reasons for making the choices reflected in the Recommended Plan. Second, the Report discusses the commendable process employed by the magistrate judge to develop the Recommended Plan, which afforded the parties and interested members of the public frequent opportunities to be heard. See Report at 8-12. Third, the Report recommends a redistricting plan that is exemplary in satisfying each and every standard set forth in this court's referral order.

[11] Mar. 15, 2012 Hr'g Tr. at 44 (statement of Jackson Chin, counsel for Ramos Intervenors); id. at 59 (statement of Richard Mancino, counsel for Favors Plaintiffs); Dominican American National Roundtable Objection at 3 (Mar. 13, 2012), Dkt. Entry 240, Ex. 7 ("DANR Objection").

3. Adoption of the Report and Recommended Plan

This court is nevertheless required to review the Recommended Plan de novo and to decide for itself what redistricting plan is necessary to ensure compliance with controlling law. See 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 53(f). Toward that end, we have carefully reviewed not only the magistrate judge's Report and Recommended Plan, but also all filings in the case, including all submitted plans (partial or statewide),[12] as well as all objections and comments to the Recommended Plan presented by any party or interested person
10 either in writing or at a public hearing conducted on March 15, 2012.[13] The court has consulted *10 further with Dr. Persily to ensure its full understanding of the demographics informing the Recommended Plan and implicated in changes urged by the parties or members of the public. Upon such careful and independent review, we adopt the magistrate judge's Report and Recommended Plan, with only minor and uncontroversial adjustments as indicated supra note 5.

[12] Any suggestion that the magistrate judge failed to consider partial-plan submissions by the parties or public, see DANR Objection at 2-3, finds no support in the record, for reasons discussed infra at 39. In any event, this court has itself reviewed all plan submissions in reaching its final decision. In considering partial plans, the court, like the magistrate judge, is mindful that its task is not simply to accommodate the particular interest addressed in any plan but to effect a redistricting plan for the entire state that, first and foremost, satisfies the mandates of federal constitutional and statutory law.

[13] The quality and fairness of the Recommended Plan is attested by the scarcity of objection from the highly engaged parties to this litigation, who include the entire executive Intervenors and the Senate Majority Defendants submitted objections to portions of the Report and Recommended Plan. See Drayton Intervenors' Letter (Mar. 14, 2012), Dkt. Entry 226; Ramos Intevenors' Letter (Mar. 14, 2012), Dkt. Entry 228; Senate Majority Defs.' Objections (Mar. 14, 2012), Dkt. Entry 231. The Lee and Rose Intervenors filed letters stating that they had no objections to the Report and Recommended Plan, see Lee Intervenors' Letter (Mar. 14, 2012), Dkt. Entry 227; Rose Intervenors' Response (Mar. 14, 2012), Dkt. Entry 229, and the Plaintiffs filed a memorandum of law in support of the Recommended Plan, see Pls.' Mem. in Support (Mar. 14, 2012), Dkt. Entry 232. The Governor, Assembly Majority, Senate Minority, and Assembly Minority Defendants filed no responses to the Report and Recommended Plan.

Although the magistrate judge and the court each invited members of the public to submit comments by easilyaccessible electronic means or in person at public hearings, only a small number of negative comments were received, and only a handful of New York's many elected officials suggested changes. The court received

approximately twenty written submissions from the public supporting or opposing the Report and Recommended Plan. See Public Submissions to the Court (Mar. 19, 2012), Dkt. Entry 240. Approximately thirty members of the public spoke at the public hearing in support of or in opposition to the Recommended Plan. As set forth infra in Part II.B, only a small number of these comments opposing the plan require extended discussion.

4. Legal Principles Informing the Court's Decision

In ordering defendants to implement the court's redistricting plan, we are guided by principles of law that all parties agree are accurately set forth in the magistrate judge's Report. See Report at 13-19 (discussing constitutional and statutory redistricting standards);

11 and legislative leadership of New York State. Of the parties, only the Drayton and Ramos *11 id. at 21-38 (discussing traditional redistricting factors). Because we adopt the Report, we do not repeat that discussion here. Nevertheless, in light of apparent confusion by some parties and members of the public at the March 15, 2012 hearing as to the court's obligations with respect to redistricting principles that impose legal mandates as compared with principles that afford some discretion, a preliminary discussion is useful to our subsequent analysis of specific objections.

a. The Constitutional Mandate of "One Person, One Vote"

At the first tier of redistricting analysis, the controlling principle is constitutional and mandatory: Article I, Section 2 requires that congressional election districts conform to the principle of "one person, one vote." Abrams v. Johnson, 521 U.S. 74, 98 (1997); Wesberry v. Sanders, 376 U.S. 1, 7-8 (1964); see also Reynolds v. Sims, 377 U.S. 533, 561-64, 568 (1964) (holding that state election districts must be apportioned by equal population). To satisfy this mandate, the population of each of New York's 27 new congressional districts must be within one person of the target number of 717,707 persons. See Report at 14; Aff. of Professor Nathaniel Persily, J.D., Ph.D. ¶¶ 103-04 (Mar. 12, 2008), Dkt. Entry 223, Attach. 1 ("Persily Aff."); see also Abrams v. Johnson, 521 U.S. at 98 (holding that "[a] court-ordered plan should ordinarily achieve the goal of population equality with little more than de minimis variation" (internal quotation marks omitted)). Thus, in considering arguments urging that persons be moved from one district to another in furtherance of one or more of the

12 traditional redistricting factors discussed infra Part II.A.4.c, this court is *12 constitutionally mandated to replace any persons moved with the same number of persons drawn from another district. As should be obvious, this means that, with the exception of changes that can be effected with a simple population swap between two districts, see, e.g., supra n.5 (discussing some such population swaps), most changes will trigger a ripple effect through multiple districts with serious constitutional implications for the entire redistricting plan.

b. Constitutional and Statutory Prohibition of Discriminatory Redistricting

The second tier of redistricting analysis is of equal importance to the first in that it too is constitutional and mandatory: a redistricting plan cannot intentionally discriminate against a racial or ethnic group. See City of Mobile v. Bolden, 446 U.S. at 66; White v. Regester, 412 U.S. 755, 765-66 (1973); Gomillion v. Lightfoot, 364 U.S. 339, 341-42, 346 (1960). At the same time, race or ethnicity cannot be used as the "predominant factor" in deciding whether to put significant numbers of persons within or without a particular district. Miller v. Johnson, 515 U.S. at 916; see Shaw v. Reno, 509 U.S. 630, 642-49 (1993). The prohibition on discrimination is reinforced by the Voting Rights Act, which proscribes both minority vote dilution in Section 2, see 42 U.S.C. § 1973, and retrogression of existing minority strength in jurisdictions covered under Section 5, see id. § 1973c. Magistrate Judge Mann accurately discusses in some detail the law relevant to these principles, and thus, we do not repeat that discussion here. See Report at 13-19; see also Rodriguez v. Pataki, 2002 WL 1058054, at *4

13 (setting forth same legal standards in reviewing special master plan for *13 2002 New York redistricting). Further, the appendices attached to Dr. Persily's affidavit document the care taken in the Recommended Plan—and, now, the Ordered Plan—to safeguard against minority vote dilution and retrogression. See Persily Aff., Apps. A-J. Here too, then, we consider arguments urging this court to move persons from one district to another mindful of our obligation not to make any changes that could cause vote dilution or retrogression.

c. Traditional Redistricting Factors

At the third tier of redistricting analysis, a court considers, to the extent possible, traditional principles that generally inform legislative redistricting. This process contemplates the exercise of discretion.

In our referral to the magistrate judge, this court identified four traditional redistricting factors warranting consideration: (1) district compactness, (2) contiguity, (3) respect for political subdivisions, and (4) preservation of communities of interest. See Order of Referral to Magistrate Judge at 3 (Feb. 28, 2012), Dkt. Entry 133. At the same time, we stated that the magistrate judge's discretion to weigh these factors also extended to other factors that she might identify as reasonable, consistent with otherwise controlling law. See id. Two further traditional redistricting factors urged by the parties and members of the public are (5)
14 maintaining the cores of existing districts and (6) protecting incumbency.[14] See Karcher *14 v. Daggett, 462 U.S. 725, 740 (1983) (recognizing these two factors as traditional considerations in legislative redistricting); Diaz v. Silver, 978 F. Supp. 96, 105, 123 (E.D.N.Y.) (stating that maintaining cores of existing districts is traditional redistricting factor, and that it is not improper for legislature to consider incumbency in enacting redistricting plan), aff'd, 522 U.S. 801 (1997).

[14] To the extent the Senate Majority Defendants characterized the protection of core districts as the "primary" factor in redistricting analysis, Mar. 15, 2012 Hr'g Tr. at 16, 20, they sensibly withdrew that argument, conceding that traditional redistricting factors are necessarily subordinate to the two identified constitutional and statutory principles that must be satisfied by any redistricting plan, see id. at 20-21.

In fact, the magistrate judge's Report carefully addresses each of these six factors, discussing both the factor's relevancy to redistricting and the concerns associated with its application. See Report at 21-38. The magistrate judge accords some weight to each of these factors, with the single exception of incumbency protection. See id. In all respects pertaining to traditional redistricting factors, we adopt both the Report's reasoning and its conclusions as our own. We add only a few observations relevant to our future discussion of particular objections to the weight assigned to some of the traditional factors. These demonstrate that the noted traditional factors are not all of a kind.

First, only the first three traditional redistricting factors—compactness, contiguity, and respect for political subdivisions—can claim the sanction of enacted New York law. The State Constitution requires that State Senate and Assembly districts be contiguous and "in as compact form as practicable." N.Y. Const. art. III, §§ 4, 5 (emphasis added). It further requires that such districts consist of contiguous territory, and limits the division
15 of counties, *15 towns, and city blocks in forming state legislative districts. See id. Where state policy is thus reflected in law, there is sound reason for a court to accord that policy some weight, even when devising a redistricting plan for the federal rather than state legislature, subject, of course, to the superior demands of federal law, see U.S. Const. art. VI, cl. 2. As detailed in the magistrate judge's Report, the Recommended Plan is scrupulous in ensuring district contiguity; further, it achieves compactness and avoids splitting political subdivisions better than the existing plan. See Report at 23-24 (noting that Recommended Plan achieves compactness and contiguity in all districts, and splits six fewer counties and five fewer towns than existing plan); Persily Aff. ¶¶ 134-35 (stating that Recommended Plan keeps together 42 of 62 counties, and 894 of 970

towns, both of which improve on existing congressional districts). Indeed, the Ordered Plan has itself modified the Recommended Plan to unite one more county and three more towns, changes that could be effected without undue disruption to the overall plan's compliance with federal law. See supra n. 5. Thus, the Recommended Plan keeps 43 New York counties and 897 towns whole.

Second, the remaining factor identified in our referral order, the preservation of communities of interest, has no comparable pedigree in enacted state law. While the preservation of communities of interest has been recognized as "a legitimate goal in creating a district plan," Diaz v. Silver, 978 F. Supp. at 123, we observe, as did the magistrate judge, that this factor can more easily draw the court into political debates than factors such as compactness, contiguity, and respect for political subdivisions. These last three factors are *16 more susceptible to neutral analysis, with a court's options and choices often evident on a map.[15] But the identification of a "community of interest," a necessary first step to "preservation," requires insights that cannot be obtained from maps or even census figures. Such insights require an understanding of the community at issue, which can often be acquired only through direct and extensive experience with the day-to-day lives of an area's residents. Legislators are expected to have such understanding and experience. Judges are not. Thus, even if legislators routinely seek to preserve their constituents' communities of interest in a new redistricting plan, courts are understandably inclined to accord redistricting weight only to the preservation of obviously established and compact communities of interest. The Recommended Plan does this by respecting "certain widely recognized, geographically defined communities." Report at 27 (quoting Persily Aff. ¶ 137).

16 *16

15 In noting that these factors are susceptible to objective evaluation, we do not suggest that they are necessarily easy to apply. See, e.g., Persily Aff. ¶ 130 & App. D (noting and applying eight different mathematical models to assess Recommended Districts' compactness).

Third, the remaining factors at issue—maintaining the cores of prior districts and incumbency protection—similarly risk drawing the court into political disputes. This is not to denigrate such factors, but simply to recognize that assigning them weight is a process that frequently requires political tradeoffs, a task for which the legislature—by virtue of insight, process, and ballot accountability—is better suited than the judiciary.[16] Indeed, that *17 conclusion is only reinforced here, where the court was obliged to create a congressional redistricting plan for as populous and diverse a state as New York in only a few weeks. To satisfy the mandates of federal law, the court's focus has necessarily been on census information. Nevertheless, like the magistrate judge, this court has made every effort also to consider the range of traditional redistricting factors, but it has done so cautiously, mindful of its obvious inability to acquire the sort of comprehensive insights that allow a legislature to balance the competing political concerns implicated in preserving various communities of interest, maintaining the cores of existing districts, and protecting incumbents.

17 *17

16 To be sure, the legislature may itself wish to insulate its own redistricting efforts from complaints of partisanship by employing an independent commission. This is the subject of current debate in New York. See, e.g., Danny Hakim, John Eligon & Thomas Kaplan, Cuomo, Admitting Setbacks, Says He Asked for the Moon, N.Y. Times, Mar. 15, 2012, at A20 (discussing mixed reactions to compromise on state redistricting reform). We express no view on this question. We note only that, to the extent political concerns are implicit in certain redistricting factors that legislatures have permissibly employed in the past, a court may reasonably decide to accord those factors less weight than others better suited to neutral determination.

Of course, when the legislature itself weighs these factors in enacting a redistricting plan, a federal court reviewing that plan must confine itself to correcting error of federal law, without displacing otherwise "legitimate state policy judgments." Perry v. Perez, 132 S. Ct. 934, 941 (2012). That, however, is not this case. The court was obliged to create a new redistricting plan because the state has failed to do so. In these

circumstances, the court owes no comparable deference to the outdated policy judgments of a now unconstitutional plan. See id. at 943 (stating that where there is "no recently enacted state plan," a court may be
18 "compelled to design an interim map based on its own notion of the public good"). Indeed, *18 when, as here, a new plan is required to contract the number of congressional districts, a court could only guess at which communities of interest the legislature would preserve or not, which districts the legislature would maintain or sacrifice, and which incumbents it would protect and which it would not.

Moreover, in creating a redistricting plan for a state that has none, a court's consideration of the traditional factors informing legislatively enacted plans does not require it to assign specific weight to any particular factor, or consistently to assign the same weight to a factor in delineating each district. Rather, the court must exercise discretion. Indeed, even if a court were generally inclined to accord significant weight to factors such as compactness or respect for political subdivisions, it might sometimes have to subordinate those factors to satisfy the population requirement of "one person, one vote," or to avoid proscribed minority voter dilution or retrogression. Similarly, a court may generally value the preservation of communities of interest while recognizing the particular challenges of "defining and accommodating" such communities of interest "in a
19 region as diverse and dynamic as New York City and its environs." Report at 26.[17] Further, as the court had *19 repeated occasion to observe at the public hearing, the delineation of communities of interest is cabined by constitutional limits on racial stereotyping. See Miller v. Johnson, 515 U.S. at 920 (recognizing that communities of interest may be based on racial or ethnic makeup so long as "action is directed toward some common thread of relevant interests," but holding that, when a "State assumes from a group of voters' race that they 'think alike, share the same political interests, and will prefer the same candidates at the polls,' it engages in racial stereotyping at odds with equal protection mandates" (quoting Shaw v. Reno, 509 U.S. at 647)).

17 As Dr. Persily observed:

> Respecting communities of interest is both an essential and slippery consideration in redistricting processes. In one respect, redistricting is about representation of communities. Communities that are split between districts often view their voice as diminished. In another respect, arguments based on communities of interest can often be pretexts for incumbency or partisan-related considerations. Moreover, community boundaries are inherently amorphous, contested, shifting and conflicting. By respecting one community's boundaries or some advocates' conception of their community, a redistricting plan might conflict with other advocates' conception of their community or with another community's boundaries.

Report at 25 n.16 (quoting Persily Aff. ¶¶ 52-53).

Insofar as Magistrate Judge Mann assigned no weight to protecting incumbents, we do not understand her to have concluded that she was legally proscribed from considering this factor, but only that she opted to assign it no weight for reasons explained in her Report. We adopt this reasoning and exercise our own discretion in the same manner. We note only that, in creating a redistricting plan that eliminates two congressional districts, it is impossible to protect all incumbents, thus presenting the judiciary with political choices. See Report at 37-38. To insulate the Ordered Plan from any complaint of actual or apparent partisan bias, we choose to assign no weight to incumbency protection. In urging that we do otherwise, objecting parties and interested persons
20 suggest that some incumbents' decisions *20 not to stand for reelection may obviate the need for the court to make any such political choice. We are not persuaded. The present intentions of congressional incumbents to seek other offices or decline to run for reelection are always subject to change and possibly contingent on expectations about the districts the court might draw. In any event, those intentions are not part of any evidentiary record in this case, being known to the court at best through press reports or suggestions by parties

and members of the public that are speculative and unreliable. Even in the absence of this evidentiary defect, the argument assumes that it would be possible to devise a redistricting plan that eliminated only districts represented by members not pursuing reelection while still satisfying all requirements of federal law. Our ability to devise such a plan is not apparent on the record. In any event, we are not inclined to upset the carefully crafted Recommended Plan on the eve of the petitioning process in order to further the most political of the traditional redistricting factors, particularly as there is no district residency requirement for congressional candidates. See id. at 36 (citing U.S. Const. art. I, § 2).[18]

[18] In reaching this conclusion, we do not overlook the importance of incumbent seniority. See Diaz v. Silver, 978 F. Supp. at 123 ("[T]he powerful role that seniority plays in the functioning of Congress makes incumbency an important and legitimate factor for a legislature to consider."). Like the magistrate judge, however, we do not think this concern requires that incumbency protection be given the weight urged in a court-devised plan. The legislature, of course, is free to give this factor greater weight in any redistricting plan it chooses to adopt.

Having reviewed the full record for ourselves and having carefully considered the objections and comments of
21 all parties with respect to the Recommended Plan, we decide de *21 novo to accord the identified traditional redistricting factors the same weight as the magistrate judge. See Report at 21-38. Any party or person disappointed with the weight assigned by this court to any of the traditional redistricting factors may certainly pursue this concern with their representatives in the New York legislature, which body has the authority to write a new plan for the next congressional election if it is dissatisfied with the Ordered Plan. Contrary to a concern expressed by one member of the public, nothing requires the Ordered Plan to remain in place for a decade. That result will occur only if the legislature chooses to leave the Ordered Plan in place.

We now address particular objections to the Recommended Plan that merit discussion.

B. Objections to the Recommended Plan

In discussing objections to the Recommended Plan, we start with those raised by the parties and proceed to others raised by public commentators.

1. Senate Majority Defendants

The Senate Majority Defendants object to the principles applied in creating the Recommended Plan and raise specific objections to particular Recommended Districts. See Senate Majority Defs.' Objections (Mar. 14, 2012), Dkt. Entry 231 ("Senate Majority Defs.' Objections"). Because we have already discussed general principles, here we address only specific objections and incorporate our previous discussion as necessary.

a. Recommended Districts 1, 2, and 3 (Long Island)

22 The Senate Majority Defendants complain that the Recommended Plan creates Long *22 Island districts that do not "respect[] the cores of current districts and the communities of interest that have formed around them." Senate Majority Defs.' Objections at 4 (quoting Rodriguez v. Pataki, No. 02-Civ. 618 (RMB), 2002 WL 1058054, at *6 (S.D.N.Y. May 24, 2002) (internal quotation marks omitted)). They object to Recommended Districts 2 and 3, which are generally oriented from east to west to create districts along parts of the South and North Shores of Long Island, respectively, because, they contend, "Districts have traditionally run north to south across Long Island." Id.

As we have already observed, and as the Senate Majority Defendants concede, the preservation of elements of former districts so as to include in a newly formed district a large percentage of a previous district's population, see Persily Aff. ¶¶ 141-42, is not a stated policy of New York. See supra at 14-16; Mar. 15, 2012 Hr'g Tr. at 30.

Nevertheless, because core preservation has been recognized as a legitimate consideration in a redistricting plan, see, e.g., Karcher v. Daggett, 462 U.S. at 740-41, a court may consider this factor, along with compactness, contiguity, respect for political subdivisions, and maintenance of communities of interest, in drawing district lines, see Abrams v. Johnson, 521 U.S. at 84, 98-100. Because the record plainly demonstrates such consideration by the magistrate judge,[19] the Senate Majority Defendants do not contend that the
23 Recommended Plan violates *23 any legal principle. They simply urge the court to exercise its discretion to give core preservation greater weight in creating districts on Long Island. Having carefully considered their arguments, we conclude that the objection provides insufficient reason to alter the Recommended Plan, which seems to us better to balance the appropriate considerations.

19 As Professor Persily notes, only 7 of the 27 new districts fail to include at least half of a prior district's population, and nearly half (13) of the new districts contain at least 70% of a prior district's population. Persily Aff. ^ 142 & App. E. The question here is not whether core preservation is an appropriate factor (it is), or whether the Recommended Plan takes it into account (it does). The question is whether an objection based on that factor alone, without taking into account other counterbalancing factors, warrants rejecting this particular aspect of the Recommended Plan.

Inspection of the Senate Majority Defendants' own proposed Long Island districts reveals that they are significantly less compact than the Recommended Districts. Their proposed districts take highly unusual shapes. Indeed, it is far from clear that the Senate Majority Defendants' proposed districts run north to south across Long Island, or are even primarily north to south in orientation. Defendants' proposed District 2 forms a rough L shape; it is impossible to draw a north-south line through it that touches both shores. Their proposed District 3, meanwhile, covers all of the northern and southern shorelines of Nassau County (and parts of the southern shore of Suffolk) but narrows to an anemic mile-wide corridor from Hicksville to Greenvale.[20] The Recommended Plan's more compact geography is sufficient reason in itself to reject the Senate Majority Defendants' objection. Moreover, districts that center on the northern and southern shores of Long Island—such as those of the Recommended Plan— follow widely understood social and geographical distinctions between
24 Long Island's "North Shore" and "South Shore" communities and thereby reflect *24 communities of interest that have no counterpart in the Senate Majority Defendants' plan. While defendants argue that preserving the cores of former districts is a more objectively measurable goal than recognizing communities of interest, the argument is not convincing with respect to well-established and geographically compact communities such as the North and South Shores of Long Island. In any event, for reasons already discussed, we think that deciding how much of a "core" to preserve, as against other redistricting considerations, is itself a highly subjective—and potentially partisan—endeavor. As with protecting incumbents, a factor to which we give no weight, judicial competence and neutrality signal caution in assigning considerable weight to factors best resolved by the political branches.[21]Finally, the Senate Majority Defendants complain that Smithtown is split between Recommended Districts 1 and 2, and should instead be placed wholly in Recommended District 1. This warrants no change to the Recommended Plan. The Senate Majority Defendants have not offered a solution for how we would unite Smithtown's 80,000 residents into a single district, see Persily Aff., App. J at 23, a task that would require swapping thousands of people between Recommended Districts 1 and 2. Such a population
25 *25 swap would compromise both Recommended Districts' compactness and preservation of existing cores. We are especially reluctant to make such a change because, as is, Recommended District 1 maintains 96.81% of existing district 1, see Persily Aff., App. E, thus achieving the preservation that defendants separately urge for Recommended Districts 2 and 3.

20 Indeed, a glance at the map shows that the Senate Majority Defendants exaggerate the extent to which the existing districts are oriented in a simple north-south direction. Their shapes are considerably more complex, resembling an "L" or an inverted "T."

21 Indeed, it is not easy to distinguish core preservation from incumbent protection in this case. While the two goals may be distinguishable, it is telling that the Senate Majority Defendants themselves have previously equated them, see Skelos Defs.' Letter Regarding Incumbency (Feb. 29, 2012), Dkt. Entry 145 ("Preserving the cores of existing districts — sometimes also referred to as incumbency protection—is a well-established, traditional districting principle in New York.") (citations omitted)), and noteworthy that maps reflecting these defendants' proposed districts label them most prominently with the names of the incumbent representatives for whom they have apparently been designed. We are thus wary of giving "core preservation" the weight urged.

For these reasons, we conclude that this objection provides no persuasive reason to alter the district lines in the Recommended Plan.

b. Recommended District 5 (Long Island/Queens)

The Senate Majority Defendants raise a number of objections to Recommended District 5: (1) it pairs incumbents and fails to preserve cores of prior districts; (2) it fragments (along with several other districts) Jewish communities; and (3) it needlessly crosses the Nassau County border. The first objection is unpersuasive for reasons already fully discussed. The second objection is addressed in our discussion of specific issues raised by public commentators on behalf of the affected Jewish communities. See infra Part II.B.3.

With respect to the county border, the Senate Majority Defendants argue that crossing the county line renders Recommended District 5 non-compact. This contention is without merit. Some piercing of the Queens-Nassau line is necessary to achieve the constitutionally mandated population of 717,707 people. After the 2010 Census, Suffolk and Nassau counties together contain just below four districts' worth of population. See Persily Aff. ¶
26 69. Thus, a breach of the Queens-Nassau border is mathematically inevitable. Indeed, the *26 Senate Majority Defendants' own plan also breaches the border in its proposed District 4, though it does so farther north. We therefore reject this argument.[22]

22 To the extent that defendants contend that the district is drawn along racial lines, we note that a substantial African American community straddles the county border in this area in an entirely compact unit, and that to divide that community, in preference to other ways of solving the inevitable breach of the county line, might well justly draw objection as a deliberate fragmentation of a compact minority community.

c. Remaining Objections

Because the Senate Majority Defendants' remaining arguments are less detailed, we consider them together.

First, persisting in their argument for preserving the cores of prior districts, defendants argue that Recommended Districts 8 and 11 should exchange the Marlboro Housing Development for Coney Island and a small part of Midwood. The specific plan offered by defendants to accomplish this change does not suggest an even population swap and, thus, is unconstitutional as proposed. Moreover, any change to move the Marlboro Housing Development would detract from the compactness of Recommended District 8 by creating a "finger" reaching up from Coney Island. Given the weakness of the core-preservation argument, and the difficulties with the defendants' proposed alternative, we decline to alter the Recommended Plan's entirely logical border between Districts 8 and 11.

Second, the Senate Majority Defendants argue that Recommended District 19, which covers much of the state's eastern border with Connecticut, Massachusetts, and Vermont, fails to preserve the core of existing district 20.
27 But defendants' proposal for this district is *27 far less compact than Recommended District 19, perhaps because their attempt to preserve the oddly shaped existing district 20 results in another oddly shaped district.

As with Long Island's Recommended Districts 2 and 3, discussed supra in Part II.B.1.a, we place greater weight on compactness and, therefore, reject defendants' core-preservation objection to Recommended District 19.

Finally, the Senate Majority Defendants propose small changes to the boundaries of Recommended Districts 23, 25, and 27 to unite towns and counties in the western part of the state. These suggestions are logical and modest, and we have adopted them. See supra n.5.

2. Drayton and Ramos Intervenors

The Drayton and Ramos Intervenors urge us to remove the Brooklyn neighborhoods of Greenpoint and east and central Williamsburg from Recommended District 12 and to place them in Recommended District 7. They do not contend that such a change is necessary to unite a compact community of interest. They seek only to align the Greenpoint and east and central Williamsburg communities with other constituents who, the intervernors submit, share common socioeconomic features and, historically, congressional representation. See Drayton Intervenors' Letter (Mar. 14, 2012), Dkt. Entry 226; Ramos Intervenors' Letter (Mar. 14, 2012), Dkt. Entry 228. We decline to adopt this suggested change.

First, these intervenors offer no record evidence that the Greenpoint and Williamsburg communities have more in common with the communities of Recommended District 7 than with those of Recommended District 12.

28 Although intervenors posit that *28 Greenpoint and Williamsburg residents lack affinity with the distant wealthier enclaves of Manhattan in Recommended District 12, they do not contend that Greenpoint and Williamsburg residents lack commonality with other neighborhoods in the Recommended District, such as Long Island City and Astoria to their immediate north. Nor do these intervenors demonstrate Greenpoint and Williamsburg's commonality with distant neighborhoods they would join in Recommended District 7, such as Chinatown and Woodhaven. Insofar as intervenors express a need for any representative of Greenpoint and Williamsburg to be attentive to ongoing environmental clean-up projects in Newtown Creek, there is no record basis for concluding that such attention could not be secured if these neighborhoods were included in Recommended District 12, which spans both shores of the East River, the waterway into which the creek's pollution would continue to be dispersed if not remedied.

Second, the Drayton and Ramos Intervenors do not contend that their suggested change will improve the compactness, contiguity, or respect for political subdivisions of either Recommended District 7 or 12. Indeed, the urged change could well upset the balance of those traditional redistricting factors in surrounding districts, whose boundaries would have to be redrawn to accommodate transplanting Greenpoint's and Williamsburg's sizeable populations, representing tens of thousands of people, from Recommended District 12 to Recommended District 7.

29 Third, the transfer of such a sizeable population could require population adjustments *29 to as many as six surrounding districts to maintain the equal populations mandated by the Constitution. Moreover, these surrounding districts are within jurisdictions covered under Section 5 of the Voting Rights Act and, in the case of Recommended Districts 8 and 9, are majority-minority districts under Section 2. Thus, moving Greenpoint and Williamsburg would entail a complex rearrangement of the surrounding districts to ensure that there is no retrogression in minority voting strength and that majority-minority districts are maintained. In these circumstances, we conclude that federal law mandates caution about adopting the urged discretionary change.

Because the totality of these concerns outweighs the arguments advanced by the Drayton and Ramos Intervenors, we maintain Recommended Districts 7 and 12 without change in the Ordered Plan.

3. Preserving a Jewish Community

Turning now to objections and comments from members of the public, we begin with a concern raised by the Orthodox Alliance for Liberty ("Orthodox Alliance"), which describes itself as "an alliance of Orthodox Jewish grass roots advocacy groups based in the New York City area." Orthodox Alliance Letter to District Court at 1 (Mar. 13, 2012), Dkt. Entry 240, Ex. 17. The Orthodox Alliance argues that congressional district lines, primarily but not exclusively in South Brooklyn, historically have caused Orthodox Jewish communities in the New York City area to be "egregiously" under-represented in Congress. Id. The Orthodox Alliance maintains
30 that past plans have "divided into oblivion" and *30 "gerrymandered into political irrelevance" these communities by splitting them among too many separate congressional districts, Orthodox Alliance Letter to Magistrate Judge Mann at 2 (Mar. 2, 2012), Dkt. Entry 222; and that the Recommended Plan "aggravates the injustice" by breaking up "the large Orthodox Jewish neighborhood of Flatbush" and "subsum[ing]" it "in neighboring African American communities," and by splitting Orthodox communities in Queens County and in Nassau County among multiple districts, Orthodox Letter to District Court at 2 (Mar. 13, 2012), Dkt. Entry 240, Ex. 17. Thus, the Orthodox Alliance submitted its own plan to the magistrate judge and now objects to the Recommended Plan for failing to adopt its proposal. It asks this court to redraw a number of congressional districts in Kings, Queens, and Nassau Counties to unify Orthodox Jewish neighborhoods into as few congressional districts as possible.

At the March 15 hearing, a representative of the Orthodox Alliance and several other members of the public spoke in support of the objection, or urged other changes to the Recommended Plan in furtherance of the Alliance's goal of unifying Orthodox Jewish communities within fewer congressional districts. In addition, two speakers argued that the court should also avoid splitting Russian Jewish neighborhoods across districts and splitting Russian Jewish neighborhoods from Orthodox Jewish neighborhoods. We have carefully considered all of these arguments as well as the Orthodox Alliance proposal, and we conclude that we cannot adopt the requested changes.

31 We have considerable sympathy for the concerns expressed by these commentators *31 about the Recommended Plan and can easily take judicial notice of the fact that a number of distinctive Jewish communities exist in the areas in question, that these communities are significant and growing in population, and that, in some configuration, these communities (and particularly the Orthodox communities) share significant commonalities of interest. Nevertheless, as explained in more detail below, the record before us does not contain adequate information either to evaluate fully the objectors' claims, or to attempt to map the contours of the neighborhoods to which they refer with the precision necessary for redistricting purposes. Even assuming for the sake of argument the theoretical possibility of drawing lines on a map that would incorporate more of these communities into a contiguous district than does the Recommended Plan, the difficulties of doing so under the circumstances confronting us make it impossible either to adopt the plan proposed by the Orthodox Alliance or to revise the Recommended Plan ourselves in a way that would satisfy the concerns of these objectors and still be consistent with constitutional and statutory requirements.

First, and most fundamentally, the plan submitted by the Orthodox Alliance cannot be adopted because—as some of the plan's proponents conceded at the public hearing—its proposed districts vary too widely from the population numbers required to satisfy the Constitution's requirement of "one person, one vote."[23] See, e.g.,
32 Mar. 15, 2012 Hr'g Tr. at *32 108-09, 154-55. Some speakers argued that the court could fix this defect in the Orthodox Alliance plan by various means. See, e.g., id. at 108-09. That turns out to be an all-but-impossible

task under the conditions facing the court, for reasons we discuss in the following paragraph. In any event, the fact remains that the only actual plan presented by those raising the noted concerns is unconstitutional as submitted and, thus, must be rejected for that reason alone.

23 The Recommended Plan achieves populations of 717,707 or 717,708 in every district. The Orthodox Alliance plan, by contrast, would create districts with widely varying populations, from 707,204 in District 4 to 729,054 in District 8.

Second, while we have grouped together a number of commentators' concerns pertaining to the treatment of "Jewish communities," that characterization oversimplifies a number of distinct but overlapping concerns and masks significant differences in the problems presented by various objectors. Thus, while the Orthodox Alliance emphasizes the specific concerns of Orthodox Jewish communities, other speakers concentrated on the concerns of Russian Jewish communities in South Brooklyn. Still others proposed larger concerns about Jewish voters generally, and some commentators presented combinations of concerns. The proposed solutions also varied. One public official noted that the Orthodox population was insufficient to constitute a majority in any single district. He suggested that the Recommended Plan adequately concentrated what he characterized as about half of the Orthodox residents of South Brooklyn (those residing in Borough Park) in Recommended District 10, but he argued that more easterly residents were divided among several districts and could beneficially be unified. See id. at 183-86. Still other speakers proposed linking Orthodox communities with
33 Russian Jewish communities; with other groups of ethnically *33 or religiously Jewish residents in other parts of Queens, Brooklyn, or Nassau; or with other groups that purportedly share conservative political values with members of the Orthodox communities. These divergences suggest the difficulties, even under ideal conditions, of identifying and satisfying the particular concerns of the objectors.

Third, the record of this case is not in any event adequate for us to evaluate fully these concerns and determine whether a plan could be created that both satisfies them and complies with constitutional and statutory mandates. While we can take judicial notice of the existence and vibrancy of a number of Orthodox communities in Brooklyn and other counties, we can similarly take notice that, as with other neighborhoods in New York, even highly distinctive, concentrated, and cohesive population groupings most often exist cheek-by-jowl with other, quite different neighborhoods. Several Orthodox areas exist, close to and separated by communities of widely divergent natures.[24] Census data—the primary concrete information available in the record for us to perform our task—does not reflect information about religion and, thus, does not permit us to identify whether a particular census block is part of an "Orthodox Jewish" neighborhood.[25] Such precision is
34 necessary, however, in the *34 drawing of district lines. Its absence here is all the more noteworthy because, at the March 15 hearing, objectors presented different, and sometimes conflicting, descriptions of the locations, boundaries, and "cores" of Orthodox Jewish and Russian Jewish neighborhoods in the New York City area.[26] As we have repeatedly emphasized, the knowledge required to identify the boundaries of a community of interest, and the ability to make essentially political decisions about how best to do so, reside in the legislature, not in a court required to operate by the most neutral principles it can devise, using often dry mathematical data. See supra Part II.A.4.c.

24 Indeed, because some of the Orthodox Jewish and Russian Jewish communities identified by the Orthodox Alliance and its supporters are geographically distant from each other, unifying these communities (particularly those outside of South Brooklyn) within single districts would create significant contiguity and compactness problems.

25 One objector argued that Orthodox neighborhoods could be identified from census data by noting areas in which there was a significant spread between the percentage of white residents and the percentage of voting age white residents, because Orthodox families have more children than other population groups. See Mar. 15, 2012 Hr'g Tr. at 135. Even if

Favors v. Cuomo

Decided Feb 13, 2012

DOCKET #11-cv-5632(DLI)(RLM)

02-13-2012

MARK A. FAVORS, HOWARD LIEB, LILLIE H. GALAN, EDWARD A. MULRAINE, WARREN SHREIBER, and WEYMAN A. CAREY, Plaintiffs, DONNA KAYE DRAYTON, EDWIN ELLIS, AIDA FORREST, GENE A. JOHNSON, JOY WOOLLEY, SHEILA WRIGHT, LINDA LEE, SHING CHOR CHUNG, JULIA YANG, JUNG HO HONG, JUAN RAMOS, NICK CHAVARRIA, GRACIELA HEYMANN, SANDRA MARTINEZ, EDWIN ROLDAN, and MANOLIN TIRADO, Intervenor Plaintiffs, v. ANDREW M.CUOMO, as Governor of the State of New York, ERIC T. SCHNEIDERMAN1, as Attorney General of the State of New York, ROBERT J. DUFFY, as President of the Senate of the State of New York, DEAN G. SKELOS, as Majority Leader and President Pro Tempore of the Senate of the State of New York, SHELDON SILVER, as Speaker of the Assembly of the State of New York, JOHN L. SAMPSON, as Minority Leader of the Senate of the State of New York, BRIAN M. KOLB, as Minority Leader of the Assembly of the State of New York, the NEW YORK STATE LEGISLATIVE TASK FORCE ON DEMOGRAPHIC RESEARCH AND APPORTIONMENT ("LATFOR"), JOHN J. McENENY, as Member of LATFOR, ROBERT OAKS, as Member of LATFOR, ROMAN HEDGES, as Member of LATFOR, MICHAEL F. NOZZOLIO, as Member of LATFOR, MARTIN MALAVE DILAN, as Member of LATFOR, and WELQUIS R. LOPEZ, as Member of LATOR, Defendants.

DORA L. IRIZARRY

DISTRICT COURT'S REQUEST TO CHIEF JUDGE OF THE SECOND CIRCUIT COURT OF APPEALS FOR APPOINTMENT OF A THREE-JUDGE PANEL PURSUANT TO 28 U.S.C. §2284(b)

2 *2 **DORA L. IRIZARRY , United States District Judge:**

By complaint filed on November 17, 2011, plaintiffs seek the court's appointment of a Special Master to effectuate the independent redistricting of New York State's Senate, Assembly and congressional districts based upon standardized, fair criteria such as population equality, contiguity of districts, fair representation of minority groups, respect for political subdivisions (such as counties and towns), compactness of districts and preservation of communities of interest. *See* Compl. ¶¶ 2, 5. The complaint, *inter alia,* alleges violations of Section 5 of the Voting Rights Act of 1965, 42 U.S.C. §1973, *et. seq.,* which includes defendants' non-compliance with New York's "Prisoner Reallocation Law" of 2010 (N.Y. Correction Law § 71 (8) (McKinney 2011)).

By letter dated December 2, 2011, plaintiffs requested that this court notify the Chief Judge of the Second Circuit Court of Appeals ("Chief Circuit Judge") that a three-judge court should be designated to hear this case, pursuant to 28 U.S.C. §2284(b). (Docket Entry #2) By Electronic Order dated December 6, 2011, the court directed defendants to show cause at a hearing to be held on December 12, 2011, why the court should not make such a request of the Chief Circuit Judge and directed the Clerk of the Court to send a copy of said Electronic Order forthwith to the Chief Circuit Judge.[2] By letters dated December 8 and 9, 2011 *(See* Docket Entries #9, 13, 16, and 20), the defendants did not oppose the convening of the three-judge panel. However, most of the defendants requested that the case not proceed pending this court's determination of the defendants' motions to dismiss the complaint, which were to be filed imminently. Accordingly, by Electronic Order dated December 20, 2011, plaintiffs were directed to show cause no later than December 28, 2011 as to whether they objected to this court deciding the motions to dismiss before requesting that the Chief Circuit Judge appoint a
3 three- *3 judge panel. By letter dated December 27, 2011, plaintiffs agreed that, as defendants' motions to dismiss only addressed the ripeness of the issues presented, this court's prompt consideration of the motions to dismiss prior to the convening of the three-judge panel would further expedite the resolution of this dispute. *(See,* Docket Entry #36, 70).[3] As of February 3, 2012, all motions to dismiss are fully briefed,[4] and are *sub judice.*

2 By Docket Entry dated December 7, 2011, the Court Clerk verified the mailing of this Court's December 6th Electronic Order to the Chief Circuit Judge.

3 Defendant Kolb had moved to dismiss on substantive constitutional grounds of equal protection and due process, as well as procedural issues of ripeness, but subsequently withdrew the constitutional claims, without prejudice, upon objection by plaintiffs. (See Docket Entries #62, 69)

4 Defendants Cuomo and Duffy have not filed a motion to dismiss, nor have they joined in any of the other defendants' motions to dismiss. Instead, they have chosen to interpose an answer once the motions to dismiss are decided. *(See* Docket Entry #47).

While it was the original intention of this court to proceed to decide the motions to dismiss *before* requesting that the Chief Circuit Judge appoint a three-judge panel, certain recent events have made it necessary, in this court's view, to make the request now.

As the Court may be aware, on January 27, 2012, the Hon. Gary L. Sharpe, Chief Judge of the United States District Court for the Northern District of New York, issued a decision in the case of *United States of America v. State of New York, et. al.,* 10-cv-1214, which, *inter alia,* set June 26, 2012 as the date for New York's congressional primary election, in order for New York to comply with the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) of 1986, 42 U.S.C. §§1973ff to 1973ff-7, as amended by the Military and Overseas Voter Empowerment (MOVE) Act, Pub. L. No. 111-84, subtitle H, §§575-589, 123 Stat. 2190, 2318-2335 (2009) ("the NDNY case"). By letter dated January 30, 2012, plaintiffs assert that this is the earliest primary election date contemplated by the parties to the instant action and it requires the candidate petitioning period to begin on March 20, 2012. (Docket Entry #65) Defendants Skelos, Silver, McEneny, Hedges, Nozzolio, and Lopez disagree contending that Judge Sharpe has no jurisdiction over New York's primaries for the State Assembly and Senate; any court intervention in ongoing state legislative redistricting efforts would be
4 premature since the *4 September state primaries are still months away; and, even under federal law and as Judge Sharpe's decision recognizes, the states may set their own congressional primary dates so long as they are no less than 80 days before the general election, *i.e.,* by August 18th. Defendants contend there is still ample time for either the New York State legislature or a special master to draw up a redistricting plan.

Subsequently, however, by Order dated February 9, 2012 in the NDNY case, Judge Sharpe formally ordered that the candidate petitioning period for New York's congressional primary elections begin on March 20, 2012. Judge Sharpe expressly adopted a political calendar that he attached to his opinion. *See, United States of America v. State of New York, et. al.*, 10-cv-1214, ECF Docket Entry #64 (Feb. 9, 2012). As plaintiffs note in their February 10, 2012 letter to the undersigned, no congressional lines have been proposed through New York's legislative process much less adopted even though the petitioning period is less than six weeks away. (Docket Entry #72). In their various submissions, plaintiffs have pointed to the uncertainty of candidates as to the boundaries of the districts they will be raising funds and campaigning in and to the fact that, pursuant to the 2010 Census, New York is entitled to two *less* representatives in the House of Representatives (27) than the number assessed pursuant to the 2000 Census (29) and yet congressional districts have not been drawn, despite the impact that Judge Sharpe's decision will have on federal elections. Paragraphs 4 and 5 of the "TABLE OF POLITICAL CALENDAR EVENTS ADJUSTED TO COMPLY WITH COURT ORDER IMPLEMENTING THE MOVE ACT", attached to Judge Sharpe's February 9th decision, punctuate the urgency of the current state of inaction in the New York State Legislature concerning redistricting:

> The issue of redistricting all state and federal district lines is *not addressed by this calendar;* however, the calendar would be *negatively impacted* by a failure to complete redistricting necessary for ballot access to occur.
> This proposed calendar, once adopted, requires DOJ Section 5 pre-clearance which may also impact implementation.

5 *5 (emphasis added).

Notably, defendants, in their motions to dismiss, simply rely on the history of past redistricting legislation that was passed and signed into law at the eleventh hour for support of their position that the appointment of a three-judge panel is premature at this point. They point to no affirmative steps being taken by the New York State Legislature at this time or that will be taken in the near future to pass redistricting legislation that will comply with both the New York State and United States Constitutions and New York and Federal statutes governing these issues. Notably, as plaintiffs point out in their motion opposition papers, in 1992 and 2002, the New York State Legislature acted only after there was judicial intervention. *See Diaz v. Silver,* 978 F. Supp. 96, 99 (E.D.N.Y. 1997); *Puerto Rican Legal Def. & Educ. Fund, Inc. v. Gantt,* 796 F. Supp. 681, 684-86 (E.D.N.Y. 1992); *Rodriguez v. Pataki,* 308 F. Supp. 2d 346, 355-58 (S.D.N.Y. 2004).

Wherefore, for the reasons set forth above, it is hereby respectfully requested by this court, that the Chief Judge of the Second Circuit Court of Appeals appoint a three-judge panel to preside over the substantive claims presented by this action and appoint a Special Master to oversee and draw up a redistricting plan that is in compliance with federal and state constitutional and statutory law.[5]

> [5] It is the intention of this court to proceed with review of the motions to dismiss and resolve them in the interim. The court is mindful that the three-judge panel may, at any time, review its subject matter jurisdiction.
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This court is available at any time to address any inquiries the Chief Circuit Judge may have concerning this matter.

RESPECTFULLY SUBMITTED THIS:

13th day of February, 2012

Brooklyn, New York

_____

DORA L. IRIZARRY

United States District Judge

this sociological generalization is accurate—a proposition that we cannot test on the underlying record—it is obviously impractical to perform that kind of calculation under the constraints facing us.

26 To illustrate the divergence between professed local knowledge and the official data available to the court, one public commentator emphasized his view that the core of a cohesive Orthodox community was "Flatbush," but agreed that what he meant by the term is "not what's on the map as Flatbush." See Mar. 15, 2012 Hr'g Tr. at 88. Indeed, his definition is quite different from the area designated as Flatbush by New York City's Community District Profiles. See N.Y. City Dep't of City Planning, Community District Profiles (Brooklyn Community District 17), http://www.nyc.gov/html/dcp/html/lucds/cdstart.shtml (last visited Mar. 18, 2012). The speaker may well be right about local usage of the term within the Orthodox community, but it is not possible for the court to identify the contours of a neighborhood, or to consider objections to the Recommended Plan's treatment of that neighborhood, under these circumstances.

Finally, even if these formidable difficulties could somehow be overcome, the proposals before us, like other objections that focus specifically on the aspirations of individual communities and seek the creation of particularized districts tailored to their interests, fail to take into account the ripple effects entailed in
35 configuring a district to meet *35 their priorities. Some objectors contended that the Brooklyn communities that they want to unite are located in as many as five Recommended Districts. Accommodating the objectors could require completely reconfiguring not only those districts, but a number of others bordering them. In addition to presenting constitutional and statutory challenges, such widespread changes risk entirely unpredictable effects on residents satisfied with the Recommended Plan, who might have valid unanticipated objections to the reconfiguration. Like the magistrate judge, we have carefully considered the objections presented, and the implications of the Orthodox Alliance's proposals. We conclude that there is no way to adopt those and similar proposals while complying with the constitutional mandate of "one person, one vote," the Voting Rights Act, and the redistricting principles of contiguity and compactness. Accordingly, we do not adopt these objectors' proposals, and we conclude that, on the present record, the objections do not provide sufficient reason not to adopt the Recommended Plan.

4. Dominican American National Roundtable

The court received objections, through both written submissions and oral statements made at the March 15 hearing, from members of the Dominican American community requesting that the court revise the Recommended Plan to conform to a map proposed by non-party Dominican American National Roundtable ("DANR"), which creates a Hispanic majority district that snakes through northwestern Manhattan, northern and eastern sections of the Bronx, and southward into the Corona, Jackson Heights, Woodside neighborhoods
36 of *36 Queens (the "DANR Plan"). See DANR Objection (Mar. 13, 2012), Dkt. Entry 240, Ex. 7. DANR argues that this proposed district better unites Hispanic communities, whereas Recommended District 13 fuses Harlem and the rest of northern Manhattan with the Kingsbridge section of the Bronx, purportedly putting together disparate African American and Hispanic communities. DANR contends that the magistrate judge erred in not considering its partial plan and claims that the creation of the Recommended Plan was unduly rushed. DANR requests that the court either adopt its proposed district or remand this matter to the magistrate judge for further proceedings.

We understand and are sympathetic to the concerns animating support for the DANR Plan, in much the same way that we understand and are sympathetic to the concerns animating arguments by members of Jewish communities seeking to have district lines drawn to enhance their electoral voice. See supra Part II.B.3. Upon careful consideration of the DANR Plan, however, the court is not persuaded to adopt the proposal.

First, DANR's claim that the Recommended Plan effectively "cracks" the Hispanic community and dilutes its vote is not supported by the record. The Recommended Plan does not retrogress and, in fact, increases the Hispanic voting age population ("VAP") percentage from 43.8% in existing district 15 to 52.7% in Recommended District 13, thereby adding a second majority-minority Hispanic congressional district in New
37 York State. See Persily *37 Aff., App. C.[27] At the same time, the Recommended Plan effectively maintains the percentage of Hispanic VAP in the single majority-minority Hispanic congressional district in the existing plan, see Persily Aff., App. C (showing 65.3% Hispanic VAP in existing district 16, and 64.3% Hispanic VAP in Recommended District 15), as well as in the existing Hispanic-plurality district from which DANR's proposed district would cull voters, see id. (showing 42.1% Hispanic VAP in existing district 7, and 45.0% Hispanic VAP in Recommended District 14).[28] These facts belie DANR's claim that the Recommended Plan simply maintains the status quo and fails to increase the ability of a growing Hispanic community to obtain political representation, or, worse, dilutes the voting power of that community.

27 This increase in the proportion of Hispanic voters reflects the reality of the fast-changing demographics of New York City, New York State and, indeed, the country, where Hispanics are the fastest growing demographic group. See Michael Martinez & David Ariosto, Hispanic Population Exceeds 50 Million, Firmly Nation's No. 2 Group, available at http://articles.cnn.com/2011-03-24/us/census.hispanics_1_hispanic-population-illegal-immigration-foreign-born, Mar. 24, 2011 (last visited Mar. 18, 2012).

28 The Recommended Plan also maintains the percentage of Hispanic VAP in the remaining existing congressional district with a Hispanic plurality. See Persily Aff., App. C (showing 41.4% Hispanic VAP in existing district 12, and 41.5% Hispanic VAP in Recommended District 7).

Second, DANR's proposed district is barely contiguous and not compact, factors that militate against changes to a carefully crafted Recommended Plan that we find strengthens, rather than dilutes, the electoral voice of the Hispanic population. But beyond these concerns, DANR proposes a district so oddly shaped that, if we were to
38 adopt it, an inference *38 might arise that the court had segregated large numbers of Hispanic voters into a particular congressional district because of their nationality or ethnicity. See Miller v. Johnson, 515 U.S. at 916-17; Shaw v. Reno, 509 U.S. at 644-49. Indeed, statements made at the March 15 hearing in support of the DANR Plan could be construed to urge the creation of a "Dominican District." See, e.g., Mar. 15, 2012 Hr'g Tr. at 77-78; id. at 140-42. We ascribe no improper purpose to any of the speakers, each of whom disrupted his or her daily routine and waited patiently to address the court. We emphasize only our own constitutional obligation to protect against discrimination in redistricting while at the same time avoiding the use of race or ethnicity as "the predominant factor" in delineating a district. Miller v. Johnson, 515 U.S. at 916.

Third, DANR's proposed district would be carved out of a densely populated area and potentially traverse five Recommended Districts. This would require not only a reconfiguration of these five Recommended Districts, but of other adjacent districts as well. As we have noted with respect to other proposals for changes that would have sizeable ripple effects throughout the Recommended Plan, this presents the court with major constitutional challenges in ensuring that the affected districts contain equal populations and that the population mix of these districts avoids minority vote dilution or retrogression. Neither the DANR Plan nor its supporters have demonstrated to the court how this could be done.

DANR cannot minimize our concerns with its proposal by claiming that it was denied access to the redistricting
39 process or that the magistrate judge only considered statewide *39 plans. The record is clearly to the contrary. In its own letter objecting to the Report and Recommendation, DANR details all the submissions it made to the magistrate judge. See DANR Objection at 1 (Mar. 13, 2012), Dkt. Entry 240, Ex. 7. Further, at the March 5, 2012 hearing before the magistrate judge, DANR's counsel, in urging adoption of its proposed partial plan,

thanked Magistrate Judge Mann for "making the process open to the public, to people who frequently don't have a chance to have their voices heard." Mar. 5, 2012 Hr'g Tr. at 116 (Mar. 8, 2012), Dkt. Entry 221. The magistrate judge's consideration of the DANR Plan is evident both in her Report and in the accompanying affidavit of Dr. Persily. See Report at 2 (incorporating Dr. Persily's affidavit); Persily Aff. 149, 159 (describing submission by Voting Rights for All, which included DANR proposed partial plan, and explaining that rejected suggestions "would likely entail violations of the Constitution or VRA," among other problems).

In any event, as noted supra n.12, the court has itself carefully reviewed all plans, whether statewide or partial, submitted by any party or member of the public. This includes the DANR Plan. In short, we have not categorically rejected any plan on the ground that it was partial. Rather, we have done our best to determine whether any statewide or partial plan identifies a remediable weakness in the Recommended Plan. Nevertheless, like the magistrate judge, we note that partial plans, by virtue of their narrower focus, frequently fail to consider the ripple effect of a discrete proposal on surrounding districts. The need to reconfigure
40 adjoining districts often presents a variety of problems, some of constitutional *40 or statutory dimension. DANR's partial plan presents such insurmountable problems, and it is for this reason that we do not adopt it.

Nor is there merit to DANR's claim that more time is needed to craft a fair and responsible redistricting plan. To be sure, the court has had to work on a punishing schedule to achieve the Ordered Plan, but the four judicial officers who have adhered to that schedule (along with Dr. Persily) have put in the hours necessary to ensure that every aspect of the plan received thorough and careful consideration. In any event, prompt implementation of the Ordered Plan is necessary to permit the 2012 congressional elections to go forward as scheduled in an orderly manner.

The concerns identified with DANR's proposed plan are significant. Meanwhile, we are not persuaded that the Recommended Plan fails to create districts fair to Hispanic voters. Accordingly, we reject DANR's proposal and adopt the Recommended Plan.

5. Objections to Recommended District 13: Harlem and the Bronx

Voting Rights for All, representing a coalition of elected officials and community advocates, including DANR, New York County Democratic Committee Leader Keith L.T. Wright, Assemblyman Carl E. Heastie, and Hazel M. Dukes, President of the NAACP New York State Conference, have objected in writing or at the March 15 hearing to Recommended District 13 on the ground that it would not adequately protect African American voters in existing district 15. See Voting Rights for All Objection (Mar. 14, 2012), Dkt. Entry 240, Ex. 19;
41 Keith L.T. Wright Objection (Mar. 14, 2012), Dkt. Entry 240, Ex. 20; Carl E. Heastie *41 Objection (Mar. 14, 2012), Dkt. Entry 240, Ex. 13; Mar. 15, 2012 Hr'g Tr. at 97-100 (statement of Hazel M. Dukes). Some urge the court to adopt a district proposed by Keith Wright (the "Wright Plan"), to extend the boundaries of existing district 15, which covers Harlem, from Manhattan to the western shore of the Bronx, across the northern Bronx, to the northeastern corner of Bronx County, as well as to two Queens housing projects near the Queensboro Bridge and into Westchester County. Like DANR's proposed district, the Wright Plan is oddly shaped and lacks compactness and contiguity. As such, it is inferior to Recommended District 13.

Recommended District 13 achieves population equality while avoiding dilution of African American voting strength by joining Harlem with East or "Spanish" Harlem and adjacent areas of the Bronx. See Persily Aff. ¶ 139, App. C. This results in a higher percentage of Hispanic voters in Recommended District 13 (52.7%) than had been in existing district 15 (43.8%). See id. ¶¶ 120-21, App. C. But it does not decrease African American voting strength in Recommended District 13. On the contrary, African Americans increase their voting population share in the district to 35.7%, compared to 34.1% in existing district 15, see id., even though the

district had to gain 77,834 people in order to comply with the constitutional mandate of "one person, one vote," see Persily Aff. at 30, tbl. I. The Recommended Plan thus avoids retrogression with respect to the African
42 American population while also increasing the Hispanic population share of the district. Moreover, in *42 contrast to other proposals received by the court, the Recommended Plan achieves both of these goals without splitting Harlem between districts.

Accordingly, the court adopts Recommended District 13 without change.

6. Remaining Objections

We have considered the remaining objections by the parties and members of the public, and we conclude that none warrants any change to the Recommended Plan.

III. Conclusion

In the face of an outdated congressional districting plan, the application of which would plainly violate the requirements of federal law, and of the New York legislature's complete abdication of its congressional redistricting duty, this court is obliged not only to recognize a violation of law but also to create a new redistricting plan to ensure against the disenfranchisement of state voters in the 2012 congressional elections.

Judicial redistricting has correctly been described as an "unwelcome obligation." Conner v. Finch, 431 U.S. 407, 415 (1977); accord Perry v. Perez, 132 S. Ct. at 940; Puerto Rican Legal Def. & Educ. Fund, Inc. v. Gantt, 796 F. Supp. at 684. That is particularly so in this case because of the extremely limited time frame within which the court has had to create the Ordered Plan. But the task is unwelcome for reasons that go beyond the practical to implicate the proper division of power within our federal republic. While congressional district lines must always be drawn to conform to federal law, the power to draw such lines is committed in the first
43 instance to the states, not to the federal government, and is properly *43 exercised by the most democratic branch of state government, the legislature. See U.S. Const. art. I, § 2. Indeed, when such power is duly exercised, a federal court's review authority is limited to ensuring an enacted plan's compliance with federal law, and will not extend to state policy choices. See Perry v. Perez, 132 S. Ct. at 941. But when, as here, a state completely abdicates its congressional redistricting duties, it effectively cedes state power to the federal government. Further, it transfers power that should be exercised by democratic bodies to a judiciary ill equipped to resolve competing policy arguments. Such a twin recalibration of important power balances in a federal republic is itself "unwelcome."

In prior redistricting challenges, New York has avoided such a wholesale transfer of state legislative power to the federal courts through last-minute enactments of new redistricting plans. In this case, however, New York has been willing to let even the last minute pass and to abdicate the whole of its redistricting power to a reluctant federal court. Confronted with this unwelcome failure of state government, and consistent with its obligations under federal law, the court hereby

(1) GRANTS judgment in favor of plaintiffs, declaring that New York's existing plan for delineating congressional districts fails to comply with the Constitution; and accordingly,

(2) ADOPTS the March 12, 2012 Report of Magistrate Judge Mann in its entirety and the Recommended Plan referenced in the Report with the changes indicated in note 5 of this opinion and reflected in the attached
44 Ordered Plan; *44

(3) ORDERS defendants promptly (a) to implement the attached Ordered Plan so that the 2012 elections for the House of Representatives can go forward as scheduled, and (b) to confirm to the court in writing, on or before noon on Wednesday, March 21, 2012, that they have taken the steps necessary to do so;[29] and

[29] The parties—as well as interested members of the public—may access the block equivalency data files through a link that will be provided on the court's public website, located at www.nyed.uscourts.gov, or at the following two addresses: https://www.nyed.uscourts.gov/pub/docs/cv/11-5632/panel/final/FINAL%20COURT%20 PLAN.txt; https://www.nyed.uscourts.gov/pub/docs/cv/1 1 - 5632/panel/final/ FINAL%20COURT%20PLAN.DCC.

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(4) DIRECTS all parties to appear before the court for a status conference on Wednesday, March 21, 2012, at 3:00 p.m., in the Ceremonial Courtroom on the second floor of the Brooklyn Federal Courthouse, located at 225 Cadman Plaza East.

SO ORDERED.

DATED: Brooklyn, New York

March 19, 2012

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REENA RAGGI

United States Circuit Judge

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GERARD E. LYNCH

United States Circuit Judge

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DORA L. IRIZARRY

United States District Judge