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May 18, 2022

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

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

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

Dear Special Master Cervas:

We represent Senate Majority Leader Andrea Stewart-Cousins. Together with counsel for the Speaker of the Assembly, who joins in this letter, we write to comment briefly on a few problematic choices reflected in your proposed Senate plan and to urge you in the strongest terms to correct the plainly unconstitutional composition of Senate Districts 17 and 26.

We maintain that the Senate plan enacted by the Legislature is superior to the proposed Senate plan for the reasons set forth in our May 4, 2022 submission (Dkt. No. 376). In particular, we highlight two problematic choices reflected in the proposed plan, which could and should be cured by implementing the enacted districts for those regions.

In District 60, the proposed plan carves out a significant portion of the City of Buffalo and combines it with far-reaching rural communities. Combining this urban center – which forms a substantial part of the second largest city in New York State – with dramatically different communities in southern Erie County runs contrary to the constitutional principles set forth in article III. Similarly, Districts 31, 32, and 33 in the Bronx make substantial, unnecessary changes to the cores of existing districts in derogation of the voting strength of minority communities. An appropriate solution to both of these problems is to incorporate the enacted Senate plan for the Buffalo region and for the Bronx.

The clear constitutional violation reflected in the composition of Districts 17 and 26 is even more stark. Fortunately, it is also easy to fix.

With the sole exception of Districts 17¹ and 26, the proposed plan adopts Commission Plan B for the entirety of Brooklyn, the Bronx, Manhattan, and Staten Island, and also Districts 35 and 37 in Westchester. Commission Plan B was approved and proposed to the Legislature by the five Commission Republicans.

Notably, the proposed plan departs sharply from Commission Plan B in Districts 17 and 26. Specifically, you chose to crack both the Chinese-American community in Sunset Park, putting part of it in District 17 and part of it in District 26, and you similarly chose to crack a well-established community of interest in Bay Ridge and Dyker Heights, dividing Bay Ridge between District 17 and District 26, and putting Dyker Heights with the smaller section of Bay Ridge.

There is no apparent lawful basis for any of these changes, which it appears may have been made to manipulate the partisan composition of District 17 so that it would fall closer to the 55% “competitiveness” threshold that you laud in your proposal. We respectfully submit that these changes to Districts 17 and 26 from Commission Plan B are blatantly unconstitutional because they crack well-established communities of interest and dilute racial and language minority voting strength in furtherance of no countervailing constitutional redistricting principle. While the New York Constitution is clear that line-drawers may not purposefully “discourage” competition, it says nothing about affirmatively encouraging competition. Subordinating unequivocal constitutional requirements to preserve minority voting strength and maintain communities of interest for the purpose of manipulating partisan lean is not contemplated or allowed by the Constitution.

These changes to Commission Plan B have understandably caused an outcry from affected communities. Numerous residents of Bay Ridge have protested the gratuitous crack of their neighborhood, which severs Fort Hamilton, removes the neighborhood’s connection to Dyker Heights, and leaves a series of arbitrary, zig-zagging lines throughout Bay Ridge. The Asian-American community has strongly protested the division of Sunset Park, a vibrant, growing Chinatown neighborhood, which was effectively decapitated in the northern portion of the district (this gratuitous change in the Senate plan is particularly hurtful to the community given the similarly problematic division of Asian communities in the proposed congressional plan). The effect of splitting this community is a significant reduction in the Asian population in new District 17 from 49.7% in Commission Plan B to 45.6% in the proposed plan. This reduction may very well be outcome-determinative to the ability of this established community to elect the candidate of its choice, thereby raising very serious and troubling legal questions.

¹ In Commission Plan B, the equivalent to District 17 is District 21. District 26 in Plan B corresponds to District 26 in the proposed plan.

It is important to reiterate that the plan for Districts 17 and 26 that you used as your starting point was proposed by five Republican commissioners. Accordingly, there is no reason to suspect that the district was drawn with an improper purpose to favor Democrats or to make the district less competitive. Rather, the lines proposed in Plan B for District 17 and District 26 respect neighborhoods and communities of interest. To those communities, the harsh effects of your proposed modifications are no different than any other unlawful gerrymander that relies improperly on political data at the expense of local interests.

Fortunately, the fix is straightforward: you should adopt the Commission Plan B proposal for District 17 and District 26, just as you did for every other district in Brooklyn, the Bronx, Manhattan, and Staten Island, and restore the integrity of the communities that are cracked in the proposed plan.

In summary, although we wish that the proposed plan reflected more of what the Legislature's carefully enacted plan accomplished, we appreciate and respect your efforts in this process. We urge you, however, to correct the grievous constitutional violation in District 17 and District 26 when you finalize the lines on Friday, and to consider the superior features of the enacted plan in the Bronx and Buffalo regions.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Alex Gold", with a stylized flourish extending to the right.

Alexander Goldenberg

cc: All Counsel of Record