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December 9, 2011

VIA CM/ECF

Honorable Dora L. Irizarry
United States District Court Judge
United States District Court, Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 12201

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

Dear Judge Irizarry:

We represent Defendant Brian M. Kolb in the above-entitled matter. By this letter, we respectfully respond to the Plaintiff's letter of December 2, 2011 requesting that this Court convene a three-judge Court to adjudicate this matter. Defendant Kolb does not object to the appointment of a three-judge Court to address the merits of this lawsuit, but the appointment should not occur until after the disposition of Defendants' procedural motions.

The provisions of 28 U.S.C. §2284 require that a three-judge Court be convened "when an action is filed challenging the constitutionality of the apportionment of congressional districts or the apportionment of any statewide legislative body." However, it is well established that there must first be "a determination whether the case is ripe for judicial determination or makes a substantial showing that it involves a judicially reviewable order, thus warranting the convening of a three-judge court." *A-1 Coach Tours, Inc. v. United States*, 260 F. Supp. 295, 295-96 (E.D.N.Y. 1966) (citations omitted).

We understand that certain Defendants intend to file a motion to dismiss this lawsuit next week. Per agreement with Plaintiffs' counsel, and subject to Magistrate Judge Mann's approval, Defendant Kolb's time to respond to the complaint is extended to December 28, 2011. Defendant Kolb is still analyzing the complaint and possible defenses, but he too may move to dismiss the lawsuit.

Accordingly, we respectfully urge your Honor to wait to proceed with Plaintiffs' request until after the procedural motions have been decided, and only if the Court determines that this matter should not be dismissed. Further, we join with counsel for

Defendants Dean G. Skelos, Sheldon Silver, John J. McEneny, Roman Hedges, Michael F. Nozzolio, and Welquis R. Lopez in requesting that the hearing scheduled for December 12 be cancelled as unnecessary.

We thank the Court for considering these comments in deciding this matter.

Respectfully submitted,

COUCH WHITE, LLP

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(KL 6431)

KML/mf
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