<u>TESTIMONY OF ESMERALDA SIMMONS, ESQ.</u>

Good afternoon, your honor. My name is Esmeralda Simmons and I am one of the attorneys for Plaintiffs-Interveners Donna K. Drayton et al. Professor Andrew Beveridge and will be presenting today on behalf of these intervenors. I will present to the development of the Unity Map and why we believe it should serve as the benchmark for drawing congressional districts in New York City and the adjacent areas. Dr. Beveridge will provide an analysis of the Unity Maps and the maps presented by the parties in light of the criteria set forth in <u>Rodriguez v. Pataki,</u> 207 F. Supp. 2d 123, 125 (S.D.N.Y. 2002) and in light of the criteria set forth by this Court.

The Unity Map is a non-partisan plan was created as a joint effort of four voting rights advocacy organizations for the protected groups in New York City. In addition, to the Center for Law and Social Justice, these organizations included the Asian American Legal Defense and Education Fund, LatinoJustice and the National Institute for Latino Policy. During the creation process of the UNITY plan all four organizations independently accumulated data on defining communities of interest through meetings with its residents as well as historic sources. When the actual lines were drawn boundaries were mutually agreed upon that took into consideration all community of interest perspectives. The plan

reflects a mutual respect for those communities from the perspective of the Asian and Latino as well as Black communities.

Specifically this includes geographic theaters where any of the communities are in close proximity. In Brooklyn the emerging Asian community of Borough Park is recognized as well as the existing Black community of East Flatbush/Flatbush and the Hispanic community of Sunset Park. The Northeast Brooklyn the communities of Bushwick and Bedford-Stuyvesant were kept whole based upon the feedback we received from the Hispanic as well as Black communities in these areas.

In Queens, the areas of discussion where agreement was reached included Jamaica, Queens Village, Richmond Hill and Ozone Park where both Black and Asian communities of interest reside. In the Bronx, the Williamsbridge/ Co-op City and Norwood neighborhoods were taken into account.   Furthermore it was felt that the Latino and Black Communities of Westchester County should be included within the same Congressional district as the Black Communities of Northern Bronx.

In developing the Unity Map, we endeavored to follow the guidelines set forth by the Court in Rodrig*uez v. Pataki, 207 F. Supp. 2d 123(124 (S.D.N.Y. 2002).* Namely that congressional maps must be substantially equal in population,

compact and contiguous and, last but not least, must comply with the Voting

Rights Act. The Unity Map satisfies each of the requirements.

First, it is substantially equal in population as eleven of its sixteen districts

are exactly equal to the ideal population of 717,707. The other five are within one

person of that average. Second, as will be more fully discussed by Professor

Beveridge, the Unity Map's districts are compact and contiguous.

The Unity Map also complies with the Voting Rights Act.   Although the

Supreme Court has held that redistricting plans prepared and adopted by a federal

court are exempt from Section 5 review, see Connor v. Johnson, 402 U.S. 690, 691

(1971). However, the Court should consider whether the submitted plans are

retrogressive. The Supreme Court has made clear that court-ordered plans must

meet the requirements of Section 2 of the Voting Rights Act. See e.g., Winter v

Brooks, 461 U.S. 921 (1983) (mem). As the Court is aware, Section 2 of the

Voting Rights Act prohibits any state or political subdivision from imposing any

voting qualification, standard, practice or procedure that deprives voters of an

effective opportunity to nominate and elect candidates of choice because of their

race, color or status as a member of a language minority group. 42 U.S.C. Section

1973(a). Generally, in the reapportionment context, Section 2 challenges involve

claims by protected groups that their communities have been "packed" or

"fractured." In brief, "packing" occurs when a minority group is concentrated into

one or more districts so that the group constitutes an overwhelming majority in those districts, thus minimizing the number of districts in which the minority could elect candidates of their choice. See e.g., Voinovich v. Quilter, 507 U.S. 146, 153-54 (1993). "Fracturing", "cracking" or "splitting" occurs when a group of minority voters is broken off from a concentration of minority voters and added to a large majority district. Gingles v. Edmisten, 590 F. Supp. 345, 374-375 (E.D. N. C. 1984), *aff'd in part, rev'd in part sub nom.* Thornburg v. Gingles, 478 U.S. 30 (1986).

Of all of the plans submitted by the parties as well as the non-parties herein, the Unity Map best affords Black, Hispanic and Asian voters the opportunity to elect candidates of their choice and does not have either a retrogressive or a dilutive effect. In the Unity plan there are three Congressional Districts with a Black majority of eligible voters (52-54%). Two are in Central & Southeast Brooklyn; one covers Southeast Queens & Elmont. Two additional districts provide their Black communities with a significant influence, by keeping the populations whole, as part of majority minority districts (32% of eligible voters in each). One is based in Northern Manhattan and wholly contains Harlem. The other is located in the Northern Bronx and Westchester. Unlike, the plans submitted by Common Cause, the Assembly Majority, the Assembly Minority, the Senate Majority and the Rose Intervenors, as detailed in greater detail in Joan P.

Gibbs's recent letter to the Court and in Dr. Beveridge's second declaration, the Unity Plan neither packs, fractures, cracks or splits Black voters and communities. Rather, it is based on careful consideration of existing communities of interest of Black, as well as Hispanic and Asian people, as will be discussed in greater detail co-counsel and provides each of these protected groups with the opportunity to elect the candidates of their choice in those districts where they make up the majority of the voting age population. Similarly, where there is substantial protected group population in a geographic area, but insufficient, whole within a congressional district.

Finally, the Unity Map is nonpartisan, as it was developed without regard incumbency or the political interests of either of the major political parties. By contrast, the plans of the Assembly Majority, the Assembly Minority and the Senate Majority are partisan plans. As such, these plans do not represent the will or sentiment of the Legislature as they have not been adopted by the Legislature. Accordingly, under Perez v. Perry, there is no Legislative plan that is entitled to any deference and the Court is free to adopt the plan that comports with the Constitution and the Voting Rights Act.

Lastly, the fact that the Unity Map is not a map for the entire state of New York is of no moment as it focuses on the areas in which the largest number of Blacks, Asians and Hispanics New York is of no moment as which the largest number of Blacks, Asians and Latinos reside in New York State and the three counties covered by Section 5 of the Voting Rights Act, the Bronx, Brooklyn and

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Kings. We urge the Court to adopt the Unity Map in developing a congressional

plan for New York. Thank you.