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VIA ECF

The Honorable Roanne L. Mann
United States Magistrate Judge
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: *Favors v. Cuomo*, No. 1:11-cv-05632-DLI-RR-GEL (E.D.N.Y.)

Dear Judge Mann:

In response to the Court's Order to Show Cause, the Senate Majority Defendants—New York State Senators Dean G. Skelos and Michael F. Nozzolio, and LATFOR member Welquis R. Lopez—respectfully submit their response to the Court's draft redistricting plan ("Proposed Plan"). In light of the short time to respond to the Proposed Plan, the Senate Majority was not able to comprehensively review the Proposed Plan and, therefore, reserves the right to assert additional objections at a later time. But based on Defendants' analysis today, there are some readily identifiable problems with the Proposed Plan.

Long Island. The proposed districts for Long Island fail to "respect[] the cores of current districts and the communities of interest that have formed around them." *Rodriguez v. Pataki*, No. 02-Civ. 618 (RMB), 2002 WL 1058054, at *6 (S.D.N.Y. May 24, 2002) (internal quotation marks omitted). Districts have traditionally run north to south across the Island. But the Proposed Plan needlessly flips districts 2 and 3 to run east and west along Long Island's northern and southern shores. This change dramatically realigns the existing districts without any apparent basis in traditional redistricting principles: whereas the Senate Majority Plan maintains 89.8% of the core of Rep. Israel's existing district and 82.9% of the core of Rep. King's existing district, *see* Ex B, the Proposed Plan would preserve only 38.8% and 47.3%, respectively, of these districts. *see* Ex A.

Moreover, keeping Smithtown wholly within district 1—rather than dividing it between districts 1 and 3 as the Proposed Plan does—is preferable and consistent with the traditional redistricting principle of respecting political subdivisions.

District 5. The Proposed Plan fails to "preserv[e] the cores of prior districts, and avoid[] contests between incumbent Representatives," *Rodriguez v. Pataki*, 308 F. Supp. 2d 346, 363 (S.D.N.Y. 2004) (quoting *Karcher v. Daggett*, 462 U.S. 725, 740 (1983)), by needlessly pairing incumbents Rep. Meeks and Rep. Turner and by creating an unnecessary open seat in light of this pairing (district 6). At the same time, the Proposed Plan fails to respect communities of interest by dividing among a total of four districts (districts 5, 8, 9, and 10) traditional Russian and Jewish neighborhoods in Brooklyn, and traditional communities of interest in Far Rockaway Peninsula, Howard Beach, and Ozone Park, which also include substantial Jewish populations. These are communities that were previously unified and should remain unified in Rep. Turner's district. In this respect, too, the Proposed Plan fails to respect political subdivisions by needlessly having district 5 cross into Nassau County.

These violations of traditional redistricting principles are completely unnecessary, as the Senate Majority Plan demonstrates. The Senate Majority Plan would not require this incumbent pairing in district 5 and respects communities of interest and political subdivisions, all while avoiding retrogression in surrounding Section 5 districts and ensuring that minorities continue to have an equal opportunity to elect representatives of their choice. *See* Senate Majority Plan Submission at 3-4 (DE 144).

If these traditional principles were violated in an effort to increase the black voting age population (BVAP) in district 5 above 50%, such an increase was unnecessary under the Voting Rights Act. Section 2 does not require the creation of a new majority black district where the new district is not compact, *see LULAC v. Perry*, 548 U.S. 399, 433 (2006); *Abrams v. Johnson*, 521 U.S. 74, 92 (1997). District 5 is not compact because it crosses into Nassau County. This is particularly true since the existing district demonstrates that blacks can elect candidates of choice in districts less than 50% BVAP.

Districts 8 and 11. Traditionally, Marlboro Housing Development and Coney Island have been in the same Congressional district. The Proposed Plan, however, places Marlboro in district 11, and Coney Island in district 8. Moreover, the Proposed Plan splits Midwood between districts. To preserve the cores of existing districts and preserve communities of interest, Marlboro should be placed in district 8, and in exchange, all of Midwood should be located in District 11.

District 19. The Proposed Plan fails to respect the core of district 19 and the communities of interest that have formed around it. Notably, the Proposed Plan omits communities in the Hudson Valley that were traditionally part of this district, including the counties of Warren, Washington, and Saratoga. As a result, the Proposed Plan preserves only 44.1% of Rep. Gibson's prior district, *see* Ex A, as compared to the Senate Majority Plan, which preserved 78.3% of this district, *see* Ex B.

Districts 23 and 27. The Proposed Plan fails to respect political subdivisions by splitting several towns in Wyoming and Livingston Counties. Consistent with traditional redistricting principles, these districts should be redrawn so that Wyoming and Livingston are drawn entirely into District 27, while population from Erie County be drawn into District 23.

The Senate Majority respectfully requests that the Court adopt these modifications to the Proposed Plan so that the final plan comports with, and does not unnecessarily deviate from, traditional redistricting principles.

Respectfully submitted,

/s/ Michael A. Carvin
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cc: All counsel of record (via ECF)