

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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MARK A. FAVORS, HOWARD LEIB, :
LILLIE H. GALAN, EDWARD A. :
MULRAINE, WARREN SCHREIBER, and :
WEYMAN A. CAREY, :

Plaintiffs, :

and :

DONNA KAY DRAYTON, EDWIN ELLIS, :
AIDA FORREST, GENE A. JOHNSON, JOY :
WOOLLEY, and SHELIA WRIGHT, :

Plaintiff-Intervenors, :

and :

LINDA LEE, SHING CHOR CHUNG, JULIA :
YANG, JUNG HO HONG, :

Plaintiff-Intervenors, :

and :

JUAN RAMOS, NICK CHAVARRIA, :
GRACIELA HEYMANN, SANDRA :
MARTINEZ, EDWIN ROLDAN, MANOLIN :
TIRADO, :

Plaintiff-Intervenors, :

and :

LINDA ROSE, EVERET MILLS, ANTHONY :
HOFFMANN, KIM THOMPSON- :
WEREKOH, CARLOTTA BISHOP, CAROL :
RINZLER, GEORGE STAMATIADES, :
JOSEPHINE RODRIGUEZ, and SCOTT :
AUSTER, :

Plaintiff-Intervenors, :

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

Case No. 1:11-cv-05632 (DLI)(RR)(GEL)

ROSE INTERVENORS' SUPPLEMENTAL
BRIEF IN RESPONSE TO ORDER TO
SHOW CAUSE

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 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.

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“When faced with the necessity of drawing district lines by judicial order, a court, as a general rule, should be guided by the legislative policies underlying the existing plan.” *Abrams v. Johnson*, 521 U.S. 74, 79 (1997). There is no dispute that “the legislative policies underlying the existing plan” in New York include “preserving the ‘cores’ of existing districts, preventing contests between incumbents,” *Rodriguez v. Pataki*, 308 F. Supp. 2d 346, 352 (S.D.N.Y. 2004), “respect for traditional boundaries, [and] maintenance of communities of interest.” *Puerto Rican Legal Def. & Educ. Fund, Inc. v. Gantt*, 796 F. Supp. 681, 687 (E.D.N.Y. 1992). While the Magistrate’s proposed plan respects these principles in many instances, it violates them in others.

For example, on Long Island the Magistrate’s plan commendably preserves 97% of prior District 1, and the Rose Intervenors have no objection to that district. As to the remaining districts on Long Island, the Rose Intervenors recognize that population shifts made some changes necessary, but believe that small changes to the proposed plan could better preserve communities of interest. Specifically, Representative Israel has long represented the communities of Wyandanch, Babylon, and Brentwood in central Long Island, but the proposed plan transfers those communities into the new District 2, represented by Representative King. These communities have strong ties to Representative Israel and to other communities in

proposed District 3. In particular, the growing African-American populations in these central Long Island communities have strong ties to the sizable African-American population in Huntington Station in proposed District 3, and the growing Latino population in these areas has a well-established working relationship with Representative Israel. *See* Exhibits 1, 2, and 3. Both to preserve the core of the prior district and to protect communities of interest, these communities should be transferred from proposed District 2 into proposed District 3. While maintaining the basic structure of the proposed districts, the population could then be equalized by transferring a few communities historically represented by Representative King (such as Old Bethpage) from proposed District 3 into Proposed District 2.

Similarly, proposed Districts 4 and 5 divide Nassau County. The Magistrate's proposed plan thus unnecessarily crosses county lines and alters prior districts. The proposed plan puts Nassau County border cities, including Elmont, North Valley Stream, and Inwood, into proposed District 5 with Queens County, even though these residents share more similar concerns with their Nassau County neighbors, with whom they share many local governmental services, including schools and public safety systems. Rather than having District 5 extend into Nassau County, it should be wholly contained in Queens County, and District 4 should extend westward to the Nassau County line. This change would have no implications for the Voting Rights Act given that District 5 (previous District 6) has repeatedly elected the African-American candidate of choice and would plainly continue to do so even if it was wholly contained in Queens County.

Meanwhile, in Westchester and Rockland counties, former Districts 17 and 18 are radically redrawn to form proposed Districts 16 and 17. Proposed District 17 retains less than half of former District 18, a dramatic change that unnecessarily splits Representative Lowey—who has represented the area since 1988—from hundreds of thousands of her former constituents, violating the New York redistricting principle of preserving the cores of prior

districts and of respecting incumbent-constituent relationships. In total, nearly 700,000 residents of Westchester and Rockland counties—a majority—are proposed to be shifted into new congressional districts. These dramatic population shifts could be easily averted by returning areas in Rockland County presently represented by Congressman Engel to proposed District 16 and simultaneously returning areas in Westchester County presently represented by Congresswoman Lowey to proposed District 17. For example, Ramapo and Orangetown could be added to proposed District 16 to preserve a core portion of the district represented currently by Congressman Engel, and municipalities along the Long Island Sound Shore, including New Rochelle, Mamaroneck, and Rye, could be restored to proposed District 17. Additional relatively small changes could unite Rockland County within proposed District 16 and unite the bulk of Westchester County in proposed District 17, a result that would minimize population shifts, maintain communities of interest, and preserve the cores of current districts. In total, these changes would preserve the minority composition of proposed District 16. Additionally, proposed District 17 divides 6 towns. Several of these communities, including Rye, New Castle, North Castle, and Scarsdale, could be made whole by preserving more of former District 18.

Similarly, proposed District 21 makes unnecessarily dramatic changes to the prior District 23 without respecting other districting principles. Former District 23 included all of Madison and Oswego Counties and much of Oneida County. Proposed District 21 removes all of these areas from the district, even though former District 23 was underpopulated and thus needed to *gain* population. Indeed, removing these areas from the district forced the addition of many new counties to the district. Many of the new counties, such as Saratoga, Warren, and Washington, have virtually nothing in common with North Country counties like Jefferson, St. Lawrence, Franklin, and Clinton, that border Canada and/or the St. Lawrence River and in some cases are separated from these counties by Adirondack Park. Moreover, adding these counties

makes what was already the largest congressional district in New York even larger. The proposed district covers 16,000 square miles, making effective constituent outreach exceedingly difficult, especially in northern New York's harsh winters. At least Madison and Oswego Counties, and preferably also Oneida County, should be returned to proposed District 21 from proposed District 22. Meanwhile, Saratoga, Warren, and Washington counties should be returned to District 19 (prior District 20), where they have been historically located, as requested by the Skelos Defendants as well. *See* Dkt. 192 at 2. The proposed map could then achieve equal population by shifting residents between proposed District 19 and proposed District 22.

Finally, proposed Districts 26 and 27 see unnecessarily large changes in the Magistrate's proposal, changes that also pair incumbent Representatives Hochul and Higgins in proposed District 26, even though there was no need to do so. Proposed District 27 takes only 53 percent of its population from former District 26, and the district adds all or part of Ontario, Erie, Monroe, and Livingston Counties, making the district significantly less compact. Proposed District 27 should be returned to a shape more similar to former District 26, and should be drawn to include Representative Hochul's residence, both to preserve the core of the prior district, maintain constituent-incumbent relationships, and avoid pairing incumbents.

If the Magistrate addresses these issues, the resulting map will better respect "the legislative policies underlying the existing plan," *Abrams*, 521 U.S. at 79, as the Court is required to do. Given the time constraints, the Rose Intervenors have been unable to propose corrections for these issues as specific as they would have liked (and as would have better assisted the Magistrate), so the Rose Intervenors entrust that task to the Magistrate. The Rose Intervenors, however, may object before the three-judge panel to changes that fail to fully address these issues. The Rose Intervenors appreciate the Magistrate's diligent work on this hugely important case.

Dated: March 7, 2012

By: /s/ Marc Erik Elias
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