

March 13, 2012

The Honorable Reena Raggi
United States Court of Appeals
for the Second Circuit
Thurgood Marshall U.S. Courthouse
40 Foley Square
New York, NY 10007

The Honorable Gerard E. Lynch
United States Court of Appeals
for the Second Circuit
Thurgood Marshall U.S. Courthouse
40 Foley Square
New York, NY 10007

The Honorable Dora L. Irizarry
United States District Court
Eastern District of New York
225 Cadman Plaza East Brooklyn, NY 11201

Re: Favors v. Cuomo, 1:11-cv-05632-DLI-RLM; Objections to the Report and Recommendation

Dear Judges Raggi, Lynch and Irizarry:

We represent the Dominican American National Roundtable (the “DANR”) and write pursuant to the Order of the Special Master dated March 12, 2012 to object, in part, to the Special Master’s Report and Recommendation and Proposed Redistricting Map (the “Report”).

By way of background, on March 2, 2012 the DANR timely filed a map for a proposed congressional district linking the Spanish speaking areas of northern Manhattan, the west Bronx and the Corona/Jackson Heights areas of Queens. At the same time, the DANR filed a letter submission in support of the propriety of this proposed district. Copies of the map and letter are included as part of this submission. In accordance with the March 6, 2012 Order of the Special Master promulgating proposed statewide maps, on March 7, 2012, the DANR timely filed an objection, in pertinent part, to those maps, a copy of which is also included as part of this submission.

The Report did not adopt a district consistent with that proposed by the DANR. Indeed, it did not even acknowledge proposal. Accordingly by this letter, the DANR respectfully objects to the Report, and in support of that objection states as follows:

1) The Report Creates an Ex Post Facto Requirement of Statewide Rather than District Specific Maps.

The lions's share of the Report is based on the Affidavit of Nathaniel Persily, the Court appointed expert to the Special Master. In Paragraph 65 thereof, commenting on district- specific submissions, Dr. Persily states:

Partial and individual district plans cannot be adopted wholesale while fulfilling the requirements that we create a plan of 27 districts. Furthermore, especially with respect to proposed individual districts, a proposal cannot be inserted into a plan while ignoring the population "needs" of the surrounding districts. Moreover, adopting an individual district proposal risks ignoring the necessary tradeoffs between districts, and can raise [Voting Rights Act] problems if one district's configuration leads to race-based dilution or retrogression in another district.

In Paragraph 67, Dr. Persily makes substantially the same statements regarding submissions by non-parties.

Respectfully, this wholesale marginalization, if not exclusion, of partial and district-specific plans constitutes an impressible changing of the rules after the game has been played, and an inappropriate dismissal of access to that portion of the population that has typically been excluded from meaningful participation in the redistricting process.

Specifically, there is nothing in the Orders of this Court or the Special Master requiring the submission of statewide maps (and only statewide maps) as a condition precedent for meaningful consideration of that party's position. To the contrary, numerous persons and groups submitted partial or individual plans, believing they would be given serious consideration. Instead, the treatment by the Court appointed expert borders on the dismissive.

If it was the intention of the Special Master to require the submission of a statewide plan as a condition precedent to meaningful consideration of any individual district map, this should have been stated specifically at the outset. Upon information and belief, many of the participants-- and certainly the DANR -- would have altered their conduct in light of this.

2) The Court Should Require Meaningful Consideration of Partial and/or District Specific Plans.

However, the Court should not require the submission of statewide plans as the price for consideration of district-specific proposals. While appreciative of the Herculean task faced by the Special Master and this Court, if the public is to have meaningful input into the redistricting process, interested persons must be permitted to submit partial or district specific plans.

The DANR is a good example of why this is true. Its specific interest is in ensuring fair representation in the Spanish speaking communities of New York that have traditionally been denied such representation. It has limited resources and cannot seriously be expected to utilize those resources to map and argue the propriety of congressional districts on the Canadian border. Similarly, partial plans were proposed by the Democratic County Chairmen of The Bronx and New York Counties. These individuals each represent a defined constituency. Should the price of having the voice of that constituency heard be the expenditure of funds to map Erie or Wyoming County? If so, then that voice will be silenced, as will the voices of those whom the DANR represents; and these are precisely the voices that, historically, have not been heard, because of artificial impediments to, and manipulation of, the process.

Finally, we note that in Paragraph 67 of his Affidavit, Dr. Persily states with respect to the partial plans submitted by the public: "For the same reasons the partial plans of the parties were rejected but given consideration, these plans were accorded the same treatment."

Unfortunately, in the same paragraph, Dr. Persily purports to list the non-party members of the public who submitted partial plans. Although the DANR did precisely that, and provided testimony at the hearing before the Special Master on March 5, 2012, and submitted an objection to the Special Master's Proposed Plan two days later, Dr. Persily fails to mention the DANR. This, at a minimum, calls into question exactly how much "consideration" was given to these plans, if any was given at all.

3) The Court Should Not Accept a Plan that is Rushed Rather Than Reasoned.

This Court, and the Special Master, have not only been asked to discharge the duties the state legislature shirked, but to do so in an unrealistically compressed timeframe. The timeframe is driven by the commencement of the petitioning process, now scheduled for March 20, 2012. The Court should revisit whether adherence to this timeframe is commanding too great a price.

At issue here is the most fundamental constitutional right of the citizenry- - the right to vote. And this Court's decision will pertain not transiently, but for the next decade.

The DANR has no doubt that if more time were available, the Special Master and Dr. Persily would not have diminished the partial plans submitted by the parties and other interested persons, and would not have made other errors that crept in to the Report and Affidavit - errors which, while not necessarily material, highlight the risk of sacrificing reflection for rapidity.¹

By abdicating its responsibilities, the legislature may be able to require this Court to undertake the thankless task of redistricting, but it should not be able to force the Court to a rush to judgment. For the reasons stated in the Rose Intervenors' Brief in Response to Magistrate's Order to Show Cause dated March 7, 2012 (Docket #191), the Court should order a judicial "time-out" and provide a timeframe for comment and analysis more compatible with the importance of the task, whatever the ramifications may be for the legislature.

4) There are Significant Problems with the Special Master's Plan

So that the Court may put the DANR's concerns into concrete context, the DANR has proposed a district uniting the Spanish speaking neighborhoods of northern Manhattan, the west Bronx and Corona/ Jackson Heights into a single congressional district. The explication for why this district is the most appropriate one from the standpoint of conventional redistricting criteria is set forth in our March 7, 2012 letter of objection to the Special Master and incorporated by reference herein.

The DANR proposal was sub silentio rejected by the Special Master in favor of a district that essentially fuses Harlem, historically an African-American neighborhood, with the Kingsbridge section of The Bronx, a largely Hispanic community. This was done despite the fact there has been a dramatic growth in the Hispanic population throughout the relevant area, and the existence of a discernable community of interest linking the Kingsbridge neighborhood to adjacent Spanish speaking neighborhoods in northern Manhattan and The Bronx.

By so doing, the Special Master has conjoined "disparity not community". See Miller v. Johnson, 515 US 900, 908 (1995). Thus, the district proposed by the DANR is united by a common language; the district proposed by the Special Master is not. The district proposed by the DANR shares a common culture; the district proposed by the Special Master does not. The district proposed by the DANR is economically homogeneous; the district proposed by the Special Master is not.

It is telling that New York County Democratic Leader Keith Wright, as well as Dr. John Flateau, in their respective responses to the Special Master's Proposed Plan, referred approvingly to the DANR proposal, and noted that the Special Master's 13th congressional

¹ For example, in paragraph 88 of his Affidavit, Dr. Persily states that the Marble Hill- Inwood neighborhood "is part of New York County but is adjoined to the [sic] Bronx." In fact, Marble Hill is adjoined to The Bronx, but Inwood is not.

district (the Harlem/Kingsbridge district referred to above) actually diluted both Black and Hispanic voting strength.

Factors such as these merit more time and study than the Special Master, working under impossible constraints, could afford to give them. Accordingly, the DANR respectfully requests this Court adopt the DANR's proposed district (in lieu of Districts 13, 14 and 15 as recommended by the Special Master), or that, in the alternative, it remand to the Special Master for further proceedings appropriate in light of the foregoing.

We thank the Court for its consideration of this matter.

Respectfully,

/s/

Lance Gotthoffer,

Becker & Poliakoff

Attorneys for Dominican American National Roundtable