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March 14, 2012

By public online submission system

District Judge Dora L. Irizarry
Circuit Judge Reena Raggi
Circuit Judge Gerard E. Lynch
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, NY 11201

Re: *Favors et al. v. Cuomo et al.*, No. 11-cv-5632

Dear Judges Irizarry, Raggi, and Lynch:

I previously submitted a public comment in this matter to Magistrate Judge Mann via the Court's public online submission on March 7, 2012. I am very pleased that the Court has made adjustments to the Proposed Plan, reflected in the Recommended Plan, that partially address two specific concerns that I identified in my March 7 comment (regarding the unification of Genesee and Livingston Counties). However, I believe that several issues that I identified remain outstanding and that this court can address them without departing in any way from the standards it set for Judge Mann. To the contrary, all of the ameliorative changes I propose here would further the stated goals of this court.

In his affidavit, Professor Persily indicated that he intended to reunite both Livingston and Wyoming Counties in the Recommended Plan.¹ Regrettably, the Recommended Plan does not accomplish this: Wyoming County remains split between recommended Districts 23 and 27.² In its adjustments to the treatment of Livingston and Wyoming Counties in the Proposed Plan, the Recommended Plan splits the town of Naples in Ontario County (in order to compensate for population inequalities arising out of these adjustments). To achieve reunification, the 231

¹ Affidavit of Professor Nathaniel Persily, J.D., PH.D., ("Persily Affidavit"), ¶ 158.

² While the Recommended Plan does reunite the town of Pike in Wyoming County, the town of Arcade remains split as I discussed in my March 7 comment, with 231 residents assigned to recommended District 23 and 3,974 residents assigned to recommended District 27. A review of the appendices to the Persily Affidavit confirms this. See, e.g., Persily Affidavit, Appendix H at p. 2, Persily Affidavit, Appendix I at p. 2, and Persily Affidavit, Appendix J at pp. 1, 45, and 53.

residents of the town of Arcade currently assigned to the recommended 23rd District could be moved to the recommended 27th District, in exchange for 231 residents (of 1,294) of the town of Naples currently assigned to the recommended 27th District. Doing so would reunite the town of Arcade and, correspondingly, all of Wyoming County, without splitting any new jurisdictions or departing from the rule requiring strict population equality.

Further, the town of Canandaigua in Ontario County remains split in the manner discussed in my March 7 comment.³ Block 3010 of Tract 506.01, another “errant zero-population block”⁴ which is currently assigned to recommended District 23, can also be restored to recommended District 27 with no effects on the other changes in Ontario County that I discussed above or the important principle of population equality as a whole.

To address the above issues, I propose changes, at the block level, that make the necessary adjustments to recommended Districts 23 and 27 while preserving population equality. A map of these changes and the resulting “adjusted districts” is shown in Attachment A1 (across two pages). The corresponding block equivalency file is attached as Attachment B1.⁵

I also respectfully submit that the other issues that I identified in my March 7 letter can be addressed without harming any of the interests identified in Professor Persily’s Affidavit and Judge Mann’s Report and Recommendation.⁶ These issues are the splitting of both Erie and Niagara Counties across recommended Districts 26 and 27, and the splitting of both Montgomery and Rensselaer Counties across recommended Districts 19 and 20.

In my March 7 comment, I presented potential adjustments at a general level that would resolve these issues and reduce, by two, the number of counties split across districts. With the benefit of additional time, I am now able to propose specific changes at the Census Block level. Maps of

³ I noted that: “One block of that town, Block 3010 of Tract 506.01, contains zero population and is assigned to the proposed 23rd District, while the remainder of the town is assigned to the proposed 27th District.”

⁴ Professor Persily uses this term to describe another zero-population block that I identified in Genesee County. See Persily Affidavit, ¶ 158.

⁵ Attachments A1-A3 are included on subsequent pages. Attachments B1 through B4 are all comma-delimited block equivalency text files and submitted separately.

⁶ In my March 7 comment, I also discuss the issue of six towns in Westchester County split between proposed Districts (and now recommended Districts), when two split jurisdictions should be sufficient for population equality purposes. In the interim, I have also identified similar issues in Dutchess County (the towns of East Fishkill, Hyde Park, La Grange, and Poughkeepsie are all split between recommended Districts 18 and 19), Herkimer County (the towns of Manheim and Russia between recommended Districts 21 and 22), Monroe County (the towns of Clarkson and Hamlin between recommended Districts 25 and 27), Saratoga County (the towns of Ballston and Stillwater between recommended Districts 20 and 21), and Tioga County (the towns of Nichols and Owego between recommended Districts 22 and 23). In each of these instances, the splitting of one town (or city) should be sufficient for population equality purposes. However, as I have not had sufficient time to propose detailed block-level changes that would resolve these issues, I do not address them further here.

these changes for Erie/Niagara Counties and Montgomery/Rensselaer Counties are presented in Attachments A2 and A3, respectively, and the corresponding block equivalency files in Attachments B2 and B3, respectively.

My proposed changes to Erie and Niagara Counties reunite Niagara County within adjusted District 27 by moving 81,744 Niagara County residents from recommended District 26 to adjusted District 27 in exchange for 81,744 Erie County residents from recommended District 27 to adjusted District 26.⁷ My proposed changes to Montgomery and Rensselaer Counties reunite Montgomery County within adjusted District 20 by moving 15,613 Montgomery County residents from recommended District 19 to adjusted District 20 in exchange for 15,613 Rensselaer County residents from recommended District 20 to adjusted District 19.⁸

The changes I propose here (detailed in attachments) fully respect the standard of population equality achieved by the Recommended Plan and required by the Constitution. A complete statewide block equivalency file that includes all the changes that I propose in this comment is included as Attachment B4. Adoption of all the changes I propose would reduce, by three (to seventeen) the number of counties split between districts.

Again, I appreciate the attention that the Court has paid to the integrity and unity of political subdivisions. Reducing county splits was listed by the Court as an important goal. As I indicated in my initial comments to Judge Mann, reducing such splits has other benefits as well. Doing so lowers the burden on local officials, especially those tasked with elections administration. The beneficial effects include requiring elections administrators to maintain fewer voting precincts and prepare fewer unique styles of ballots corresponding to the various representative districts in which a voting precinct may fall, among others.

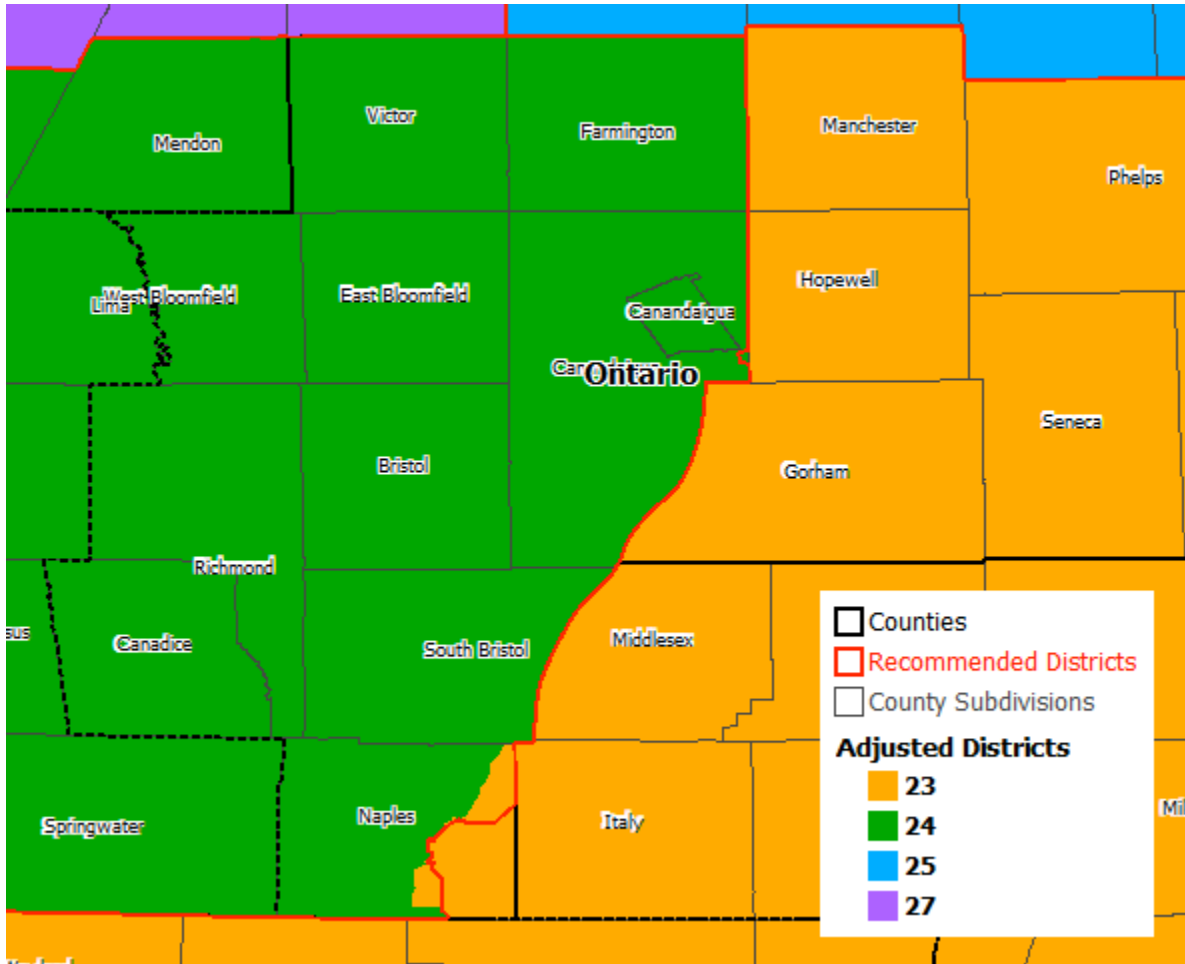
Sincerely,

/s/ David Nir

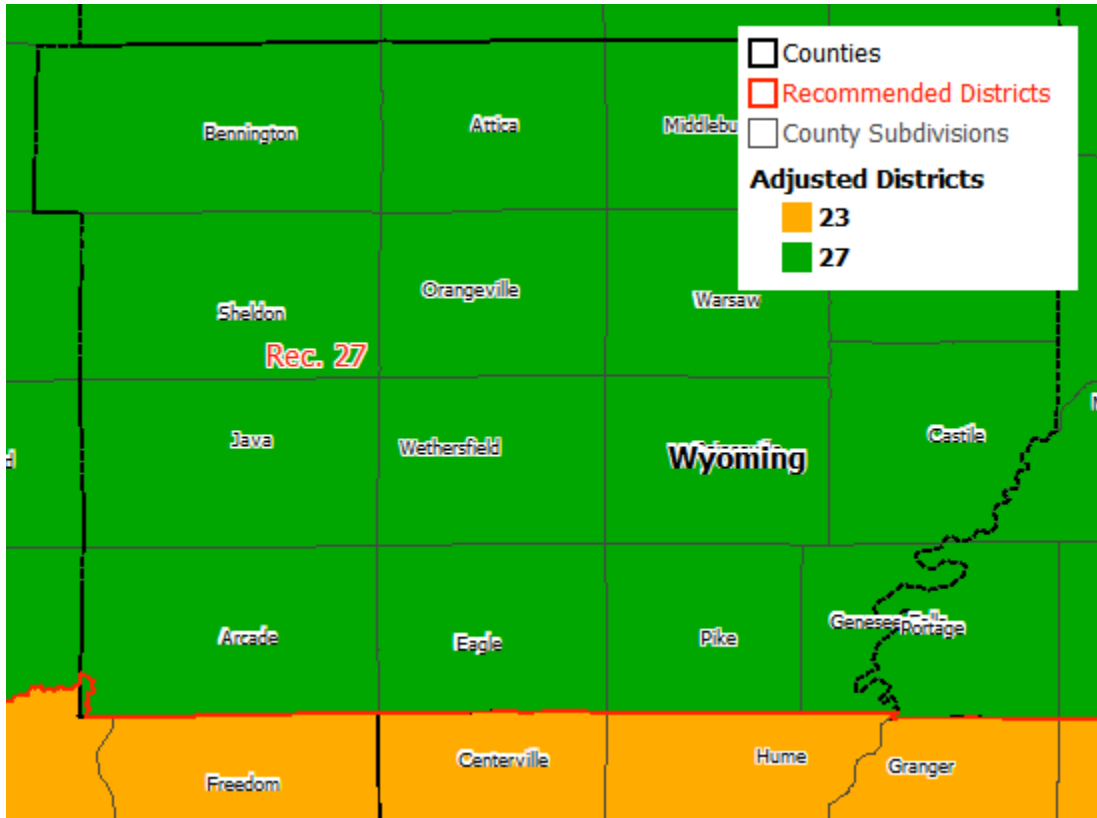
⁷ All Niagara County residents assigned to recommended District 26 are assigned to adjusted District 27. The Erie County residents moved from recommended District 27 to adjusted District 26 reside in the towns of Amherst, Hamburg, and Orchard Park. The town of Amherst is reunited within adjusted District 27 and the town of Hamburg is moved entirely to the adjusted District 27. The town of Orchard Park is split between adjusted Districts 26 and 27.

⁸ All Montgomery County residents assigned to recommended District 19 are assigned to adjusted District 20. The Rensselaer County residents moved from recommended District 20 to adjusted District 19 reside in the towns of East Greenbush, Schodack, and Schaghticoke. The towns of Schodack and Schaghticoke, which had been split between recommended Districts 19 and 20, are reunited within adjusted District 19. The town of East Greenbush is split between adjusted Districts 19 and 20.

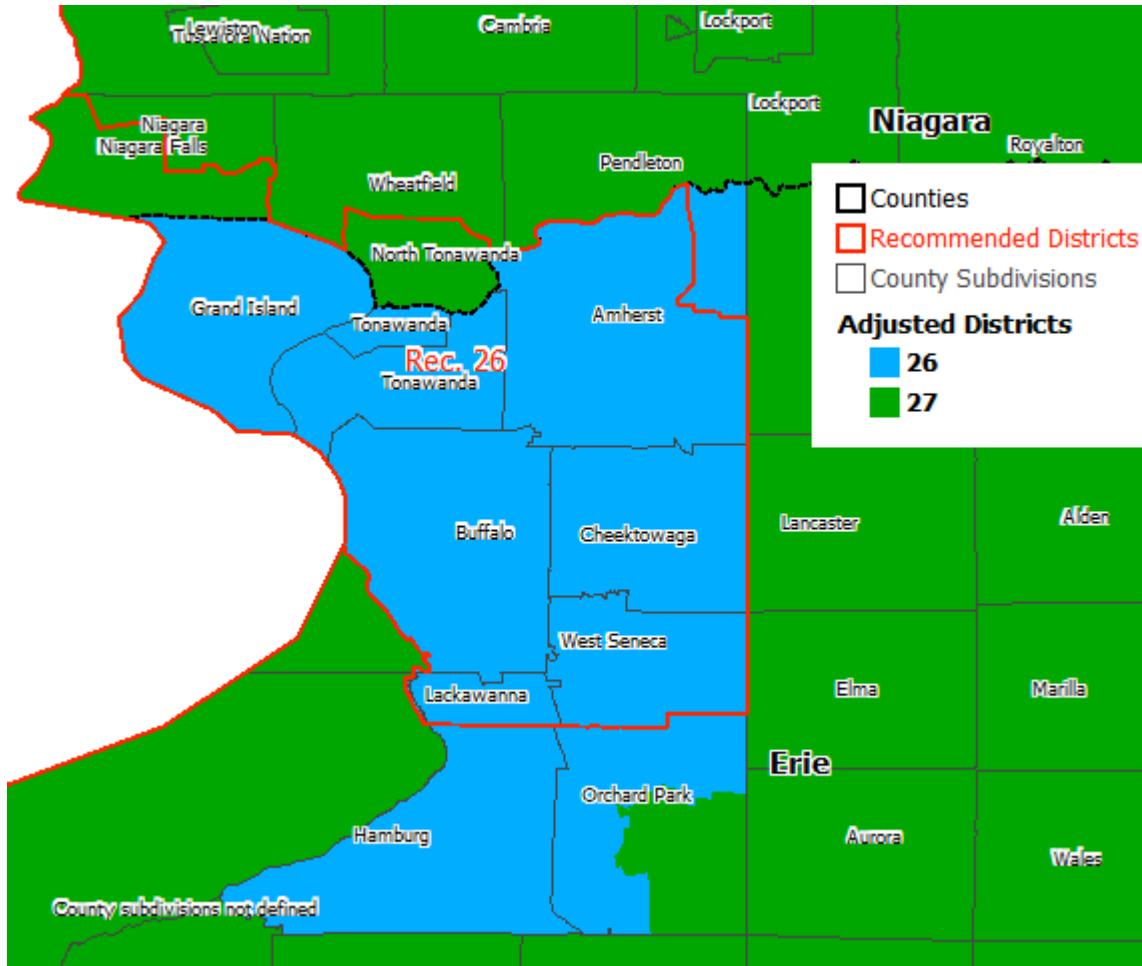
Attachment A1 – Ontario County



Attachment A1 – Wyoming County



Attachment A2 – Erie and Niagara Counties



Attachment A3 – Montgomery and Rensselaer Counties

