

VOTING RIGHTS for ALL

March 14, 2012

Honorable Reena Raggi
Honorable Gerard E. Lynch
Honorable Dora I. Irizarry
United States District Court for the
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 12201

Re: Favors v. Cuomo
11. Civ. 5632

May It Please The Court:

Today, we represent an expanded coalition of community advocates and elected officials concerned with protection of the voting rights of residents of New York State. Specifically, the Coalition members are the Dominican American National Roundtable, Hazel Dukes, President NAACP NYS, NY County Democratic Leader Keith Wright, Carl Heastie, Bronx County Democratic County Leader, Congresswoman Yvette Clarke, NYS Senators Adriano Espalliat and Velmanette Montgomery, NYS Assembly Members Inez Barron, William Boyland, Jr., Karim Camara, Nelson Castro, Marcos Crespo, Herman Denny Farrell, David F. Gantt, Vanessa Gibson, Guillermo Linares, Crystal Peoples-Stokes, N. Nick Perry, Robert Rodriguez, Eric Stevenson, NYC Council Members Robert Jackson, Inez Dickens and Ydanis Rodriguez.

While United States Magistrate Judge Mann's task was challenging and complex we continue to be dissatisfied with the overall results of her labor. The Coalition members reaffirm their belief that their interests were not adequately represented by the parties and interveners, and that the Proposed Plan, and more importantly the Recommended Plan is deficient in several material respects. Accordingly, the Recommended Plan must be rejected by this Court upon consideration of the objections and rationale included herein.

Although the Recommended Plan ("Plan") acknowledges the fundamental guidelines with regard to compactness and contiguity it fails to adequately respect political subdivisions and preserve many communities of interest. Furthermore, the Plan depicts an incorrect preoccupation with creating substantial population equalities at the expense of communities of interest. It is evident that the Magistrate did not give adequate consideration to many of the "other reasonable factors" submitted by this coalition in its March 7, 2012 letter of objection.

While we commend the Magistrate's consideration of Communities of Interest in altering its Proposed Plan for the 8th CD, we do believe the Plan gives excessive weight to the singular guideline which prohibits the excessive use of race in the construction of districts. As a result the application of the Magistrate's interpretation of the guideline has been inconsistent. This Court must reconsider the application to Northern Manhattan and the Bronx which has resulted in the unintended consequence of cracking a community of interest spanning from Northern Manhattan

VOTING RIGHTS for ALL

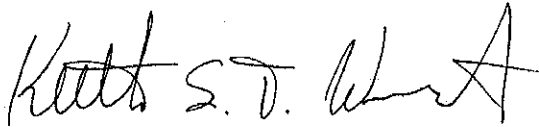
through the Northeast Bronx and into Mount Vernon and ignoring the broad based Latino community in the same areas.

The Plan disregards the plea of many to create a truly *new* Hispanic district but does so at the expense of eliminating an historic African American district. The use of benchmark plans cannot and must not be used to abridge the franchise for growing populations of protected classes of Black and Latino. The commonalities of the communities of interest have been offered to this Court by this Coalition and many of its members individually. We foresee the Plan as having a chilling effect on the collective voice of protected classes of Black and Latino voters. This Coalition and its members have submitted partial plans that take into account the need for population equality without sacrificing the "needs" of communities of interest. In addition the partial plans do not impede the creation of the remaining districts. Mr. Persily has acknowledged the difficult task of creating a statewide plan given the limited time available. This Court enjoys the advantage provided to the Voting Right's Districts to prioritize creation of same and consider all reasonable options offered.

Reference is hereby made to the submissions of the individual Coalition members submitted in advance of March 5, 2012 for additional examples. In addition, to ensure that their interests are represented going forward and their right to object is preserved many members have attached hereto specific objections to the Plan. See Exhibits 1 and 2.

Again, we commend the Court for its efforts in extraordinary circumstances, but respectfully request that it reject the Plan in light of the annexed objections and modify it accordingly.

We thank the Court for its consideration.



NY County Democratic Committee Leader
Keith L. T. Wright



Bronx County Democratic County Leader
Carl E. Heastie

Dominican American National Roundtable
President, NYS NAACP, Hazel Dukes
Congresswoman Yvette Clarke
NYS Senator Adriano Espalliat
NYS Senator Velmanette Montgomery
NYS Assembly Member Inez Barron
NYS Assembly Member William Boyland, Jr.
NYS Assembly Member Karim Camara
NYS Assembly Member Nelson Castro
NYS Assembly Member Marcos Crespo
NYS Assembly Member Herman Denny Farrell

NYS Assembly Member David F. Gantt
NYS Assembly Member Vanessa Gibson
NYS Assembly Member Guillermo Linares
NYS Assembly Member Crystal D. Peoples-
Stokes
NYS Assembly Member N. Nick Perry
NYS Assembly Member Robert Rodriguez
NYS Assembly Member Eric Stevenson
NYC Council Member Inez Dickens
NYC Council Member Robert Jackson
NYC Council Member Ydanis Rodriguez

EXHIBIT 1

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 the 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

EXHIBIT 2

Rationale for Proposed 15th CD (Rangel) – 2012 Redistricting

John L. Flateau, PhD
johnflateau@gmail.com 347-423-6794

Background

The northern Manhattan based 15th Congressional District is the second oldest northern Black congressional district in the United States. The Deep South, where 90 percent of the Black population resided in the post Civil War era, elected several Black Congress members during the Reconstruction era. The first northern Black Congressman was elected from Chicago in the 1920s, Oscar DePriest, followed by Arthur Mitchell and William Dawson. The second northern Black Congressional district was based in Harlem and northern Manhattan, New York, and elected Adam Clayton Powell, Jr. in 1944, followed by Charles B. Rangel in 1970. Both Powell and Rangel achieved historic, powerful congressional roles benefiting Black Americans and indeed all Americans. Powell as Chair of the House Education and Labor Committee was a prolific legislator playing a seminal role in ushering in civil rights, and War On Poverty legislation of the 1960s. Rangel has played a key legislative role as Chairman of the powerful, tax writing House Ways and Means Committee; and today, he is the senior member and Chair of the New York Congressional delegation. Thus for decades, the 15th CD has been a national, historic congressional district for Black New Yorkers and Black Americans.

According to the 2010 Census, New York has the largest Black population of any state in America: this population has grown to 3.3 million Black New Yorkers, and has been represented by four Black members of Congress for the past three decades (Manhattan-1, Brooklyn-2, Queens-1). As expected, via Census 2010, there have been demographic shifts in the location and composition of New York's Black population and other populations, and there is a robust overall Black population base of 3.3 million, more than enough to sustain the continued representation of four Black congressional districts in New York, including the 15th CD.

It should also be noted that New York County, which is also the Borough Of Manhattan, is one of three counties in New York State, covered by the Section 5 preclearance provisions of the US Voting Rights Act; and the 15th CD is a voting rights district.

Boundary Descriptions, Proposed 15th CD – Contiguous, Compact, et.al.

The proposed 15th CD is highly compact, taking in all of Manhattan north of 97th St. from East River to Hudson River, with the exception of Washington Heights. Within its current boundaries, the 15th CD is some 80,000 short of the current equal population requirement of 717,707. The additional subtraction of Washington Heights with approximately 139,000 persons makes it necessary for the 15th CD to pick up major population and

geography. It cannot go further south in Manhattan without causing major disruptions. South of 97th St. on the East Side is the current 14th CD (Maloney); and on the West Side, is the 8th CD (Nadler). Thus the only directions for the 15th CD to go are: north and east, into the Bronx; and east into Queens. (CD 15 is bordered by the Hudson River on its west side.)

Going east, the 15th CD picks up Roosevelt Island (13,000) and three public housing developments very close to the East River waterfront in Queens: Queens Bridge Houses, Ravenswood Houses and Astoria Houses (Queens total, 20,000). The 15th CD already has one of the largest concentrations of public housing in the City, State and nation, and these three additions blend well with the public housing community of interest. This adds about 33,000 persons to the 15th CD. The balance of necessary population to reach 717,707 is added by going north and east, into the Bronx.

The 15th CD goes from the northern tip of Manhattan, the Marble Hill neighborhood, takes a narrow corridor eastward, hugging the southern border of Van Cortland Park, and adds the North Bronx areas of Williamsbridge and other areas between East Gunhill Road on the south, and the Bronx County line on the north; as well as Coop City, in order for the 15th CD to reach the population requirement of 717,707. The proposed 15th CD takes this particular route, in order to take the most unobtrusive pathway, leaving maximum maneuverability and unobstructed geography for the Bronx's nearly 750,000 Hispanic population including its heavily Dominican West Bronx, in order to constitute the basis for two Hispanic congressional districts anchored in the Voting Rights County of the Bronx, with 1.4 million persons, including the current 16th CD represented by Hon. Jose Serrano.

This 15th CD pathway to the Bronx also provides a geographic connector for two Black socio-cultural communities of interest, which are comprised of approximately 149,000 Blacks in North Manhattan and their socio-cultural siblings, who are 129,000 Blacks in the North Bronx.

An Appeal for Communities of Common Interest in New York City

We are once again writing to strongly object to your proposed Congressional district composition. In our opinion, the court missed an opportunity to empower communities of interest, one of the key tenets of the redistricting process. The data shows us that we have an opportunity to keep together communities of interest in areas where the court has created divisions.

Specifically, in Districts 12 – 15, the court has not maximized its ability to merge communities of interest. What is not seen in the numbers is a bond that exists between longstanding traditional communities and the existence of newly formed, expanding communities that have more similar characteristics.

With just a few changes, the court could compose new districts that preserve a longstanding, historic African American district, acknowledge the shift and slight migration within a borough of another, and establish and recognize an emerging community seeking to elect a representative that understands the true nature of their communities.

The communities you've included in the 15th District share a common bond with many now included within their borough in District 14. These two districts could merge more seamlessly, and could be shifted to accommodate changes needed to combine communities located in a better constructed 13th District.

The 13th District should be changed to reflect the commonalities within the communities of Harlem, Spanish Harlem and the Bronx. The court should connect these communities, as they are inextricably linked through history. Many of the residents of the Northeast Bronx and Co-Op City actually have family in the communities of Harlem and Spanish Harlem. They grew up in Harlem and still attend church in Harlem.

Simply put, the court should acknowledge the unique nature of these communities and deem them communities of interest. By the numbers, the court should examine and address the dilution of African American votes in the 13th, 14th and 15th Districts. In the current composition, you are making African Americans take a step backward by dividing the community. In addition, you are denying the Latino community more representation.

It is American tradition to send representatives to Washington to articulate the distinct cultures of their respective districts. Magistrate Mann, you have an opportunity to insure that all New Yorkers can feel as though they have a voice in Washington, one that is not muted by dilution.

Once again, we urge you to reconfigure the lines under the auspices of the concept of communities of interest. It is the right thing to do.