

# **Exhibit C**

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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MARK A. FAVORS, et al.,	:	11-CV-5632
	:	(RR) (GEL) (DLI) (RLM)
Plaintiffs,	:	
	:	
-against-	:	United States Courthouse
	:	Brooklyn, New York
	:	
ANDREW M. CUOMO,	:	
As Governor of the State of	:	Friday, April 20, 2012
New York, et al.,	:	9:30 a.m.
	:	
Defendants.	:	
----- X	:	

TRANSCRIPT OF CIVIL CAUSE FOR ORAL ARGUMENT

BEFORE THE HONORABLE REENA RAGGI  
HONORABLE GERARD E. LYNCH  
UNITED STATES CIRCUIT JUDGES  
SITTING BY DESIGNATION

HONORABLE DORA L. IRIZARRY  
UNITED STATES DISTRICT JUDGE

HONORABLE ROANNE L. MANN  
UNITED STATES MAGISTRATE JUDGE

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1           MR. CHIN: That certainly would be a possible  
2 response, your Honor.

3           CIRCUIT JUDGE RAGGI: What else do you intend to  
4 respond if they come forward with these other  
5 nondiscriminatory reasons?

6           MR. CHIN: I'm trying not to sort of dwell on the  
7 abstract. Let me use a specific example --

8           CIRCUIT JUDGE RAGGI: Me too.

9           MR. CHIN: -- of why, for example, the 63 district,  
10 which I believe -- I understand from papers and I'm corrected  
11 from my papers, that I thought the new 63rd district was  
12 located in the western part of the state, when in fact the  
13 opposing counsel for now revealed to me that it is Senate  
14 district 46. This is the new district that is in the 63 plan.  
15 Their argument that seems to me to justify why it was placed  
16 there, why it was created, is that in the proposed -- or  
17 rather, in the enacted Senate district 46, a majority-wide  
18 district, consisting of portions of Montgomery, Syracuse,  
19 Albany, Green and Ulster counties, that that had a larger  
20 relative growth rate than New York City. They allege a  
21 3.36 percent relative growth rate, whereas New York's relative  
22 growth rate in the last decade was only 2.8 percent.

23           This is a very specious and unacceptable pretext for  
24 their discrimination, and the reason why is that we believe  
25 the actual growth is what we have to look to. The actual

1 growth between these two specific districts or regions, if you  
2 want to put it that way, is that here in New York City's five  
3 counties, we saw what was 41.5 percent of the entire state's  
4 growth in the decade consisting of 166,855 people. And those  
5 are mostly minority residents and voters. Compare that with  
6 their new district, whose actual growth had only 24,000  
7 people, new people over the decade. That was only 6 percent  
8 of the entire state's total growth.

9           Now, what state policy or policies authorize that  
10 type of determination? Who and under what process authorized  
11 this particular policy? Does the same relative growth versus  
12 actual growth policy exist for any other districts throughout  
13 the state? Why is it that the upstate districts, as we've  
14 identified, north Westchester -- rather, north of New York  
15 City and above, western and northern, those districts, why are  
16 they all systematically underpopulated, under what criteria,  
17 under what reasons? What's the purpose for all the  
18 overpopulated populations in districts having been put in Long  
19 Island and New York City?

20           CHIEF JUSTICE LYNCH: Mr. Chin, are you saying that  
21 you have numbers, for example, that show what the relative  
22 growth rates were for all these districts or that you need  
23 numbers from them as part of discovery?

24           MR. CHIN: Well, I think the first question is  
25 whether that is a statewide or whether that was one of their

1 doesn't -- if he speaks for the entire Senate.

2 MR. CARVIN: That's a good point. I don't think  
3 anybody, especially Mr. Hecker, would argue that Dean Skelos  
4 speaks for the Senate Minority. And why did the walk out?  
5 This is New York, this is politics.

6 JUDGE IRIZARRY: So if he doesn't speak for  
7 everybody, then why shouldn't we look to see exactly what  
8 went into this.

9 MR. CARVIN: You want to depose Mr. Hecker's  
10 clients I'll let him decide about legislative privilege.  
11 You can depose them all you want. My clients are going to  
12 assert legislative privilege on the basic Supreme Court  
13 precedent.

14 JUDGE IRIZARRY: But Mr. Hecker's clients are  
15 saying that they're not understanding what is behind the  
16 63rd district that somehow magically appeared in January and  
17 was nowhere discussed in all of the hearings that went on in  
18 2011 when all of the very same groups that are here,  
19 plaintiffs groups that are here before the Court and other  
20 public interest groups contributed to the proposals for new  
21 Senate and Assembly maps when everyone was discussing 62  
22 districts.

23 MR. CARVIN: That's not true. There was plenty of  
24 63-seat alternatives well in advance of January.  
25 Mr. Breitbart testified whether it should be 62 or 63. Part