EXHIBIT B

Redline

purposes. Such an intrusive, counter-productive rule would be particularly inappropriate given that the Court *presumes* redistricting is motivated by politics. *Gaffney*, 412 U.S. at 753 ("Politics and political considerations are inseparable from districting and apportionment.").

Here, to illustrate, if the Court were to find that the compelling policy of avoiding dilution of upstate votes was pursued by the Senate because a disproportionate number of Republicans reside upstate, this would provide no warrant for the Court to overturn that legitimate policy and *penalize* upstate voters (Republican and Democratic) by further diluting their votes, simply because it was "shocked, shocked" that political calculations had seeped into the pristine redistricting process. Indeed, such a rule in New York would establish an endless merry-go-round where the federal judiciary, in a quixotic and counter-productive effort to invalidate perfectly legitimate population schemes because they are "tainted" by political motivations, strikes down *every* redistricting plan. Here, for example, both the Common Cause alternative and the enacted Assembly plan *systematically underpopulate* (on a total population basis) the New York City districts, Senate Majority's Response at 44, ~~[cite old filing],~~ which provides an obvious benefit to the predominantly Democratic City and further exacerbates the stark dilution of upstate voting power. Thus, unless there is a rule whereby Democrats are subject to different Fourteenth Amendment standards than Republicans, the Court must inquire into the political motivations of the drafters of the Common Cause alternative and the Assembly plan—both of which facially demonstrate a New York City "bias"—before invalidating the Senate plan because of its (nonexistent~~nonexcutent~~ in terms of citizens or registered voters) upstate "bias." Inquiry into the Assembly plan is particularly required because

one legitimate justification for population disparities recognized in the seminal *Reynolds~~Baker~~ v. Sims~~Carr~~* case ~~[cite]~~ is compensating for disparities in the other state legislative house's plan. 377 U.S. 533, 577 (1964) ("apportionment in one house could be arranged so as to balance off minor inequities in the representation of certain areas in the other house"); *see also* Senate Majority's Response at 44-45.~~[cite, full quote. Cite first brief]~~ (And, of course, if this Court is to depart from the square holding of *Rodriguez* and invalidate the Senate plan because of "political" purposes, there will be an immediate challenge to the equally political Assembly plan's underpopulation of New York City, which in fairness must be adjudicated prior to invalidating the Senate plan.)

The *Rodriguez* Court wisely recognized that it was a fool's errand to try and penalize the "minimal underpopulation of upstate districts" by focusing on whether it was "driven by" "permissible considerations" or by politics, particularly given the "traditional correlation between 'upstate' districts and Republican political identification." *Id.* at 368. Thus, *after* thoroughly examining the "Burgeson memorandum" (which Plaintiffs ballyhoo as the best sort of "smoking gun" evidence that they could even hope to produce through their intrusive discovery), the Court found no "constitutional harm" because, regardless of political motives, the "plan promotes . . . traditional principles" and therefore the "deviations" could not "result[] s*olely* from impermissible considerations." *Id.* at 362-68, 370.

The Court should follow this wise course, summarily affirmed by the Supreme Court after *Larios*. If it does so, then all the testimony about alleged political purposes is completely irrelevant because, as we presently show, the plan indisputably furthers