

# Exhibit 2

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF STEUBEN

-----X

TIM HARKENRIDER, GUY C. BROUGHT,  
LAWRENCE CANNING, PATRICIA CLARINO,  
GEORGE DOOHER, JR., STEPHEN EVANS, LINDA  
FANTON, JERRY FISHMAN, JAY FRANTZ,  
LAWRENCE GARVEY, ALAN NEPHEW, SUSAN  
ROWLEY, JOSEPHINE THOMAS, AND MARIANNE  
VIOLANTE,

Index No. E2022-0116CV

Petitioners,

-against-

GOVERNOR KATHY HOCHUL, LIEUTENANT  
GOVERNOR AND PRESIDENT OF THE SENATE  
BRIAN A. BENJAMIN, SENATE MAJORITY LEADER  
AND PRESIDENT PRO TEMPORE OF THE SENATE  
ANDREA STEWART-COUSINS, SPEAKER OF THE  
ASSEMBLY CARL HEASTIE, NEW YORK STATE  
BOARD OF ELECTIONS, AND THE NEW YORK  
STATE LEGISLATIVE TASK FORCE ON  
DEMOGRAPHIC RESEARCH AND  
REAPPORTIONMENT,

Respondents.

-----X

**PETITIONERS' RESPONSE MEMORANDUM TO LEGISLATIVE  
RESPONDENTS' PROPOSED CONGRESSIONAL MAP**

TROUTMAN PEPPER HAMILTON  
SANDERS LLP

Bennet J. Moskowitz, Reg. No. 4693842  
875 Third Avenue  
New York, New York 10022  
(212) 704-6000  
bennet.moskowitz@troutman.com

Misha Tseytlin, Reg. No. 4642609  
227 W. Monroe St., Suite 3900  
Chicago, IL 60606  
(608) 999-1240  
misha.tseytlin@troutman.com

KEYSER MALONEY &  
WINNER LLP

George H. Winner, Jr., Reg. No. 1539238  
150 Lake Street  
Elmira, New York 14901  
(607) 734-0990  
gwinner@kmw-law.com

HOWARD HINMAN &  
KATTELL LLP

Richard C. Lewis  
700 Security Mutual Building  
80 Exchange Street  
Binghamton, NY 13901  
(607) 231-6605  
rlewis@hkh.com

**TABLE OF CONTENTS**

PRELIMINARY STATEMENT ..... 1

ARGUMENT ..... 2

I. The Remedial Maps This Court Adopts In This Case Must Be Consistent With The  
Methodology That Prevailed During The Merits Phase Of This Case ..... 2

II. Legislative Respondents’ Map Egregiously Violates These Principles ..... 3

    A. Overall Partisan Effect/Packing And Cracking ..... 3

    B. The Legislative Respondents’ Proposed Map Keeps Most Of The  
Gerrymandered Choices From Their Invalidated Map ..... 7

III. Legislative Respondents’ Attack On Petitioners’ Proposal Is Meritless ..... 10

CONCLUSION..... 19

**TABLE OF AUTHORITIES**

|  | <b>Page(s)</b> |
|--|----------------|
| <b>Cases</b>   |                |
| <i>Gill v. Whitford</i> ,<br>138 S. Ct. 1916 (2018).....   | 3              |
| <i>Harkenrider v. Hochul</i> ,<br>___ A.D.3d ___, 2022 WL 1193180 (4th Dep’t Apr. 21, 2022) .....  | 2, 3, 6        |
| <i>Harkenrider v. Hochul</i> ,<br>___ N.Y.3d ___, 2022 WL 1236822 (Apr. 27, 2022).....   | 1, 2           |
| <i>Martin v. City of Cohoes</i> ,<br>37 N.Y.2d 162 (1975).....   | 3, 6           |
| <b>Constitutional Provisions</b>   |                |
| N.Y. Const. art. III, § 4 .....  | 1, 2, 12, 14   |
| <b>Other Authorities</b>   |                |
| Dave Wasserman (@Redistrict), Twitter (May 4, 2022 1:58 PM).....   | 5              |
| <i>New York Legislature Approves New Congressional Maps</i> , AP News (Feb. 2, 2022) .....   | 8, 16          |
| Nicholas Fandos, <i>How N.Y. Democrats Came Up With Their Gerrymandered Districts on Their New Map</i> , N.Y. Times (Jan. 31, 2022)..... | 15             |
| <i>What Redistricting Looks Like In Every State – New York</i> , FiveThirtyEight.....  | 11             |

### **PRELIMINARY STATEMENT**

The gerrymandered remedial map that Legislative Respondents have submitted is an insult to the People and the courts of New York. The People in 2014 adopted the most robust language prohibiting partisan gerrymandering in the country, providing that no districts may be “drawn to discourage competition or for the purpose of favoring or disfavoring incumbents or other particular candidates or political parties.” N.Y. Const. art. III, § 4(c)(5). Petitioners proved beyond a reasonable doubt—which Legislative Respondents have emphasized over and over again is the highest burden under New York law—that the Legislature’s 2022 congressional map was an unconstitutional gerrymander. In ruling in Petitioners’ favor, this Court relied heavily upon the simulation methodology that Mr. Sean P. Trende submitted to measure the partisanship of the map, which reliance the Appellate Division and Court of Appeals affirmed entirely. Further, the Court of Appeals issued a ruling on Petitioners’ substantive gerrymandering claim—notwithstanding its conclusion that the maps were procedurally unconstitutional—*precisely* “to provide necessary guidance to inform the development of a new congressional map on remittal.” *Harkenrider v. Hochul*, \_\_\_ N.Y.3d \_\_\_, 2022 WL 1236822, at \*9 n.12 (Apr. 27, 2022) (“*Harkenrider II*”). Accordingly, Petitioners’ success on the merits in this case must guide the remedial maps that this Court adopts, under the law of the case doctrine.

Yet, Legislative Respondents remarkably double-down at the remedial phase, pretending that they have not lost on the merits of this case. The map that they submit to this Court is almost as egregiously gerrymandered as their prior submission, as Mr. Trende’s attached report shows. That Legislative Respondents would submit such an insulting map—even though they have ready access to Dr. Barber’s 50,000 simulations that he testified were consistent with Mr. Trende’s simulations, and thus well-knew that their map failed under Mr. Trende’s methodology—shows their continued disregard for the 2014 Amendments and these proceedings. This Court should

reject Legislative Respondents' efforts to reinstate much of their unconstitutional gerrymander and ensure that their egregious map plays no role in these proceedings.

Petitioners' proposed map, on the other hand, is—as Mr. Trende explained—“not infused with the Legislature's partisan intent” and “would be an outstanding choice for this Court to replace the previous map.” NYSCEF No.277 at 8. Legislative Respondents admit by silence that Petitioners' map scores very well on Mr. Trende's analysis. Further, Petitioners' proposed districts reflect respect for existing communities of interest and public testimony during the IRC process, in order to draw a map that is most reflective of the views of New Yorkers.

### ARGUMENT

#### **I. The Remedial Maps This Court Adopts In This Case Must Be Consistent With The Methodology That Prevailed During The Merits Phase Of This Case**

In reviewing (and rejecting) Respondents' appeal from the Appellate Division's conclusion that the enacted 2022 congressional map was an unconstitutional partisan gerrymander, in violation of Article III, Section 4(c)(5), the Court of Appeals endorsed both this Court's and the Appellate Division's partisan-gerrymandering determinations based in significant part on “the expert testimony proffered by petitioners.” *Harkenrider II*, 2022 WL 1236822 at \*10–11. Indeed, the Court of Appeals found “record support in the undisputed facts and evidence presented by petitioners for the affirmed finding that the 2022 congressional map was drawn to discourage competition.” *Id.* at \*11. This ruling affirmed the Appellate Division's conclusion that the Legislature's congressional map violated Article III, Section 4(c)(5)'s prohibition on drawing maps “to discourage competition or for the purpose of favoring or disfavoring incumbents or other particular candidates or political parties.” *Harkenrider v. Hochul*, \_\_\_ A.D.3d \_\_\_, 2022 WL 1193180, at \*3 (4th Dep't Apr. 21, 2022) (“*Harkenrider I*”) (quoting N.Y. Const. art. III, § 4(c)(5)). The Appellate Division gave great credence to Mr. Trende's dotplot and

gerrymandering index analyses and conclusions that the enacted map had “the effect of rendering . . . districts less competitive in favor of democrats,” in violation of the New York Constitution. *Id.* at \*3–5.

The analysis of the remedial map thus *must* reflect this Court’s, the Appellate Division’s, and the Court of Appeals’ reliance on Petitioners’ successful proof—especially Mr. Trende’s methodology—to ensure that the map it adopts is constitutional, under the law of the case doctrine. *See Martin v. City of Cohoes*, 37 N.Y.2d 162, 165 (1975). In ruling in Petitioners’ favor, the courts in this case did not rely upon a district-by-district discussion of communities of interest or compactness scores to measure partisan fairness precisely because it is well known that “[n]ew redistricting software” can make gerrymanders “more extreme and durable,” “captur[ing] every last bit of partisan advantage, while still meeting traditional districting requirements (compactness, contiguity, and the like),” *Gill v. Whitford*, 138 S. Ct. 1916, 1941 (2018) (Kagan, J., concurring). Therefore, any proper analysis of the remedial submissions in this case absolutely must pass through Mr. Trende’s metrics evaluating a partisan gerrymander to be a permissible remedy.

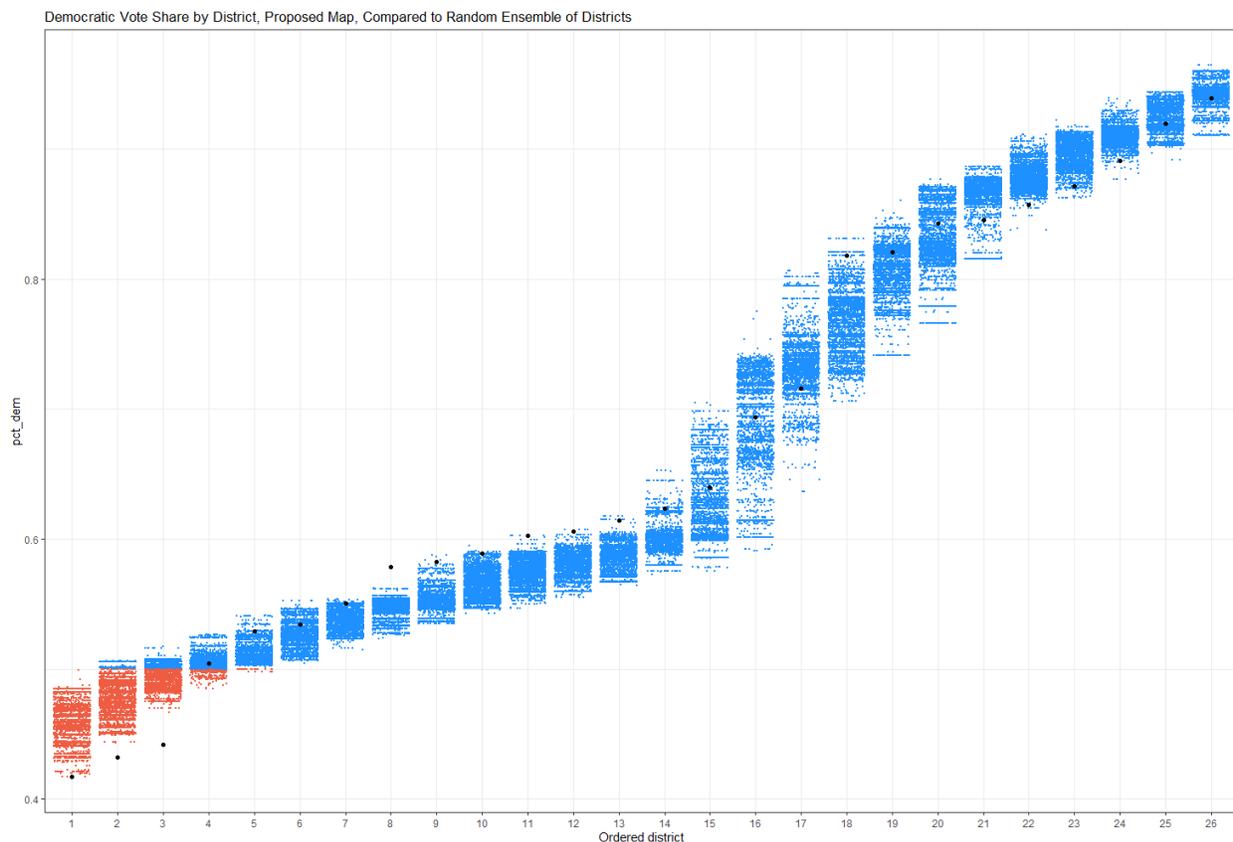
## **II. Legislative Respondents’ Congressional Map Egregiously Violates These Principles**

Legislative Respondents’ proposed remedial congressional map violates these principles, offering yet another gerrymandered map for this Court’s and the Special Master’s consideration.

### **A. Overall Partisan Effect/Packing And Cracking**

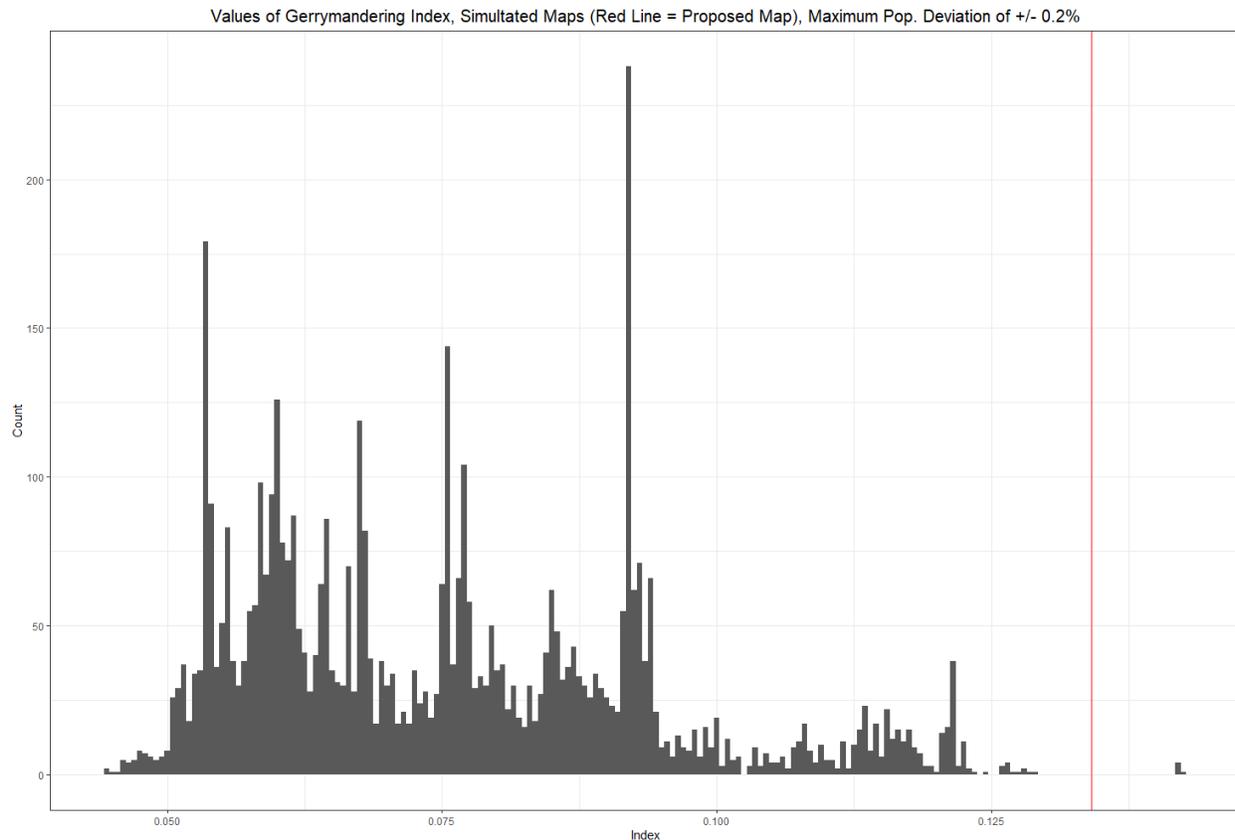
As the Remedial Map Rebuttal Expert Report of Sean P. Trende (“Trende Cong. Reb. Rep.”) shows, Legislative Respondents have largely repackaged their unconstitutionally gerrymandered 2022 enacted map and resubmitted it to this Court, with the obvious result that Legislative Respondents’ proposed “remedial” map incorporates all the same partisan errors as the unconstitutional map. As Mr. Trende’s report shows, outside of their proposed Congressional Districts 1 and 2, all of Legislative Respondents’ districts are near identical to the congressional

map this Court invalidated. *Trende Cong. Reb. Rep.1–2*. The results of this replication are unsurprising, as shown in Mr. Trende’s dotplot and gerrymandering index analyses. On the dotplot, Legislative Respondents’ new map continues to pack Republican voters into a small number of districts, giving Republicans three districts that are overwhelmingly safe, while making other districts more Democratic than would be expected from a map drawn without partisan intent, thereby *still* decreasing competition and favoring the Democratic Party, in violation of Article III, Section 4(c)(5):



*Trende Cong. Reb. Rep.2–3*. It is no surprise, then, that Dave Wasserman, a nationally respected, nonpartisan redistricting expert, *see Trial Transcript, Day 2, at 190–91 (Mar. 15, 2022)*, explained Legislative Respondents’ new map as a “watered-down version of their struck 22D-4R

gerrymander,” Dave Wasserman (@Redistrict), Twitter (May 4, 2022 1:58 PM).<sup>1</sup> As a result of this packing and cracking, Legislative Respondents’ proposed remedial congressional map remains standard deviations worse on the gerrymandering index than the average of the 5,000 ensemble maps, showing how deeply this map continues to favor Legislative Respondents’ Democratic Party interests:



Trende Cong. Reb. Rep.3–4. Thus, Legislative Respondents’ proposed congressional map similarly fails on the metrics that all of the Courts found relevant in labeling Respondents’ first attempt an unconstitutional “partisan gerrymander, and does not comply with the requirements of the New York Constitution.” Trende Cong. Reb. Rep.4.

<sup>1</sup> Available at <https://twitter.com/redistrict/status/1521912126582972419?s=21&t=fyiGiNPV Vp167mD74aosBQ>.

Legislative Respondents do not even attempt to address the data-based conclusion that their proposed remedial congressional map is yet another egregious, unconstitutional gerrymander, remarkably repeating their prior, failed arguments against Mr. Trende’s methodology, in complete derogation of the law-of-the-case doctrine. *See Martin*, 37 N.Y.2d at 165. So Legislative Respondents are wrong to contend that Mr. Trende’s analyses are “of no probative value,” NYSCEF No.313 at 2 n.1, given this methodology has already prevailed at the merits stage of this case. Respondents contend that “Mr. Trende failed to consider important constitutional criteria like communities of interest” in his analysis, NYSCEF No.313 at 2 n.1, but as litigated *extensively* in this case, Mr. Trende’s analysis incorporated all of the possible “additional constraints” except for communities of interest, which Respondents’ own expert “conceded” are “notoriously difficult to account for because of their vague definition” and it is patently “implausible that the failure to account for this one criterion in the simulated maps” could adequately explain the resulting partisanship in a redistricting plan. *Harkenrider I*, 2022 WL 1193180, at \*4. And Respondents’ argument that Mr. Trende’s ensemble fails to consider “consensus decisions like uniting Onondaga County and Tompkins County in a single district,” NYSCEF No.313 at 2 n.1, is simply factually inaccurate, and an attempt to paper over their continued efforts to gerrymander upstate New York for Democratic gain, as Petitioners explain below, *infra* pp.9–10, 18–19.

Remarkably, while Legislative Respondents present their own expert report from Dr. Barber in support of their proposed remedial congressional map, his analysis is extremely limited, discussing only traditional redistricting criteria such as contiguity, compactness, core retention, and the like, *see* NYSCEF No.315 at 3–9, without ever addressing the obvious partisan gerrymandering of this new submission. Thus, even though Dr. Barber already had his own 50,000-map simulation ensemble—which he could have easily used to evaluate Legislative

Respondents' map under Mr. Trende's winning methodology in this case—Legislative Respondents declined to have Dr. Barber perform that analysis (or, if they had him perform that analysis, realized how embarrassing the results were, and thus did not disclose them to this Court).

**B. The Legislative Respondents' Proposed Map Keeps Most Of The Gerrymandered Choices From Their Invalidated Map**

Even beyond the mere fact that Legislative Respondents' submission fails the social science and data metrics for gerrymandering, *see supra* Part I.A, numerous individual districts in Legislative Respondents' submission replicate their prior unconstitutional map.

Long Island

Legislative Respondents' proposed remedial congressional map makes several clearly partisan choices on Long Island, either reiterating the partisan decisions from their prior invalidated map or moving incumbents to make for better Democratic opportunities in open districts. For example, Legislative Respondents' Proposed CD1 moves incumbent Republican Congressman Andrew Garbarino into their CD1, from his current spot as the incumbent in Congressional District 2. This allows them to have an open seat in proposed CD2—which, as drawn, is a highly competitive district, albeit one that voted in favor of President Biden in 2020—without having to compete with a Republican incumbent thus increasing their chances of flipping their CD2 to Democrat from its current Republican-represented status. In Legislative Respondents' proposed CD3, they duplicate the five-county marauding district found in their unconstitutional enacted map, again lumping in unrelated communities in Suffolk, Nassau, Queens, Bronx, and Westchester Counties. Thus, in this regard, Legislative Respondents merely double down on their gerrymandering efforts, offering this Court largely what it already rejected as unconstitutional.

New York City

In New York City, Legislative Respondents admit that their proposed “remedial” map is identical to those districts in their unconstitutional map. NYSCEF No.313 at 3–5. Included among their rote repetition are proposed CDs 10 and 11, which have long been at issue in this lawsuit. Legislative Respondents’ proposed CD10 attempts to connect the westside of Manhattan with portions of southern Brooklyn, while omitting certain Asian American communities and placing them with the primarily Staten Island-based proposed CD11, ignoring the public testimony calling for those Asian American communities not to be combined with disparate communities in Staten Island. Public Statement of Dr. Wah Lee (July 29, 2021); *see also* Public Statement of Karen Zhou (July 29, 2021); Public Statement of Kay Wong (July 28, 2021).<sup>2</sup> Indeed, this configuration unnecessarily divides Brooklyn’s predominantly mainland Chinese population (particularly the Fukienese community), and also separates this community from the large Asian American population in lower Manhattan (Chinatown).

In proposed CD11, a key dispute throughout this litigation, Legislative Respondents re-submit their egregious gerrymander combining Staten Island with disparate portions of Brooklyn, including Sunset Park and other Asian American communities, contrary to the same public testimony, as well public outcry from even elected Democrats representing the region. *See New York Legislature Approves New Congressional Maps*, AP News (Feb. 2, 2022) (statement of Assemblywoman Marcela Mitaynes).<sup>3</sup> So while Legislative Respondents claim that their resubmission of this same, egregious gerrymander was not done to be “combative,” NYSCEF

---

<sup>2</sup> Available at [https://nyirc.gov/storage/archive/Kings\\_Richmond\\_Redacted.pdf](https://nyirc.gov/storage/archive/Kings_Richmond_Redacted.pdf).

<sup>3</sup> Available at <https://bit.ly/3kE77Oc>.

No.313 at 4–5, they simply provide no cogent explanation beyond unconstitutional partisan interests supporting this particular drawing of proposed CD11.

Hudson Valley

Legislative Respondents’ proposed remedial congressional map is no better than the unconstitutional map in the Hudson Valley region. In proposed CD16, Legislative Respondents continue to connect urban areas in the Bronx and south Westchester County with Carmel, Somers, Yorktown, and Putnam Valley. Indeed, this submission is arguably worse than the unconstitutional 2022 enacted map, as it extends even further north, lumping in even more disparate rural areas in Putnam County. Proposed CDs 17 and 18, while encompassing minor changes, continue to unreasonably split counties and related communities for purely partisan reasons. Legislative Respondents’ proposed remedial congressional map continues to split Orange County between CDs 17 and 18 for no discernible reason, especially considering that Orange County could easily be fully contained in CD18.

Upstate New York

In upstate New York, Legislative Respondents reiterate multiple of their unconstitutional gerrymandering choices, for partisan gain. In proposed CD23, for example, Legislative Respondents have made only cosmetic changes to their unconstitutional plan, continuing this district’s planned packing of Republican voters. And in proposed CD24, Legislative Respondents provide a *slightly* less ridiculous district spanning across New York’s almost entire Northern Lake Ontario border, with only other minor changes from the initial unconstitutional map. And Legislative Respondents’ continuation of their decision to split Erie County between three congressional districts—their proposed CDs 23, 24, and 26—is similarly explained only by their partisan goals.

But, more importantly, each of those upstate changes are in aid of the continuation of Legislative Respondents’ decision to gerrymander upstate in proposed CD22. In CD22, Legislative Respondents purport to create a “university district” centered on Utica and Syracuse, which is a patent ruse for partisan gain. New York has over 100 independent colleges and universities, as well as 64 State University of New York campuses throughout the State. Despite New York’s ample universities, Legislative Respondents purported to identify two such campuses—Ithaca and Syracuse—as uniquely connected in order to combine disparate communities in Onondaga and Tompkins Counties, despite Tompkins County’s historical incorporation with the other southern tier counties in a separate district.

\* \* \*

Legislative Respondents’ “remedial” submission is nothing more than a blatant attempt to disregard this Court’s prior ruling of unconstitutionality on a notably similar map and this Court should reject Legislative Respondents’ bad faith submission.

### **III. Legislative Respondents’ Attack On Petitioners’ Proposal Is Meritless**

Legislative Respondents attack Petitioners’ proposed remedial congressional map as an “unabashed pro-Republican gerrymander,” NYSCEF No.312 at 1, but they present no evidence to support this outlandish claim. On Mr. Trende’s measures that this Court already relied upon in measuring partisanship, Petitioners’ map is “not infused with . . . partisan intent” and “an outstanding choice for this Court to replace the previous map.” NYSCEF No.277 at 8. Although Legislative Respondents had Dr. Barber analyze their own map only for traditional redistricting criteria, he nowhere opined on the fairness of Petitioners’ submitted map, even though he already had his own 50,000-map ensemble that he could compare to Petitioners’ submission. *See* NYSCEF No.315. And while Legislative Respondents cite favorably the nonpartisan redistricting website FiveThirtyEight as somehow showing that Petitioners’ map creates an “unprecedented

stretch of red” south of the city, NYSCEF No.312 at 6, they ignore that FiveThirtyEight scores Petitioners’ proposal as not materially different on the efficiency gap from the neutral, 2012 court-drawn map, while measuring Legislative Respondents’ newest submission as a very similar pro-Democratic efficiency gap score as the invalidated, gerrymandered map. *What Redistricting Looks Like In Every State – New York*, FiveThirtyEight (comparing Petitioners’ “Proposed remedial map” at an efficiency gap of R+2.3, the 2012 “Old map” at R+1.3, the “Previously enacted proposal” at D+8.6, and “New York Democrats’ [new] proposal” at D+8.8).<sup>4</sup>

Repeatedly throughout their letter response to Petitioners’ proposed remedial congressional map, Legislative Respondents levy race-based accusations against Petitioners’ map, claiming that Petitioners somehow failed to adequately preserve various racial demographics in their proposed congressional districts. *See* NYSCEF No.312 at 1–2, 4, 5, 5–6, 6–7. But the U.S. Supreme Court has quite recently reiterated that “districting maps that sort voters on the basis of race are by their very nature odious,” so any time “race is the predominant factor motivating the placement of voters in or out of a particular district, the State bears the burden of showing that the design of that district withstands strict scrutiny,” meaning “narrowly tailored to comply with the VRA.” *Wis. Legislature v. Wis. Elections Comm’n*, 142 S. Ct. 1245, 1248 (2022) (per curiam) (citation omitted). Consistent with these directives, Petitioners have not unconstitutionally subordinated traditional redistricting criteria to racial considerations—as Legislative Respondents apparently would prefer—but have properly considered communities of interest in drawing their congressional districts. While communities of interest can be “vague [in] definition,” *Harkenrider I*, 2022 WL 1193180, at \*4, and at times might overlap with racial demographics, Petitioners respectfully suggest that the Court and Special Master should endeavor to draw districts respecting

---

<sup>4</sup> Available at <https://53eig.ht/3OVXkRB>.

such communities of interest rather than wading into the “odious” form of “districting . . . that sort[s] on the basis of race,” and which the U.S. Supreme Court has very recently struck down in other States. *Wis. Legislature*, 142 S. Ct. at 1248, 1251. Following Petitioners’ approach, therefore, complies with the New York Constitution’s prohibition against drawing districts that “would result in the denial or abridgement of racial or language minority voting rights,” N.Y. Const. art. III, § 4(c)(1), without violating the U.S. Constitution’s equal-protection clause jurisprudence, *Wis. Legislature*, 142 S. Ct. at 1248. And Petitioners’ proposed remedial congressional map adequately respects both of these considerations, providing a similar number of minority-majority and minority-plurality districts as the 2012 congressional map. *See* NYSCEF No.278 (“Pets.’ Cong. Memo.”) at 3.

Legislative Respondents’ individual criticisms of Petitioners’ proposed congressional districts all fail, as Petitioners’ map “consider[s] . . . communities of interest,” N.Y. Const. art. III, § 4(c)(5), public concerns voiced during the IRC process, and core retention, while maintaining compactness, contiguity, and equal-population concerns.

Legislative Respondents’ criticism of Petitioners’ Long Island districts, NYSCEF No.312 at 1, fails. Petitioners’ CD1 maintains 100% of the core of the 2012 district, maintaining it entirely in Suffolk County and incorporating very few splits of cities, towns, and communities of interest. *See* N.Y. Const. art. III, § 4(c)(5).

Petitioners’ CD2 maintains over 80% of the core of the prior, court-drawn district while extending only slightly further westward into Nassau County for population purposes, thereby creating a South Shore district, combining these related communities of interest, without unnecessarily extending into Queens, where there was little if any connection. *See* Pets.’ Cong. Memo.4–5 (citing Public Comment of Lisa DelliPizzi (June 30, 2021); Public Comment of

Margaret Kelly (Aug. 1, 2021)<sup>5</sup>). Legislative Respondents ignore this geographic and public-testimony reality entirely in claiming that Petitioners’ map splits up Hispanic votes. And while Legislative Respondents claim that the Affidavit of Todd Breitbart shows “a key aspect of Republican gerrymanders on Long Island” was “cracking minority neighborhoods,” NYSCEF No.312 at 1–2 (citing NYSCEF No.149 ¶¶ 22–35), they ignore that Mr. Breitbart’s testimony was solely related to the Legislature’s past redistricting practices in the state Senate map, and that he had nothing to say about congressional districts on Long Island. NYSCEF No.149 ¶¶ 34–35.

While Legislative Respondents contend that Petitioners’ CD3 “cracks” various communities, splitting them between CDs 2 and 3, NYSCEF No.312 at 2, Petitioners’ plan remedies the bizarre, five-county Congressional District 3 the Legislature attempted in its unconstitutional enacted map. Pets.’ Cong. Mem.5. In doing so, Petitioners’ map created a North Shore district contained within Nassau and Suffolk Counties, keeping together related communities of Islip, West Sayville, Sayville, and Bayport, all consistent with the proffered public testimony during the IRC proceedings. Pets.’ Cong. Mem.5 (citing Public Comment of Lisa DelliPizzi, *supra*; Public Comment of Margaret Kelly, *supra*; Testimony of Edward O’Donnell, 20:35–23:13, Virtual Public Meeting of the NYSIRC, July 20, 2021<sup>6</sup>). Thus, Petitioners’ CD3 makes both geographic and community sense, combining related communities together for a single, combined representative in Congress. *Contra* NYSCEF No.312 at 2.

Moreover, the district lines for Petitioners’ CDs 1–3 also accommodate the voluminous public testimony supporting an Orthodox Jewish-centered communities-of-interest district in Petitioners’ CD4. Petitioners’ CD4 combines these heavily Orthodox and Russian Jewish

---

<sup>5</sup> Available at [https://nyirc.gov/storage/archive/Suffolk\\_Nassau\\_Redacted.pdf](https://nyirc.gov/storage/archive/Suffolk_Nassau_Redacted.pdf).

<sup>6</sup> Available at <https://www.youtube.com/watch?v=DuWDR8GyaWo>.

neighborhoods throughout Brooklyn, Queens, and Five Towns, all linked by economic, cultural and religious ties. Pets.’ Cong. Mem.5–6 (citing Public Comment of Nachman Mostofsky (July 28, 2021); Public Comment of Rabbi Yeruchim Silber (July 29, 2021); Public Comment of Dr. Bernard Fryshman; Public Comment of Louis Jerome<sup>7</sup>). Indeed, while Legislative Respondents contend that this new district is based entirely on partisan concerns to create a “safely Republican” district, NYSCEF No.312 at 2–3, in so arguing they ignore that the core connections between these Orthodox communities are “strong biblical values” creating “a cohesive community of interest,” Public Comment of Nachman Mostofsky, *supra*, and one that is particularly “unique” in that almost all of these Orthodox Jewish citizens “have the same religious practices, have similar modes of worship, [and] all keep Saturday as an official day of rest where no work at all is allowed included even things like talking on the phone,” while also all shopping in similar “kosher groceries, supermarkets and restaurants,” Public Comment of Rabbi Yeruchim Silber, *supra*. Given that there is arguably “no clearer example of a community of interest anywhere in New York than this community,” Public Comment of Dr. Bernard Fryshman, *supra*, Petitioners’ map adequately reflects these important concerns of a large and growing ethnic population in New York City, *see* N.Y. Const. art. III, § 4(c)(1), (5). This also reflects—as Legislative Respondents acknowledge, NYSCEF No.312 at 3–4—original draft plans created by the IRC, which also included an Orthodox Jewish interest district covering this region, *see* “Names” Congress Plan, Redistricting & You: New York.<sup>8</sup> Cynically diminishing all of these significant connections between these related communities as mere window dressing for partisan gain, as Legislative

---

<sup>7</sup> Available at [https://nyirc.gov/storage/archive/Kings\\_Richmond\\_Redacted.pdf](https://nyirc.gov/storage/archive/Kings_Richmond_Redacted.pdf).

<sup>8</sup> Available at <https://bit.ly/3ybgEog>.

Respondents do here, *see* NYSCEF No.312 at 3, ignores the real concerns of and connections between these communities of interest.

Legislative Respondents next assert that Petitioners' map wrongly "cannibalizes" portions of existing Congressional Districts 5 and 8 in the 2012 map into Petitioners' CD4. NYSCEF No.312 at 5. But Legislative Respondents also acknowledge that 2012 Congressional Districts 5 and 8 "are two of only four overpopulated districts from 2012." *Id.* Thus, Legislative Respondents seemingly understand that this overpopulation required portions of these districts to be moved elsewhere. As explained above, Petitioners chose to correct this overpopulation as part of a new district, responsive to community concerns during the IRC process, providing for an Orthodox Jewish interest district, connecting the deeply related Orthodox neighborhoods split between these districts into a single district. *See supra* pp.13–14. As a result of this important new Orthodox district, Petitioners extended their proposed CD8 into Queens, in order to maintain this district's status as an African American minority-majority district and not split up those important communities of interest, as the 2012 map maintained them. *See* Pets.' Cong. Mem.7.

Regarding Petitioners' CD10, Legislative Respondents argue that the proposed district "divide[s]" the Asian American communities between multiple districts. NYSCEF No.312 at 5–6. But Petitioners' proposed map merely eliminates the bizarre and much-maligned snaking portion of their enacted Congressional District 10 that connected western Manhattan with south Brooklyn via a narrow "serpentine shape[d] . . . almost comically contorted" segment going into Brooklyn. *See* Nicholas Fandos, *How N.Y. Democrats Came Up With Their Gerrymandered Districts on Their New Map*, N.Y. Times (Jan. 31, 2022).<sup>9</sup> Thus, Petitioners' CD10 is a compact,

---

<sup>9</sup> Available <https://www.nytimes.com/2022/01/31/nyregion/nyc-congressional-district-nadler.html>.

contiguous district wholly contained in New York County. This change also helps to remedy the problem of the enacted map, which unnecessarily divided Asian American communities of interest into Congressional Districts 10 and 11, even though public testimony during the IRC process explained that those communities did not wish to be combined with disparate communities on Staten Island. Public Statement of Dr. Wah Lee, *supra*; Public Statement of Karen Zhou, *supra*; Public Statement of Kay Wong, *supra*.

Legislative Respondents attack Petitioners' proposed CD11, NYSCEF No.312 at 6, despite acknowledging that this district is similar to its 2012 predecessor, retaining over 90% of its core, Pets.' Cong. Mem.7. CD11 needed to cross from Staten Island into Brooklyn for population purposes, and Petitioners' map does so only by including the related communities directly across the Verrazano-Narrows Bridge connecting those neighborhoods. *Id.* So Petitioners' CD11 reflects the ample public testimony provided during IRC proceedings explaining the deep connections between these portions of Brooklyn and Staten Island, *id.* at 8 (citing Public Statement of Brian Doherty; Public Statement of Barbara Slattery; Public Statement of Rocco Coluccio (Aug. 10, 2021)<sup>10</sup>). Petitioners' CD11 also largely corrects the errors of the enacted map that led State Assemblywoman Marcela Mitaynes to vote against the congressional map because it unnecessarily "br[oke] up Chinatown communities of Lower Manhattan and Sunset Park, as well as surrounding Latino communities." *New York Legislature Approves New Congressional Maps, supra.*

Legislative Respondents attack Petitioners' CD12 as "disregard[ing] the core of a Democratic-leaning district," NYSCEF No.312 at 6, but fail to acknowledge that it incorporates over half of its 2012 counterpart, Pets.' Cong. Mem.8. While this district does move further into Queens than its predecessor, this was necessary to reach population equality while accommodating

---

<sup>10</sup> Available at [https://nyirc.gov/storage/archive/Kings\\_Richmond\\_Redacted.pdf](https://nyirc.gov/storage/archive/Kings_Richmond_Redacted.pdf).

the new, compact CD10 that is now entirely in Manhattan. And while Legislative Respondents similarly argue that Petitioners' CD14 is "aim[ed] at a high-profile incumbent," NYSCEF No.312 at 6, this district retains almost two-thirds of its 2012 core while maintaining a similar concentration of Hispanic residents as its 2012 counterpart by maintaining those communities of interest as best as possible, Pets.' Cong. Mem.9. While this district is now roughly one-third new, those changes were necessary to accommodate the other fixes Petitioners' map makes in Long Island and New York City. Indeed, Petitioners' map eradicates Respondents' declared-unconstitutional, five-county Congressional District 3, while also preserving the Asian American communities in Petitioners' CD6, and making CD10 a compact Manhattan-based district. As a result, CD12 necessarily had to move further into Queens to accommodate these fixes.

Legislative Respondents attack Petitioners' CDs 16 and 17, claiming that CD16 "ruptures th[e] connection" between the Black communities in the north Bronx and Mount Vernon in Westchester that have been joined "for decades." NYSCEF No.312 at 7. But this is false. Petitioners' CD16 still incorporates a portion of the north Bronx with Mount Vernon and southern Westchester County, retaining over three-quarters of the core of the 2012 district. Petitioners' CD16 removes parts of *northern* Westchester County from this district, given their much more rural nature and the extensive public commentary noting that *southern* Westchester maintained logical links with the Bronx and these more urban areas. Public Statement of Betty Berenson; Public Statement of Deborah Porder; Public Statement of Ellen Hendrickx; Public Statement of Jenny Geer (Aug. 14, 2021); Public Statement of Maryellen Chomsky (Aug. 15, 2021); Public Statement of Susan H. van Dijk (Aug. 11, 2021); Public Statement of William H. Schrag.<sup>11</sup> This also explains Petitioners' CD17, which combines the related and more rural areas in northern

---

<sup>11</sup> Available at [https://nyirc.gov/storage/archive/Mid-Hudson\\_Capital\\_Region\\_Redacted.pdf](https://nyirc.gov/storage/archive/Mid-Hudson_Capital_Region_Redacted.pdf).

Westchester County with their related communities in Putnam County, as public testimony also explained that these areas had longstanding connections, more so than northern Westchester County had with southern Westchester County. Public Testimony of Sergio Esposito 1:28:40–1:30:55, Virtual Public Meeting of the NYSIRC, Aug. 2, 2021; *see* Public Testimony of Aiden Rowan 1:39:20–1:42:10, *id.*<sup>12</sup> Thus, Legislative Respondents are simply incorrect to claim that all of the public testimony supported an “East to West” division of these counties. *See* NYSCEF No.312 at 7.

Legislative Respondents contend that Petitioners’ CD19 “crack[s] Democratic voters from the district” by excluding the Town of New Paltz. *Id.* at 8. But they ignore that Petitioners’ and Legislative Respondents’ CD19 choices are largely consistent, with the main differences between Legislative Respondents’ proposed Congressional District 19 and Petitioners’ CD19 is that Petitioners’ map does not endorse their brand new and unsupported “university district” in Congressional District 24, connecting unrelated communities in Onondaga and Tompkins Counties.

Turning to Petitioners’ CD24, Legislative Respondents contend that it “reflects another obvious attempt by Petitioners to skew a district toward Republicans.” NYSCEF No.312 at 8. Of course, Legislative Respondents ignore that Petitioners’ CD24 retains almost 90% of the core of its 2012 predecessor, while Legislative Respondents’ own attempt to create a new “university district” here injects approximately 40% new voters. NYSCEF No.277 at 5. Petitioners’ map maintains historical associations by keeping Tompkins County with its fellow southern tier counties in CD23. And while Legislative Respondents misleadingly contend that “bipartisan consensus” supported creating this new district of “prominent educational institutions and

---

<sup>12</sup> Available at <https://www.youtube.com/watch?v=7HgDIwfiMmw>.

surrounding communities,” NYSCEF No.312 at 8, they ignore that the Republican caucus of the IRC only included this combined district as part of broader bipartisan negotiations, which failed when the Democratic caucus refused to meet them in the middle elsewhere. Thus, as explained above, *supra* pp.9–10, it is Legislative Respondents’ blatant attempts to gerrymander in the middle of upstate New York that disregard communities of interest and historical districting.

### CONCLUSION

For the reasons set forth above, Petitioners respectfully request that the Special Master and this Court adopt Petitioners’ Proposed Remedial Congressional Map.

Dated: New York, New York

May 5, 2022

TROUTMAN PEPPER HAMILTON  
SANDERS LLP

By: 

---

Bennet J. Moskowitz, Reg. No. 4693842  
875 Third Avenue  
New York, New York 10022  
(212) 704-6000  
bennet.moskowitz@troutman.com

Misha Tseytlin, Reg. No. 4642609  
227 W. Monroe St.  
Suite 3900  
Chicago, IL 60606  
(608) 999-1240  
misha.tseytlin@troutman.com

Respectfully submitted,

KEYSER MALONEY &  
WINNER LLP

By: s/ George H. Winner, Jr.

---

George H. Winner, Jr., Reg. No. 1539238  
150 Lake Street  
Elmira, New York 14901  
(607) 734-0990  
gwinner@kmw-law.com

HOWARD HINMAN &  
KATTELL LLP

Richard C. Lewis  
700 Security Mutual Building  
80 Exchange Street  
Binghamton, NY 13901  
(607) 231-6605  
rlewis@hhk.com

**CERTIFICATION**

I hereby certify that the foregoing memorandum complies with the bookmarking requirement and word count limitations set forth in Rule 202.8-b of the Uniform Rules of Supreme and County Courts. *See* 22 NYCRR § 202.8-b. This memorandum contains 4,905 words, excluding parts of the document exempted by Rule 202.8-b(b).

Dated: New York, New York  
May 5, 2022

TROUTMAN PEPPER HAMILTON  
SANDERS LLP

By: /s/ Bennet J. Moskowitz

Bennet J. Moskowitz, Reg. No. 4693842  
875 Third Avenue  
New York, New York 10022  
(212) 704-6000  
bennet.moskowitz@troutman.com