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May 17, 2022

By E-Filing

Hon. Patrick F. McAllister
Supreme Court, Steuben County
3 East Puteney Square
Bath, New York 14810

Re: Harkenrider et al. v Hochul et al., Index No. E2022-0116CV

Dear Justice McAllister:

I request that you request that Dr. Cervas provide a written explanation for the choices he made among the competing considerations when drawing the Congressional and State Senate maps. His colleague Bernard Grofman and Sean Trende did precisely that when submitting their Congressional map to the Virginia Supreme Court, so I know Dr. Cervas is familiar with that protocol. I request that you request him to do so by this evening if possible so that the public square (this issue is no longer really about the contending political parties), so that they can evaluate Dr. Cervas' comments in time for them to reflect and comment upon them by the deadline you set for Midnight tomorrow (Wednesday, May 18, 2022). In that regard, I gave Dr. Cervas notice by email at 7:00 am this morning that I was going to request such a report, and for that matter shared with him at 1:20 pm today the maps linked below, so that he not be blindsided by this letter, but rather have as much time as possible to prepare a response, if not to the public square perhaps, at least to you "in chambers" as it were.

My comments are limited to the Congressional map. My "office" is limited to just myself. I have no staff or hired experts or anyone else to generate a quality work product as to everything that is out there at warp speed, so thus my more limited purview, typos and all.

I find much of Dr. Cervas' CD map to be excellent. However, I take great exception to his rejecting an Orthodox Jewish-Asian influence district, and embracing a slice and dice of those communities. It was wrong to do that 10 years' ago, and it is wrong to do that now. I appreciate that it is "inconvenient" to create for a district for this extremely compelling community of interest. I also appreciate that to do so entails more county splits, and one thing I agree with Dr. Cervas upon is that minimizing county and municipal splits is a top priority. But the

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minimization of splits, after the creation of performing ethnic, racial and language group minority districts, should not take precedence over respecting communities of interest that are compelling and compact (it is no accident that Orthodox Jewish communities are compact because they choose to live within walking distance from their places of worship in order to avoid using other means of transportation).

To the extent that Dr. Cervas' concern was a lack of partisan balance, or for that matter the erosity of the way I drew NY-11, I redrew my map in that area of the map. Specifically, in exchange for creating the compact south Brooklyn CD that at least for the moment is favorable to the GOP, the map renders NY-11 close to safely Democratic. This issue is not about partisan advantage – it is about doing what is right. This revised map that I drew I thinks looks attractive to the eye, and I know that Dr. Cervas is familiar with the way that I split up Manhattan, and that he considered it, before obviously for whatever reason, rejected this approach, be it because it was just too much of a change (too much of a change solely because this community was given the "shaft" last time, so let's do a redux of that and exclude them from the party again), or too many additional county splits, or whatever. The DRA link to the map which restores an Orthodox Jewish-Asian influence district (34.1% Asian VAP), and makes NY-11 less erose and close to safe Democratic is here:

https://davesredistricting.org/join/65eff0ee-03b8-4f6e-b26a-672492c8679b

My other objection is to the way Dr. Cervas drew upstate New York, to wit in particular, going the Common Cause route and placing the entirety, or close to it, of Tompkins County in NY-19 to make it more Democratic. In lieu of the way Common Cause did it, which made Tompkins stick out like a sore thumb, with NY-23 ear muffed around it, Dr. Cervas accomplished the same thing by creating an "ugly" and non-compact NY-24. Given that one can draw a map that 1) creates a "Southern Tier" CD about which so much has been said as if it were akin to being sacrosanct (and perhaps it is in, e.g., Steuben County, to pick one county at random, not), 2) draws a much more compact NY-24, and 3) entails smaller county splits all around (Erie County 42,000 for Dunn, 60,000 for Cervas; Dunn 20,000 for Oswego County, Cervas 38,000 for Jefferson County; and Dunn 5,500 for Tompkins County, Cervas 22,000 for Otsego County), in my opinion what we have here is a soft gerrymander in favor of the Democrats.

If Dr. Cervas effected this soft gerrymander for purposes of partisan balance (his NY-15 was carried by Biden by about 5 points, my original map had it even, and my revised map to go the Southern Tier route has Trump 2020 carrying it by about 3 points), he should explain his reasoning, at least to you (but preferably to the public square in a written report). Then, it is for you, and you alone, to decide if you agree that it is a soft Democratic gerrymander, whether you also agree that it is worth it because you think it is necessary for partisan balance, and whether you also agree, that the appropriate measurement to assess partisan balance is PVI, which I consider questionable actually, but reasonable minds can disagree about that in this uncertain political world. Indeed perhaps, at the margins, and that is what we have here, given such uncertainty, you may well decide, just not do this particular soft Democratic gerrymander at all.

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The DRA link to the map which undoes what I consider Dr. Cervas' soft Democratic gerrymander of NY-19, while keeping the balance of his upstate design is here:

https://davesredistricting.org/join/9bd177a3-3554-48df-b63d-76f0ceeb8872

And finally, just for purposes of comparison, the DRA link to my final previous map which has NY-19 dead even between Biden and Trump is here:

https://davesredistricting.org/join/bda18120-68ef-4564-85d8-4b20cb70fbbc

Attached for easy access to those not facile with the DRA are all three maps.

I also attach some inside baseball arcane mathematical statistics that are the world in which Dr. Cervas inhabits, just in case he decides to "torture" you with them "in chambers." As you can see, it is not as if the numbers fall off the cliff for the Dunn designs, as opposed to the Dr. Cervas' handiwork.
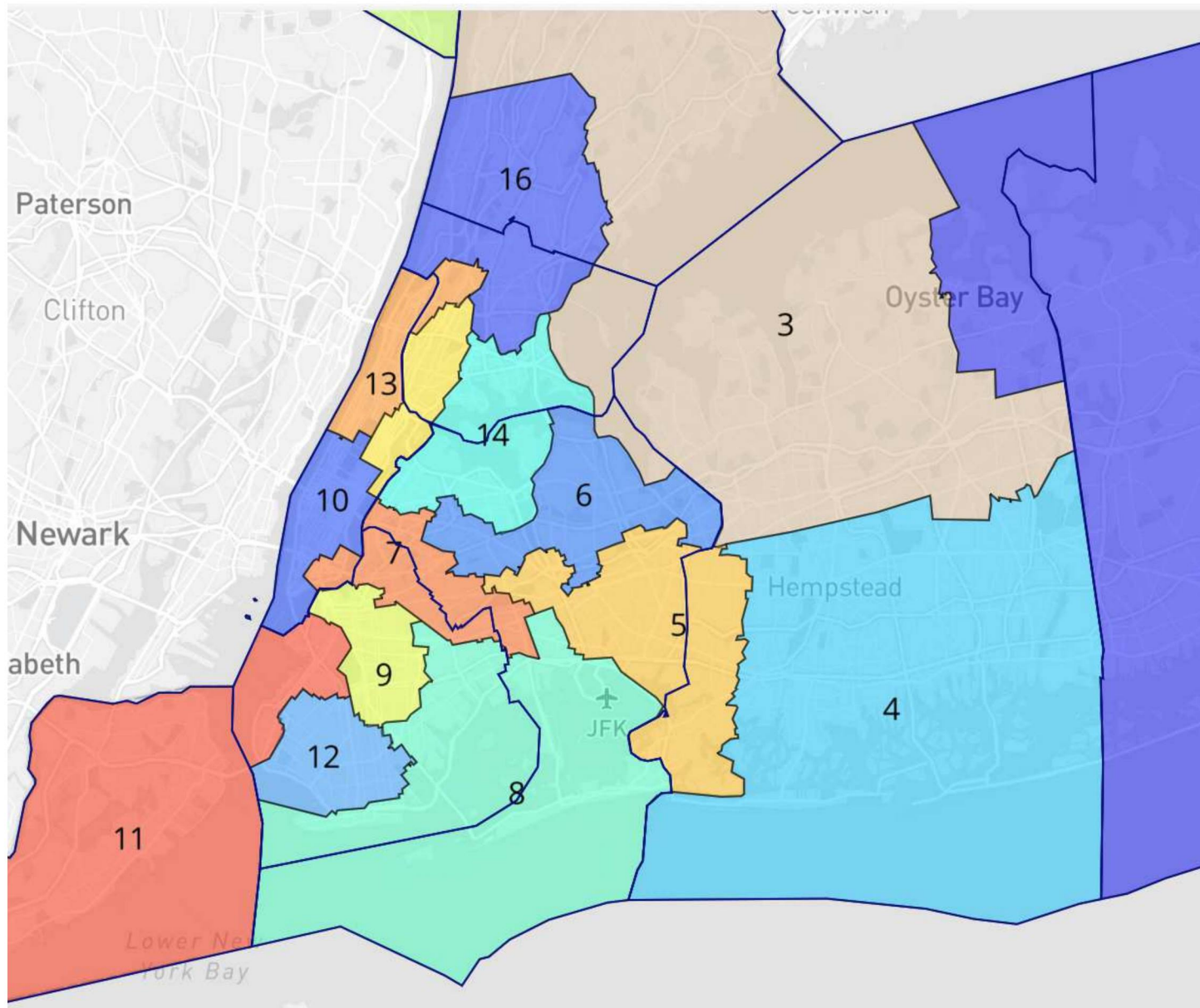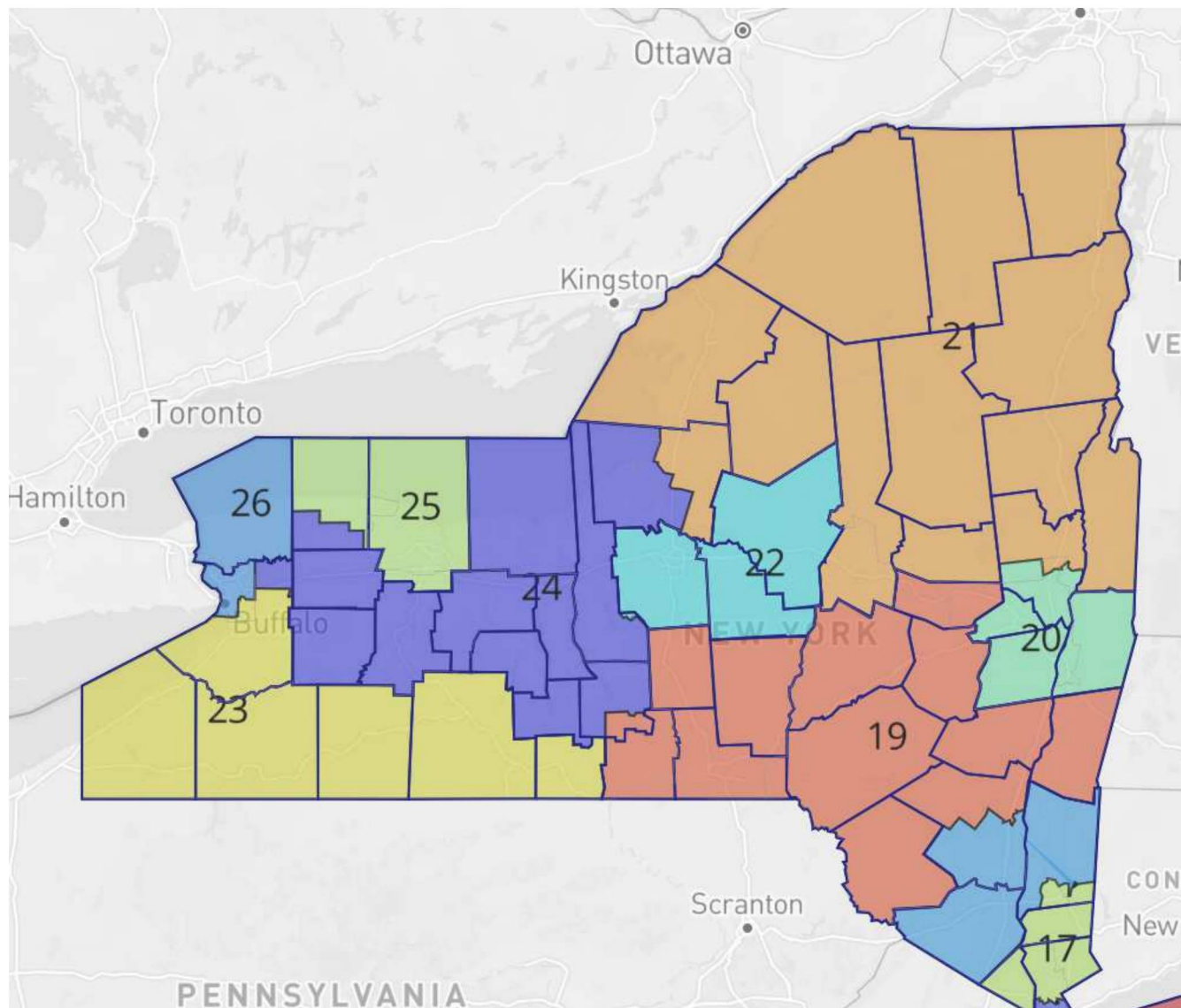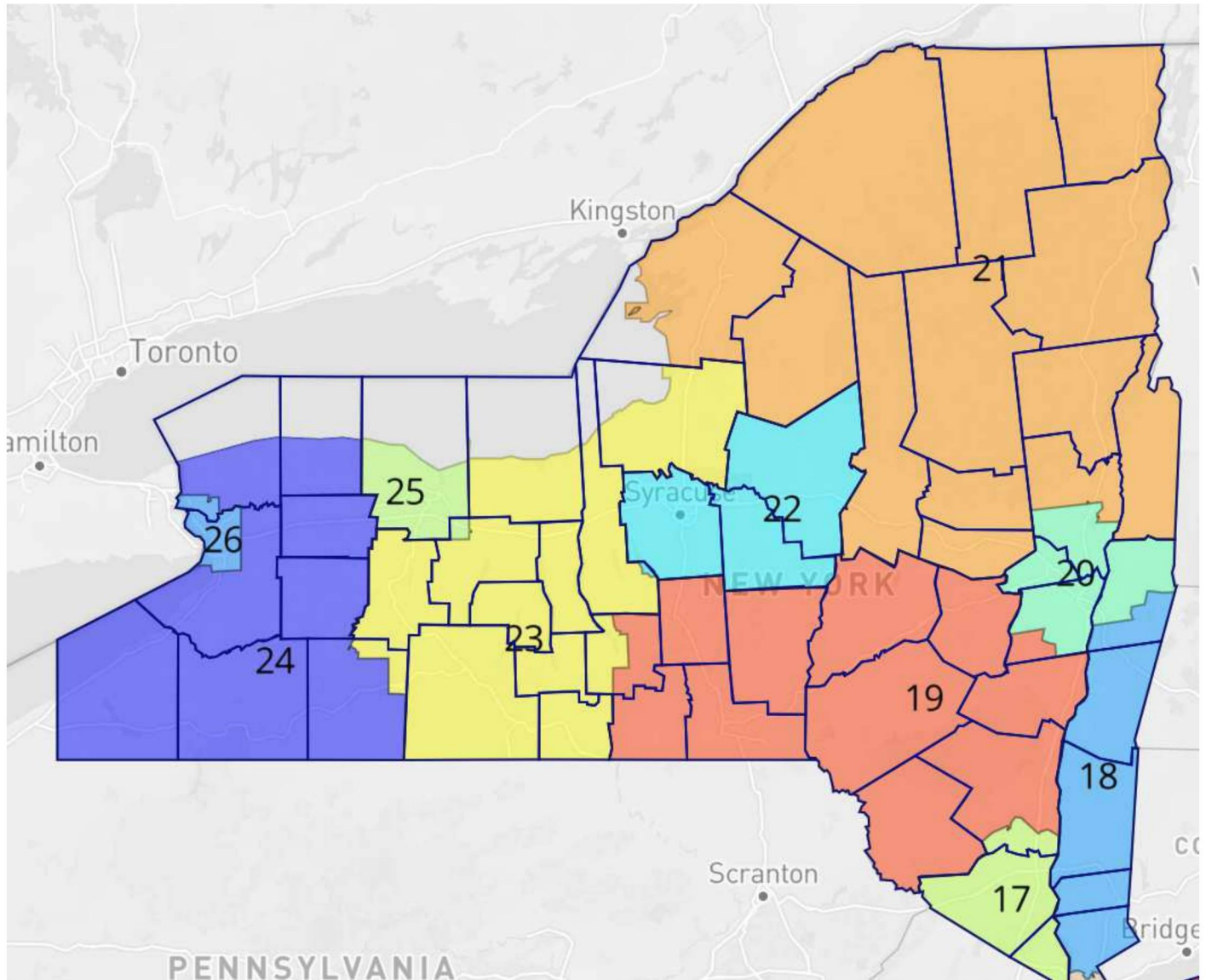
Thank you for your consideration.

Sincerely,

/s/

Stephen W. Dunn

cc: Dr. Jonathan Cervas

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By convention minus means favoring Republicans

	Dunn	Cervas	Upstate Dunn Rev	Downstate Dunn Rev
Eff Gap Plan Score	-3.0%	0.9%	0.0%	-0.7%
Declination Plan Score	-0.11	0.00	-0.04	-0.4
Competitiveness DRA	36	35	34	31
Proportionality DRA	97	85	76	85
Splitting DRA	32	40	40	32
Compactness DRA	62	60	60	63
Minority DRA	82	82	82	82