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By NYSCEF Filing and Electronic Mail

Special Master Jonathan Cervas
Institute for Politics and Strategy
Carnegie Mellon University
Posner Hall 386
5000 Forbes Avenue
Pittsburgh, Pennsylvania 15213

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

Dear Special Master Cervas:

We represent Common Cause/New York, the New York state chapter of Common Cause, Inc. (“Common Cause”), and respectfully submit these comments on your proposed congressional and State Senate maps.

As you know, on April 27, 2022, the New York Court of Appeals held that the congressional and State Senate maps adopted by the New York legislature violated both the procedural and substantive requirements of the New York State Constitution. The four-judge majority of the Court of Appeals held that the legislature’s maps were procedurally deficient because they were adopted without the Redistricting Commission having first completed the drafting and submission of two rounds of proposed maps, as required by the 2014 constitutional amendment creating the bipartisan redistricting commission. *See Harkenrider v. Hochul*, No. 60, (Apr. 27, 2022) at 20-23. Those same four judges concluded that the maps adopted by the legislature were also substantively unconstitutional due to clear partisan gerrymandering in violation of the redistricting principles also contained in the 2014 constitutional amendment. *See id.* at 24-25 & n.13 (recognizing that the 2014 constitutional amendment also added an express prohibition on racial gerrymandering and that district lines “shall not be drawn to have the purpose of, nor shall they result in, the denial or abridgement of the voting rights of racial or minority language groups).

Unfortunately, while you clearly undertook great efforts in drafting the proposed maps to consider the comments and concerns expressed in numerous submissions and testimony as well as certain of the requisite redistricting criteria, it is apparent that the proposed maps are fatally defective in significant parts because they fail to apply the hierarchy of redistricting criteria mandated by the New York State Constitution. Specifically, Article III, Section 4(c) of the New York State Constitution provides that, subject to federal constitutional and statutory requirements, “the following principles *shall be used* in the creation of state senate and state assembly districts and congressional districts.” *Id.* (emphasis added). Yet numerous proposed congressional and State Senate districts violate the very first clearly enunciated, mandatory principle – that “[w]hen drawing district lines, the commission shall consider whether such lines would result in the denial or abridgement of racial or language minority voting rights, and districts shall not be drawn to have the purpose of, nor shall they result in, the denial or abridgement of such rights.” *Id.* § 4(c)(1).



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The proposed maps not contain any explanation as to whether, and if so how, you considered whether any of the proposed districts would result in the denial or abridgment of the opportunity of racial and language minority voters to elect candidates of their choice. More fundamentally, both the proposed congressional and State Senate maps eliminate multiple districts where black, Latinx and Asian-American voters previously constituted a majority or significant plurality of the Voting Age Population and had the opportunity to elect candidates of their choice have been eliminated, and the racial and language-minority voters in those districts have been cracked and dispersed into multiple different districts. A detailed description of the most egregious examples of improperly redrawn districts is contained in Appendix A, and commentary from members of Common Cause living in those affected districts is contained in Exhibit 1 thereto.

It appears that these districts have been redrawn with a focus on mathematically compactness as measured under the Reock and Polsby-Popper tests as well as on minimizing county splits (in the congressional map) and city and town splits (in the State Senate map). While those redistricting criteria – which fall into the fourth and fifth factors, respectively¹ – may be considered in making certain choices in the map-drawing exercise, they cannot displace the requirement in the first criteria of protecting the voting rights of racial and language-minority voters. But that is precisely what the proposed maps have done. The result is that, under your draft proposed maps, racial and language-minority voters will now “have less opportunity to participate in the political process than other members of the electorate *and to elect representatives of their choice*,” *id.* (emphasis added) – a result directly contrary to the requirements of Article III, Section 4(c) of the New York State Constitution, as well as Section 2 of the Voting Rights Act and the First and Fourteenth Amendments to the United States Constitution.

For the foregoing reasons, and as detailed in Appendix A, we urge you to reconsider both the proposed congressional map and the proposed State Senate map to correct for the failure to apply properly the redistricting criteria as mandated by the New York State Constitution. We are, of course, available to answer any questions you may have, in an appropriate setting in which all interested persons would have an opportunity to be present, as you finalize the draft maps for submission to the Court.

Respectfully submitted,

/s/ Neil A. Steiner

Neil A. Steiner

cc: All counsel of record (via NYSCEF)

¹ Moreover, within the fifth redistricting criteria, the proposed maps improperly prioritize minimizing county, city and town splits over other criteria of the same level – namely, the goal of maintaining longstanding and well-defined communities of interest within the same district.