

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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ERIC RODRIGUEZ, et al., :  
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 : Plaintiffs, :  
 : :  
 : : No. 02 Civ. 0618  
 : - against - :  
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 : GEORGE E. PATAKI, et al., :  
 : :  
 : Defendants. :  
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**REPORT AND PLAN  
OF THE SPECIAL MASTER**

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Pursuant to Rule 53 of the Federal Rules of Civil Procedure, a Three-Judge Court consisting of Judge John M. Walker, Jr., Chief Judge of the United States Court of Appeals for the Second Circuit, and United States District Judges John G. Koeltl and Richard M. Berman, of the Southern District of New York (the "Court"), appointed me Special Master in this action by Order dated April 26, 2002 (the "Order"). *See* Appendix in Support of the Report and Plan of the Special Master ("Appendix"), Exhibit A, which is being submitted herewith. The Order directed me as the Special Master to prepare and recommend to the Court "a report, including a proposed redistricting plan for the State of New York, dividing the state into 29 congressional districts in accordance with the 2000 federal Census and applicable law."

I submit to the Court my Report on my proposed Redistricting Plan (the "Special Master's Plan" or my "Plan"). *See* Special Master's Plan attached hereto as Exhibit 1. Exhibit 1 consists of reduced copies of maps showing the twenty-nine congressional districts I have proposed: one map showing the proposed Redistricting Plan for the City of New York (the "City") and neighboring counties and including Long Island; another map focusing solely on the City; and

one map showing the proposed Redistricting Plan for the balance of New York State.<sup>1</sup> The maps in Exhibit 1 designate the residence of each incumbent with a star. Full-size originals of these maps are being filed with the Clerk of the United States District Court for the Southern District of New York.

## **I. Introduction**

The circumstances underlying the Court's decision to appoint a Special Master to prepare a proposed congressional redistricting plan for the State of New York are set forth in the Court's Order, the Complaint dated January 23, 2002, and the Amended Complaint dated April 24, 2002 in the underlying litigation. On May 9, 2002 I also received copies of the Answer of Defendant Joseph L. Bruno to the Amended Complaint and the Answer of Defendant Sheldon Silver to the Amended Complaint. *See* Appendix Exhibit B (Complaint, Amended Complaint, Answer of Defendant Joseph L. Bruno to the Amended Complaint and Answer of Defendant Sheldon Silver to the Amended Complaint).

The Order directed me to adhere to and, where possible, reconcile the following guidelines:

- (a) Districts shall be of substantially equal population, compact, and contiguous.
- (b) The plan shall comply with 42 U.S.C. § 1973 (b) and with all other applicable provisions of the Voting Rights Act.

Appendix Exhibit A at ¶ 2.

Acknowledging the "pressing need for having a redistricting plan in place as soon as possible," the Order directed me to submit my proposed plan to the Court on May 10, 2002 or as soon as possible thereafter. *See* Appendix Exhibit A at ¶ 3. The Order also authorized me to

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<sup>1</sup> In addition to Exhibit 1, Exhibit 2 is attached, showing a demographic breakdown of the population in each district I have drawn. Exhibits 3 and 4 display the same information for current districts.

retain appropriate assistants and experts as I deemed reasonably necessary to accomplish my task within the established time constraints. *See* Appendix Exhibit A at ¶ 4. The Order further requested that the New York State Legislative Task Force on Demographic Research and Reapportionment (the "Task Force") provide me with "immediate and unrestricted access to its computer facilities and programs," and the necessary support, staffing and assistance on a confidential basis to facilitate and expedite my task. *See* Appendix Exhibit A at ¶ 5.

The Order directed me to consider any proposed plans and comments already submitted in this action, and permitted, but did not require me to invite additional submissions, hear testimony, hold hearings, and take other steps reasonably necessary to develop the plan contemplated by the Order. *See* Appendix Exhibit A at ¶ 6. Finally, the Order gave me the discretion to recommend an entirely new plan or incorporate all or parts of any proposed plans submitted in this action, or submitted to or developed by the Honorable Herman Cahn, Justice of the Supreme Court of New York County, in the action entitled *Allen v. Pataki*, Index No. 02-101712, pending in the Supreme Court of the State of New York, County of New York.

## **II. Development of the Plan**

### **A. Personnel**

In light of the limited time available to develop a plan, I immediately determined that it would be necessary to retain experts familiar with the process of districting, districting principles, the requirements of the Constitution and the Voting Rights Act of 1965, 42 U.S.C. §§ 1973, *et seq.*, and the implications of the United States Supreme Court's decision in *Shaw v. Reno*, 509 U.S. 630 (1993), and its progeny. My staff contacted numerous individuals in the area, including Professors Bernard Grofman and Nathaniel Persily, two eminent scholars in the field, and I subsequently retained them to advise me in this project. *See* Appendix Exhibits C and D (curricula vitae of Professors Grofman and Persily respectively).

On April 29, 2002 I was advised that interested parties in the underlying litigation had jointly recommended Mr. Marshall Turner, former chief of the United States Census Bureau Redistricting Data Office, as an expert in the redistricting process. I therefore also retained Mr. Turner as an expert. *See* Appendix Exhibit E (curriculum vitae of Mr. Turner).

Very substantial support has been provided to me by my law firm, LeBoeuf, Lamb, Greene & MacRae, L.L.P., for which I am senior counsel. Those primarily responsible were: partners William Primps and Margaret Keane; and associates Lorna McKenzie, Terry Han, Stephen Kennedy and Zahid Quraishi. These attorneys prepared memoranda of the applicable law, assisted me in working with Professors Grofman and Persily and Mr. Turner, to achieve a plan and aided me in reviewing plans submitted to me by various interested persons. *See* Appendix Exhibit F (memorandum detailing the applicable law).

#### **B. Computer Access and Applications**

In accordance with the Order, the Task Force afforded us immediate and unrestricted use of its computer facilities and programs and provided us with the services of its very competent and cooperative technical staff throughout the project.

In developing the proposed revised congressional districts, I, along with my staff and Professors Grofman and Persily and Mr. Turner, used and relied upon the "redistricting system" application available on New York State's Sun UNIX computer platform, Arc/Info software and a special purpose GIS database. The GIS database contained integrated polygon coverage of census geography, including county boundaries, minor civil divisions, voting tabulation districts, and census tract and census block information. *See* Affidavits of Professors Grofman and Persily and Mr. Turner ("Grofman Aff.") ¶¶ 13-14, which is being submitted herewith.

### **C. Public Comment and Input**

Pursuant to my authority under Rule 53 (c) of the Federal Rules of Civil Procedure and the Court's Order, by a notice of April 29, 2002 I invited the parties, intervenors, and numerous other interested persons to attend a hearing on May 6, 2002 to present to me their views on redistricting, and to submit any proposed congressional redistricting plans. Shortly after the Order of my appointment was issued, counsel for the Assembly Speaker contacted me and requested a meeting on behalf of the Speaker. Mr. Primps met with the Assembly Speaker's representatives on April 30, 2002, and I extended an offer for a similar meeting to counsel for the Senate Majority and to counsel for Governor Pataki. My staff and I met with representatives of the Senate Majority on May 2, 2002.

On May 2, 2002, I augmented my April 29, 2002 notice by requesting that anyone intending to make presentations or to present redistricting plans at the May 6 hearing be prepared to describe how their plans or proposals took into consideration the following factors:

1. the community or communities of interest encompassed in any present or proposed district,
2. the effect on political parties and racial groups caused by any redistricting,
3. whether incumbents are protected in the proposed plan,
4. whether the proposed districts are compact and contiguous,
5. whether the proposed districts respect political subdivisions, and
6. whether the proposed districts preserve the cores of prior districts.

The May 2 notice also requested that any persons presenting redistricting proposals be prepared to comment on the legality of their proposals under the United States Constitution and the Voting Rights Act. These notices were sent via facsimile to those persons whose names appeared in the Court's docket of the underlying litigation, and to persons who contacted my staff by telephone

after becoming aware of my appointment as Special Master. *See* Appendix Exhibit G (copies of the April 29, 2002 and May 2, 2002 notices).

Approximately eighty persons attended the May 6, 2002 hearing. *See* Appendix Exhibit H (list of the attendees). Among those present was Kenneth Bialkin, Esq., the court-appointed referee in *Allen v. Pataki*. Mr. Bialkin stated to those present that Justice Cahn had directed him to submit a report with a proposed congressional districting plan for New York State by May 21, 2002. He invited interested persons who had or intended to submit proposed plans or comments to me as Special Master, to make the same submissions to him by May 8, 2002, with any additional submissions to him by May 10, 2002.

At the May 6 hearing, proponents of various redistricting plans, including some with partial plans, made presentations in favor of their proposals.<sup>2</sup> Written and oral comments were also submitted at the hearing, and I invited the submission of further written comments and proposals, to be received no later than noon on May 8, 2002. *See* Appendix Exhibit J (list of written submissions received before, on, and after May 8, 2002).<sup>3</sup>

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<sup>2</sup> The following persons made statements at the hearing: Representative Benjamin Gilman (R) (District 20), Representative Major R. Owens (D) (District 11), Representative Jose Serrano (D) (District 16); Henry Berger on behalf of Plaintiffs; Jeff Buley on behalf of Representative Sweeney; Louis Fisher on behalf of the Senate Majority; Ezra Friedlander as a resident of Borough Park, Brooklyn; Lucia Gomez on behalf of the Latino Voting Rights Committee of Metro New York; Ron Hayes on behalf of Representative Jack Quinn; Roman Hedges on behalf of the Assembly Majority; Karen Johnson on behalf of Representative Towns; Glenn Magpantay on behalf of the Asian-American Legal Defense and Education Fund; Madeline Polayes on behalf of the Coalition for a Livable West Side; David Pollack on behalf of the Jewish Community Relations Council and community of Williamsburgh; Tom Tranter on behalf of Representative Houghton; Andrew Tulloch on behalf of Representative Carolyn Maloney; Paul Wooten on behalf of Plaintiff-Intervenors, the Council of Black Elected Democrats and several individual minority voters. *See* Appendix Exhibit I (copy of the hearing transcript that was filed with the Court).

<sup>3</sup> I am grateful to the many individuals and organizations who provided valuable and thoughtful insights at the hearing and thereafter. All timely comments, whether expressed orally or in writing, have been carefully considered in the development of my Plan, along with the submissions presented after May 8.

### **III. Proposed Redistricting Plans Presented to the Special Master**

I received three complete congressional redistricting plans for my consideration at the hearing: (1) a plan by the New York State Senate Majority (the "Senate Majority plan"), (2) a plan by the New York State Assembly Majority (the "Assembly Majority plan") and (3) a plan by the Council of Black Elected Democrats (the "Council plan").<sup>4</sup> The Puerto Rican Legal Defense and Education Fund ("PRLDEF") submitted a partial plan for the New York City area. *See* Grofman Aff. ¶¶ 8-11, 25-34.

The Senate Majority plan complied with the constitutional requirement of "one person, one vote," by having districts containing either 654,361 or 654,360 people. *See* Appendix Exhibit K. The Assembly Majority plan also complied with the constitutional requirement of "one person, one vote." *See* Appendix Exhibit L. The Council plan had a difference of eleven people between their most and least populous districts, for an approximate zero deviation. *See* Appendix Exhibit M. Finally, PRLDEF submitted a 6-district congressional redistricting plan, prepared by the Latino Voting Rights Committee of Metro New York ("LVRC"). *See* Appendix Exhibit N.

#### **A. Further Evaluation of the Proposed Redistricting Plans**

I examined each of the proposed redistricting plans for compliance with the United States Constitution and the Voting Rights Act. I also evaluated the extent to which they considered any traditional districting principle, such as preserving prior district cores or lines, protecting communities of interest, avoiding unnecessary incumbent challenges, respecting political subdivisions and creating districts that are compact and contiguous.

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<sup>4</sup> On May 8, 2002, Representatives Nydia Velazquez, Major Owens and Eldolphus Towns, submitted a joint three-district partial plan for Districts 10, 11 and 12. It appears this plan was incorporated into the plan submitted by the Council, and therefore, it was considered but is not separately analyzed here.



## **B. New York State Senate Majority Plan<sup>5</sup>**

Although achieving population equality, the Senate Majority plan substantially reconfigures most of the current districts, especially within the City. For Long Island, the Senate Majority plan addresses the underpopulation of the present districts in that area primarily by extending those districts westward. In doing this it eliminates much of the North Shore component of current District 5. In other respects, the Senate Majority plan preserves the cores of current Districts 1 through 4.

With respect to the City, the Senate Majority plan completely reconfigures the current congressional districts. In Queens and most of Brooklyn its reconfigurations appear to seek to achieve greater compactness and contiguity. The plan nevertheless creates a new District 12 to replace District 8 that extends from Borough Park, Brooklyn, up the entire west side of Manhattan, sometimes narrowing to only a few blocks wide, and into Riverdale in the Bronx, for no apparent reason. It would result in pairing Democratic incumbents to run against each other.

Regarding the upstate New York districts, the Senate Majority plan significantly deviates from the current lines of the congressional districts, presumably to achieve population equality. It respects the Hudson River as a boundary between proposed District 18 and most of District 19, but revises District 20 so that it crosses the Hudson River, extending from Essex County in the north all the way southward to Columbia County.

Except for how it dealt with Long Island, I found the Senate Majority plan wanting for lack of political fairness and for its disregard of the cores of many current districts. *See* Grofman Aff. ¶ 29.

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<sup>5</sup> On May 8, 2002 the Senate Majority submitted an alternative redistricting plan to supplement its initial submission.

**C. New York State Assembly Majority Plan**

Unlike the Senate Majority plan, the Democratic Assembly proposal for the Long Island districts significantly changes their current boundaries and maintains a non-compact District 5 along the North Shore. The Assembly Majority plan largely preserves the current district lines in the City but does not preserve core districts or communities or traditional boundaries in upstate New York.

The Assembly Majority plan proposes to combine two districts in western New York, while creating a district running east-to-west across the Hudson River that would join major portions of the current Districts 19 and 20. The creation of these new districts would potentially ensure races between two Republican incumbents in each of these districts. Except for how the Assembly Majority plan dealt with the City, I found this plan wanting because of a lack of political fairness as well. *See Grofman Aff.* ¶ 29.

**D. Council of Black Elected Democrats Plan**

The Council plan did not achieve absolute population equality. Nevertheless, we reviewed the plan. With respect to the Long Island districts, the Council plan maintains a non-compact District 5 on the North Shore, and significantly changes the current boundaries of District 1 and District 2. Similar to the Assembly Majority plan, the Council plan largely maintains the current district lines in the City but does not preserve the core districts in upstate New York. Also similar to the Assembly Majority plan, the Council plan proposes to eliminate District 30 in Erie County, and to create a new district running east-to-west across the Hudson River that pairs Republican incumbents against each other by combining Districts 19 and 20. Given that the plans of the Assembly Majority and the Council adopted somewhat similar approaches, in particular with respect to Long Island and the City, and the Assembly Majority

plan achieved zero deviation, I considered and evaluated both of them similarly finding their configurations helpful in the City but not in Long Island or upstate New York. I also note that the Council's plan unduly fragments communities in Southern Westchester and the Northern Bronx by having three districts cutting through the narrow stretch of land joining Westchester and the Bronx and unfortunately would divide the City of Buffalo into two districts.

#### **E. Puerto Rican Legal Defense and Education Fund**

As stated above, PRLDEF submitted a partial plan. Of its six proposed districts, five are located in the New York City area, with the sixth embracing the Bronx and Westchester border. It was unclear to what degree the proposed Districts 6, 7, 12, 15, 16 and 17 would impact surrounding districts, or meet the "one person, one vote" requirement when placed in a complete plan with 29 districts. Therefore, I was unable to consider whether creating such districts would be viable in light of the applicable constitutional and statutory restrictions.

### **IV. Overview of the Special Master's Plan**

#### **A. Plan Principles**

I believe it is useful at the outset to describe the essentials of the Plan being filed with the Court today. I served as Special Master upon appointment ten years ago by a Three-Judge Court convened in the Eastern District of New York. *See Puerto Rican Legal Defense and Education Fund, et al., v. Gantt, et al., CV-92-1521 (SJ)* (the "PRLDEF case"). That assignment gave me an understanding of the complex demographic, political and legal issues that influence redistricting in New York. Now, while New York's population has grown over the past twenty years, it has not expanded as rapidly as that of many sister states, especially those in the South and West. Therefore, congressional seats have been reallocated from New York to states in those other regions.

In 1992, as reported in the *PRLDEF* case, I proposed a plan to reduce New York's congressional delegation from 34 to the 31 seats mandated under the 1990 Census. The 2000 Census dictates similar shrinkage, from 31 to 29 seats.

While the Plan I submitted in 1992 was accepted by the Three-Judge Court, ultimately it did not become law because of the intervention of the state legislature, which chose to enact a redistricting plan closely resembling that developed by a state court referee. The process of the enactment of that plan by New York State in 1992 is recounted in detail in *Diaz v. Silver*, 978 F. Supp. 96 (E.D.N.Y. 1997), *summarily aff'd*, 522 U.S. 801 (1997).

*Diaz* also analyzed the requirements of the Voting Rights Act and the propriety of certain districts drawn by the legislature to achieve majority-minority districts in the City. I found *Diaz* helpful to the decision-making involved in crafting a plan applicable to the congressional districts that are wholly or partially in the City. Also of assistance, in part, were the plans submitted to me by the Senate Majority and the Assembly Majority of New York State. Against this background, and aided by the advice and analyses of Professors Grofman and Persily and Mr. Turner, I reached the following conclusions:

First, the geography and demographics of New York suggested it was reasonable to begin the redistricting effort with straightforward adjustments of the four congressional districts that are wholly within Suffolk and Nassau Counties in Long Island. Application of the neutral principle of enlarging each of those districts to "capture" the necessary population to achieve zero deviation from the "ideal" district population of 654,360 people required moving each of these districts in a westerly (or to some extent, a northwesterly) direction.

Second, because of the need to add population to each of the Long Island districts, District 5, currently a tri-county district that spans the North Shore of western Suffolk County as

well as the northern sections of Nassau and Queens Counties, and the Bronx, is moved out of Suffolk County and in my Plan now occupies parts of Nassau and Queens Counties, but with its predominant area and population in Queens. By virtue of this shift, a substantially reconfigured District 5 is now the State's ninth majority-minority district.

Third, a simple calculation of the 2000 Census population contained within Long Island and the City made clear that these areas could not support 17 congressional seats. In fact, my experts' calculations demonstrated that the areas south and east of the Westchester-Bronx border would be entitled to about 16.45 congressional seats. *See Grofman Aff.* ¶ 24. This in a manner of speaking necessitated some degree of "sharing" of representatives between the Bronx and Westchester counties.

## **B. Description of Districts Contained Within the Special Master's Plan**

In consultation with my experts and after reviewing the various plans and submissions presented for my consideration, I prepared a congressional redistricting Plan as described below for New York. The results of the 2000 Census dictated that the congressional map for New York contain 29 districts, down from 31 districts. Based upon the total population of the state of 18,976,457, the ideal population size of each of the 29 districts is 654,360 persons.

### **1. Long Island and Northeast Queens: Districts 1 Through 5**

The Senate Majority proposal for Long Island satisfied the neutral redistricting principles of contiguity, compactness and respect for the cores of its current districts. I also concluded that the districts thus formed were consistent with the redistricting principles that I, working with my experts, had already begun to apply to the adjustment of district boundaries in Long Island. Therefore, in concert with my experts' analysis, I accepted the Senate Majority plan for the four districts completely within the boundaries of Suffolk and Nassau counties. *See Grofman Aff.* ¶¶ 28, 31-32, 35.

Under my Plan, proposed District 1 runs from the east end of Long Island west to the Brookhaven-Islip border in the south and, in the north, to the western edge of Smithtown.

District 1 maintains substantially the core of the current District 1, but extends farther west at its northwestern border in order to achieve population equality.

Under my Plan, proposed District 2 abuts proposed District 1, extending westward in the southern portion of central Long Island. Proposed District 2 retains substantially the same core as the current district.

Proposed District 3 forms an "S" shaped district connecting the north and south shores of Long Island along the Nassau-Suffolk border. To achieve population equality, proposed District 3 gathers part of the northeastern portion of current District 5. The southern portion of proposed District 3 then takes part of current District 4, encompassing all of the Town of Hempstead.

Under my Plan, proposed District 4 forms a compact district within Nassau County, maintaining substantially the same core as the current District 4, and abuts the border between Nassau County and Queens.

Available census data show that the residents in Districts 1 through 4 have substantially the same demographic profile as in the current Districts 1 through 4 under the 2000 Census. *Compare* Exhibit 2 hereto (Population Figures for the Special Master's Plan ) with Exhibit 4 hereto (Figures for 1997 Congressional Districts by 2000 Population).

As has been indicated, 11-12, *supra*, my Plan substantially alters the shape and location of current District 5, which forms a three-pronged extension running into the Town of Huntington in Suffolk County to portions in North Hempstead and extending westward into Queens and the Bronx. To achieve population equality, it was found to be necessary to extend the current District 5 into either Queens or the Bronx, or both. To form a more compact and

contiguous district that respects political subdivision lines, I decided to minimize the number of districts penetrating three counties; therefore, proposed District 5 enters the City (from the northwestern portion of Nassau County) into Queens only. The Plan thus changes a four-county district into one that straddles only two counties. As a result, my proposed District 5 contains a voting age population breakdown of 46.25% NH White, 5.08% NH Black, 22.04% Hispanic, and 24.25% NH Asian. *See* Exhibit 2 attached hereto. Under the 2000 Census, current District 5, with its eastward reach into Suffolk County, was composed of a voting age population of 68.21% NH White, 3.11% NH Black, 8.63% Hispanic and 18.22% NH Asian. *See* Exhibit 4 attached hereto. Proposed District 5 therefore becomes a ninth majority-minority district.

## **2. New York City: Districts 6 Through 16**

Moving on from District 5, drawing the district lines in the City posed particular issues because of the geography, population and concentration of different communities of interest. In most significant respects, my Plan, with respect to those districts within the City, is similar to the Assembly Majority plan. Aided by my experts' analysis, and as I have noted, I determined that the plan proposed by the Assembly Majority properly respected the cores of current districts and the communities of interest that have formed around them; and is relatively in accord with the concerns of the Court in the *Diaz* case and the boundaries approved therein. Thus, the City districts in my Plan are substantially similar to those contained in the Assembly Majority plan. *See* Grofman Aff. ¶¶ 32-34.

Under my Plan, and putting aside District 5, the City contains eleven districts, all within the five boroughs, up to the Westchester border (District 6 through District 16). Proposed Districts 6, 8, 9, 10, 11, 12, 13, 14 and 15, substantially maintain the core and shape of the current districts but this is not true as to proposed Districts 7 and 16.

Dealing first with Staten Island, my Plan maintains Staten Island entirely within one district, proposed District 13. Proposed District 13 extends into Brooklyn over the Verrazano Narrows Bridge to connect with the Bay Ridge and Bensonhurst neighborhoods. This extension into Brooklyn was necessitated by the fact that the total population of Staten Island is 443,728, requiring the addition of more than 200,000 people to achieve population equality. This proposed district maintains substantially the same demographic make-up as the current district under the 2000 Census. *See Exhibits 2 and 4 attached hereto.*

Proposed District 8 extends through and along the upper west side of Manhattan southward and encompasses Borough Park in Brooklyn. It maintains the core of the current district. Statements at the May 6, 2002 hearing, and submissions from interested parties, identified certain communities of interest within current District 8. *See, e.g., Appendix Exhibit I at 67:10-18; 105:3-23.* District 8 under my Plan maintains substantially the same demographic make-up as the current District 8 under the 2000 Census. *See Exhibits 2 and 4 attached hereto.*

Considering both Districts 6 and 9, proposed District 6 is adjacent to proposed District 9 and forms a district within Queens and maintains the core of the current district in eastern Queens. Proposed District 9 encompasses the southern portions of Brooklyn and Queens, with a northward extension into Queens. It maintains the core of the current district but extends farther outward to the northeast corner of Queens to achieve population equality. Both of these proposed districts maintain substantially the same demographic make-up as the current districts under the 2000 Census. *See Exhibits 2 and 4 attached hereto.*

Proposed Districts 10 and 11 have substantially the same geographic configuration as current Districts 10 and 11, changing slightly to achieve population equality. Proposed District 10 maintains substantially the same demographic make-up of current District 10 under the 2000



Census. *See* Exhibits 2 and 4 attached hereto. Under the 2000 Census, current District 11 was composed of a voting age population of 17.75% NH White, 64.61% NH Black, 10.42% Hispanic and 3.53% NH Asian. *See* Exhibit 4 attached hereto. Proposed District 11 under my Plan is composed of a voting age population of 23.57% NH White, 56.77% NH Black, 11.59% Hispanic and 4.31% NH Asian. *See* Exhibit 2 attached hereto. Thus, this district would continue to be a majority-minority district.

Proposed District 12 extends from the lower east side of Manhattan into parts of Brooklyn and Queens over the northern portion of proposed District 10 and respects the core of current District 12, as configured after the *Diaz* decision in 1997. The incumbent representative for District 12 does not live within the boundaries of District 12 as proposed; rather, she lives in the proposed District 11. This situation also exists under the districts currently in effect. I therefore did not assume that the District 12 incumbent representative would, on the basis of her residence, be a challenger to the current representative of District 11, nor did it seem necessary or advisable to extend the boundaries of District 12 to encompass her residence. Proposed District 12 maintains substantially the same demographic make-up as the current District 12 under the 2000 Census. *See* Exhibits 2 and 4 attached hereto.

Considering now proposed Districts 14, 15 and 16, proposed District 14, as with the current District 14, extends from the east side of Manhattan into Queens. This district had to reach into Queens to achieve population equality. Proposed District 15 maintains the historic Harlem district lines, and has substantially the same core as current District 15. It also extends into Queens and the Bronx but only as far as is necessary to achieve population equality. Proposed District 16 retains most of its current configuration, except that as a result of current District 16's loss of some territory to current District 7, it would now include a portion of current

District 17 on its northeast corner to achieve population equality. Proposed Districts 14, 15 and 16 maintain substantially the same demographic make-up as their current districts under the 2000 Census.

Due to the reconfiguration of the other Brooklyn and Queens districts, as described above, particularly the proposed District 5 (which penetrated far into current District 7), proposed District 7 extends substantially into the Bronx and includes parts of current Districts 5, 16 and 18. This would result in some demographic changes, and District 7 would remain a minority coalition district.

### **3. The Bronx -Westchester Border: Districts 17 Through 18**

Under the current congressional districting, two districts cross the Bronx and Westchester border, Districts 17 and 18. Based upon the ideal population needed to achieve population equality throughout the state, the City and Long Island can support the equivalent of 16.45 congressional seats. Thus, at least one of the 17 districts in lower New York must cross the Bronx-Westchester border. Again, aided by my experts' analyses, I determined it was preferable, if feasible, where appropriate given a consideration of all factors, to minimize county intrusions. Accordingly, in my Plan only one district, proposed District 17, extends north from the Bronx into Westchester.

The core of current District 17 which was in the Bronx remains there in proposed District 17 under my Plan. The goal here has been to unify groups with common interests that exist on either side of the Bronx-Westchester border. During the hearing on May 6, there was evidence given that citizens in this vicinity share common interests and outlooks, regardless of whether they live on the Bronx or the Westchester side of the county border. *See* Appendix Exhibit I at 80:11-81:8.

In proposed District 17, under the 2000 Census, there is a substantial increase in the NH White population and a corresponding decrease in the percentage of NH Black and Hispanic populations. The demographic composition under the 2000 Census changes from a voting age population of 20.44% NH White, 39.67% NH Black, 32.79% Hispanic and 3.59% NH Asian to 41.99% NH White, 29.18 % NH Black, 21.50% Hispanic and 4.05% NH Asian. *See Exhibits 2 and 4 attached hereto.* I do not perceive this as retrogression. First, the district still contains a substantial minority population that exceeds 50% of the district's total voting age population. Second, the reduction of minority voting strength in proposed District 17 is offset by the corresponding increase in minority voting strength in proposed Districts 5 and 7. Third, the change to a more northerly orientation was driven by the necessity of achieving population equality.

Although under my Plan, District 18 encompassing parts of three counties, Westchester, Rockland and Putnam, would more properly be classified as a suburban district, because the current district is in part in the Bronx and Queens, it will be considered at this point. This district is now wholly contained within the suburban counties north of the City. It no longer reaches into the Bronx and Queens, and extends from Westchester County to Putnam County in the north and Rockland county in the west. A portion of current District 18 has been combined with what was a portion of current District 19, by pushing northward and following the eastern border of New York, in order to achieve population equality. I decided to preserve, to the extent possible, the east and west Hudson Valley boundaries in the upstate districts that I have drawn, and kept most district lines running parallel with the Hudson River on one side or the other. However, again, to gain the requisite population for District 18, I did have to extend this district across the Hudson River into southern Rockland County. I believe that, because of the joining of Westchester

County and Rockland County in this area by the Tappan Zee Bridge, continuity is preserved and a community of interest is respected.

#### **4. Upstate New York Districts**

As a result of the reduction from 31 to 29 districts (which I have accomplished in upstate New York rather than in the City or Long Island), under my Plan numbers of certain districts have been changed. Thus, under my Plan, the area encompassed by current District 23 has been combined with the area encompassed by current District 26 to form one proposed district, numbered District 23. The elimination of current District 26 is designed to implement the required reduction in districts. Similarly, the area encompassed by current District 29 is to be combined with the area encompassed by current District 30 to form a new district designated District 26. Again, this combining of two districts into one was dictated by the need to reduce the number of districts from 31 to 29. Current District 31 has been renumbered and is now District 29 and continues to encompass the southern tier of New York State while also moving north to achieve population equality.

Turning first to the comprehensive plans submitted to me for upstate New York redistricting, I found that in part they lacked political fairness. *See* 8-10, *supra*. In addition to proposing a pairing between two Democrats in the City, 8, *supra*, the Senate Majority plan also proposed a pairing between two Democrats in upstate New York. *See* Grofman Aff. ¶ 28. Likewise, the Assembly Majority plan proposed a pairing between two sets of Republicans upstate. Putting these plans aside, I instructed my experts to reconfigure these upstate districts to achieve a balance of factors: social cohesiveness within the district, partisan fairness, and respect for political subdivisions, particularly with respect to cities such as Buffalo and

Rochester, the capital region around Albany, the southern tier and the so-called "north country" along the Canadian border. *See* Grofman Aff. ¶¶ 35, 38-45, 48, 61-62.

I believe that under my Plan, the upstate districts that are created reflect the proper districting principles and, among other things, my Plan can potentially result in contests between a Republican and a Democrat in each of two districts newly configured because of the reduction from 31 to 29 congressional seats. *See* Grofman Aff. ¶ 64.

The geography and population losses of western New York compel anyone redrawing the district lines in upstate New York to begin the process at the extreme western end of the state, to avoid, as my experts put it, "painting oneself into a corner." Grofman Aff. ¶¶ 19-22. To gain population, many district boundaries had to move eastward. Other principles then had to be applied in remapping this portion of the state. Specifically, in developing my Plan, I took into account the current configuration of current District 29 and District 30 which effectively split the City of Buffalo, dividing its population between the two districts. I, after consulting with my experts, determined that the City of Buffalo, a mid-sized city along the northwestern border of New York, contained a substantial community of interest not served by its current separation. Under my Plan, a newly created and numbered District 26 now encompasses an area including all of the City of Buffalo. In the same manner, proposed District 28 in my Plan encompasses all of the City of Rochester and maintains the core of current District 28. My Plan also maintains a District 21 that encompasses the traditional capital district including the entire City of Albany, which approximates the boundaries of current District 21.

My Plan also took into account the communities of interest within current District 31. Current District 31, now numbered District 29, runs along the New York - Pennsylvania border. In preserving the rural character of this district, my Plan preserves the district.

Under my Plan, proposed District 27 runs along the Lake Ontario border until it abuts the location of District 28. District 27 then extends south for population equality purposes. In so doing it forms a reverse "C" shape around newly numbered District 26. Newly numbered District 24 forms a central compact district.

District 22, forced westward to gather population, having lost areas on the eastern border to District 19's need for population, forms a central district in the northern portion of the state while proposed District 19 continues to run along the eastern border of the state. In order to achieve population equality, proposed District 23 now moves in a southerly direction to encompass much of current District 26. The portion of what was District 26 that is not contained in newly configured District 23 is shared among Districts 20 and 25 to achieve population equality for those districts. The remaining upstate districts were configured based upon the need to achieve population equality, taking into account the various traditional principles of redistricting.

**V. Conclusion**

My Plan satisfies the constitutional and statutory requirements for redistricting and seeks to balance traditional redistricting principles as they apply to the State of New York. Seventeen districts have a population of 654,361 and twelve districts have a population of 654,360 and achieve population equality with a zero deviation. Based on the foregoing, I respectfully recommend that the Court adopt this Plan for New York's congressional redistricting.

Respectfully submitted,

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Frederick B. Lacey  
Special Master

Dated this \_\_\_\_ day of May, 2002