



Sent via email

January 9, 2023

Town of Hempstead
One Washington Street
Hempstead, New York 11550

Re: Hempstead Town Council Redistricting

Dear Supervisor Clavin, Town of Hempstead Council Members, and Members of the Town of Hempstead Temporary Redistricting Commission:

The Legal Defense Fund (“LDF”), Frederick K. Brewington, Randolph McLaughlin, and LatinoJustice PRLDEF write to express our concern that the proposed district map for the Hempstead Town Council districts presented by the Town of Hempstead Temporary Redistricting Commission (the “Commission”) on December 20, 2022 risks violating the federal Voting Rights Act and the John R. Lewis Voting Rights Act of New York. We are especially concerned that the map cracks the Black and Latino community in Elmont/Valley Stream community¹ into two separate districts, creating a risk that Black and Latino voters are denied an equal opportunity to participate in the political process and elect candidates of their choice.

The cracking of the Black and Latino community in the Elmont/Valley Stream community is especially concerning because it risks perpetuating severe underrepresentation of Black and Latino voters on the Hempstead Town Council – over 38% of the Town’s population is Black or Latino, but Black and Latino voters are only afforded an opportunity to elect a candidate of their choice in one out of six districts (only 16.7% of the seats).

We urge the Commission to present a new proposal that unifies the Elmont/Valley Stream community into a single district. We have prepared two alternate maps to achieve this goal. Both alternate maps preserve districts 1, 5, and 6 as they were drawn in the

¹ The Elmont/Valley Stream community includes the incorporated villages of South Floral Park and Valley Stream and the hamlets of Elmont, North Valley Stream, and South Valley Stream.

Commission's December 20, 2022 proposal with no changes, and adjust districts 2, 3, and 4 to provide for a unified Elmont/Valley Stream district.

We also request a meeting with Town officials to discuss the concerns outlined in this letter and to explore alternate district maps that can avoid unnecessary litigation by providing Black and Latino voters with an equal opportunity to participate in the political process and elect candidates of their choice as mandated by the federal Voting Rights Act and the John R. Lewis Voting Rights Act of New York.

I. Background

The Town of Hempstead has a population of 793,409 residents, making it America's largest town, with a budget of over \$500 million.² Voters in the Town of Hempstead elect six council members from single-member districts. Historically, Hempstead Town council elections were conducted on an at-large basis. However, in 1997, a federal court found that the Town's at-large voting structure violated Section 2 of the federal Voting Rights Act, and ordered the Town to replace its at-large voting structure with six single-member districts.³ Ever since that decision, the Town has maintained one majority-Black district (District 1) and five majority-white districts.

As shown below, the Town is one of the most racially diverse municipalities in New York State. The Town's Black population of 130,804 makes it the largest Black community of any town or city in the state outside of New York City. And the Town's Latino population of 174,883 *also* makes it the largest Latino community of any town or city in the state outside of New York City.

	Total	White	Black	Latino
Total Population	793,409	426,368 (53.7%)	130,804 (16.5%)	174,883 (22.0%)
Voting Age Population	620,910	344,650 (55.5%)	103,089 (16.6%)	125,615 (20.2%)
Citizen Voting Age Population	545,585	327,945 (60.1%)	98,035 (18.0%)	82,540 (15.1%)

Town of Hempstead Demographics (from 2020 Census and 2020 ACS 5-year CVAP estimates)

Over the last 10 years, the Town's white population has fallen dramatically from 68.3% in 2010 to 53.7% in 2020, while the combined Black and Latino population has grown from 33.9% in 2010 to 38.5% in 2020. Notwithstanding these significant demographic shifts, the Commission's December 20, 2022 proposal maintains five majority-white districts (83.3% of the seats) and only one majority-Black district (16.7% of the seats). This proposal will perpetuate severe underrepresentation of Black and Latino voters on the Town Council.

² See Brandon Duffy, *Hempstead Passes \$504.1M Budget*, Freezes Taxes, the Island 360 (Nov. 16, 2022), <https://theisland360.com/new Hyde Park-108/hempstead-passes-504-1m-budget-freezes-taxes/>.

³ *Goosby v. Town of Hempstead*, N.Y., 956 F. Supp. 326 (E.D.N.Y. 1997), *aff'd* 180 F.3d 476 (2d Cir. 1999).

II. The Town of Hempstead Must Comply With Section 2 of the Federal Voting Rights Act and the John R. Lewis Voting Rights Act of New York When Drawing a District Map.

a. The Town of Hempstead Must Comply With Section 2 of the Federal Voting Rights Act.

The Town of Hempstead has an affirmative obligation to ensure any district map it adopts complies with Section 2 of the Voting Rights Act (“Section 2”). Section 2 requires jurisdictions to ensure that voters of color have an equal opportunity “to participate in the political process and elect candidates of their choice,” taking into consideration the state or locality’s demographics, voting patterns, and other circumstances.⁴ A chief purpose of Section 2 is to prohibit minority vote dilution at all levels of government, including town elections.⁵

A district map may violate Section 2 when it dilutes the voting power of voters of color by cracking minority communities into separate districts, thus depriving them of the opportunity to elect their candidates of choice in either district. Section 2 prohibits minority vote dilution regardless of whether a plan was adopted with a discriminatory purpose.⁶ What matters under Section 2 is the effect of the redistricting plan on the opportunity of voters of color to elect candidates of their choice.

The U.S. Supreme Court has established the following three “*Gingles* preconditions” for evaluating vote dilution under Section 2: whether (1) an illustrative districting plan can be drawn that includes an additional district in which the minority community is sufficiently large and geographically compact to constitute a majority in a single-member district; (2) the minority group is politically cohesive in its support for its preferred candidates; and (3) in the absence of majority-minority districts, candidates preferred by the minority group would usually be defeated due to the political cohesion of white voters in support of different candidates.⁷ Together, the second and third *Gingles* preconditions are commonly referred to as racial bloc or racially polarized voting.⁸ In the Second Circuit, a coalition of Black and Latino plaintiffs can satisfy the *Gingles* preconditions when plaintiffs can demonstrate that Black and Latino voters vote cohesively.⁹

After a plaintiff establishes the three *Gingles* preconditions, a “totality of circumstances” analysis is conducted to determine whether minority voters “have less

⁴ See *Thornburg v. Gingles*, 478 U.S. 30, 34 (1986).

⁵ See, e.g., *Goozby v. Town of Hempstead*, 180 F.3d 476 (2d Cir. 1999).

⁶ *Gingles*, 478 U.S. at 35.

⁷ *Id.* at 50-51.

⁸ Racially polarized voting occurs when different racial groups vote for different candidates. In a racially polarized election, a majority of Black or Latino voters vote together for their preferred candidate, and a majority of white voters vote for the opposing candidate.

⁹ See, e.g., *Bridgeport Coal. for Fair Representation v. City of Bridgeport*, 26 F.3d 280 (2d Cir. 1994), vacated and remanded on other grounds, 512 U.S. 1283 (1994); see also *Clerveaux v E. Ramapo Cent. School Dist.*, 984 F.3d 213, 237 (2d Cir. 2021).

opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice.”¹⁰ It will be “only the very unusual case in which the plaintiffs can establish the existence of the three *Gingles* factors but still have failed to establish a violation of § 2 under the totality of circumstances.”¹¹

A jurisdiction that fails to ensure the ability of minority voters to elect their candidates of choice when these conditions exist violates the Voting Rights Act. It is thus incumbent upon those responsible for redistricting to determine whether the *Gingles* conditions are present within their jurisdiction and, if they are, to take steps to ensure that any redistricting plan does not result in the dilution of minority voting strength.

b. The Town of Hempstead Must Comply With the John R. Lewis Voting Rights Act of New York.

Last year, Governor Hochul signed the John R. Lewis Voting Rights Act of New York (the “NYVRA”) into law. The NYVRA established a private right of action against racial vote dilution in redistricting.¹² This statute prohibits political subdivisions in New York from drawing district maps that “hav[e] the effect of impairing the ability of members of a protected class to elect candidates of their choice or influence the outcome of elections.”¹³

Under the NYVRA, a district map is unlawful if, under that map, “candidates or election choices preferred by members of the protected class would usually be defeated, and either (a) voting patterns of members of the protected class within the political subdivision are racially polarized; or (b) under the totality of the circumstances, the ability of members of the protected class to elect candidates of their choice or influence the outcome of elections is impaired.”¹⁴ The NYVRA established specific rules for evaluating racially polarized

¹⁰ 52 U.S.C. § 10301(b); *see also LULAC v. Perry*, 548 U.S. 399, 425 (2006). Courts examine the “totality of the circumstances” based on the so-called Senate Factors, named for the Senate Report accompanying the 1982 Voting Rights Act amendments in which they were first laid out. *Gingles*, 478 U.S. at 43-45. The Senate Factors are: (1) the extent of any history of discrimination related to voting; (2) the extent to which voting is racially polarized; (3) the extent to which the Parish uses voting practices that may enhance the opportunity for discrimination; (4) whether Black candidates have access to candidate slating processes; (5) the extent to which Black voters bear the effects of discrimination in areas of life like education, housing, and economic opportunity; (6) whether political campaigns have been characterized by overt or subtle racial appeals; (7) the extent to which Black people have been elected to public office; (8) whether elected officials are responsive to the needs of Black residents; and (9) whether the policy underlying the voting plan is tenuous. *Id.* at 36-37. However, “there is no requirement that any particular number of factors be proved, or that a majority of them point one way or the other.” *Id.* at 45.

¹¹ *NAACP v. City of Niagara Falls*, 65 F.3d 1002, 1020 n.21 (2d Cir. 1995) (citing *Jenkins v. Red Clay Consol. Sch. Dist. Bd. of Educ.*, 4 F.3d 1103, 1135 (3d Cir. 1993)).

¹² N.Y. Elec. Law § 17-206(2).

¹³ *Id.*

¹⁴ N.Y. Elec. Law § 17-206(2)(b)(ii).

voting¹⁵ and enumerated a number factors that may be considered to determine whether, under the totality of the circumstances, a violation has occurred.¹⁶

Although both the NYVRA and Section 2 are designed to combat racial vote dilution in redistricting, the NYVRA differs from Section 2 in important ways. For instance, the NYVRA has no requirement analogous to the first *Gingles* precondition; in other words, it is not necessary to show that an alternative redistricting plan can be drawn in which the minority community constitutes a numerical majority in an additional single-member district. The NYVRA also expressly provides that coalition claims are permitted.¹⁷ And, unlike Section 2, under which plaintiffs must prove the three *Gingles* preconditions and also satisfy the Senate factors, under the NYVRA, plaintiffs can prove a claim *either* by demonstrating the existence of racially polarized voting *or* by satisfying the totality of the circumstances factors.¹⁸

The NYVRA also explicitly prohibits certain legal defenses that are sometimes asserted by defendant jurisdictions in litigation brought under the federal Voting Rights Act. For example, the NYVRA prohibits consideration of “evidence that voting patterns and election outcomes could be explained by factors other than racially polarized voting, including but not limited to partisanship”¹⁹ as well as “evidence that sub-groups within a protected class have different voting patterns.”²⁰

The NYVRA takes effect on July 1, 2023, at which point any district maps that are in effect will be subject to challenge if they violate the provisions of the law. Therefore, the Town

¹⁵ N.Y. Elec. Law § 17-206(2)(c).

¹⁶ N.Y. Elec. Law § 17-206(3). The factors that are established in the NYVRA are: (a) the history of discrimination in or affecting the political subdivision; (b) the extent to which members of the protected class have been elected to office in the political subdivision; (c) the use of any voting qualification, prerequisite to voting, law, ordinance, standard, practice, procedure, regulation, or policy that may enhance the dilutive effects of the election scheme; (d) denying eligible voters or candidates who are members of the protected class to processes determining which groups of candidates receive access to the ballot, financial support, or other support in a given election; (e) the extent to which members of the protected class contribute to political campaigns at lower rates; (f) the extent to which members of a protected class in the state or political subdivision vote at lower rates than other members of the electorate; (g) the extent to which members of the protected class are disadvantaged in areas including but not limited to education, employment, health, criminal justice, housing, land use, or environmental protection; (h) the extent to which members of the protected class are disadvantaged in other areas which may hinder their ability to participate effectively in the political process; (i) the use of overt or subtle racial appeals in political campaigns; (j) a significant lack of responsiveness on the part of elected officials to the particularized needs of members of the protected class; and (k) whether the political subdivision has a compelling policy justification that is substantiated and supported by evidence for adopting or maintaining the method of election or the voting qualification, prerequisite to voting, law, ordinance, standard, practice, procedure, regulation, or policy.

¹⁷ N.Y. Elec. Law § 17-206(2)(c)(iv).

¹⁸ N.Y. Elec. Law § 17-206(2)(b)(ii).

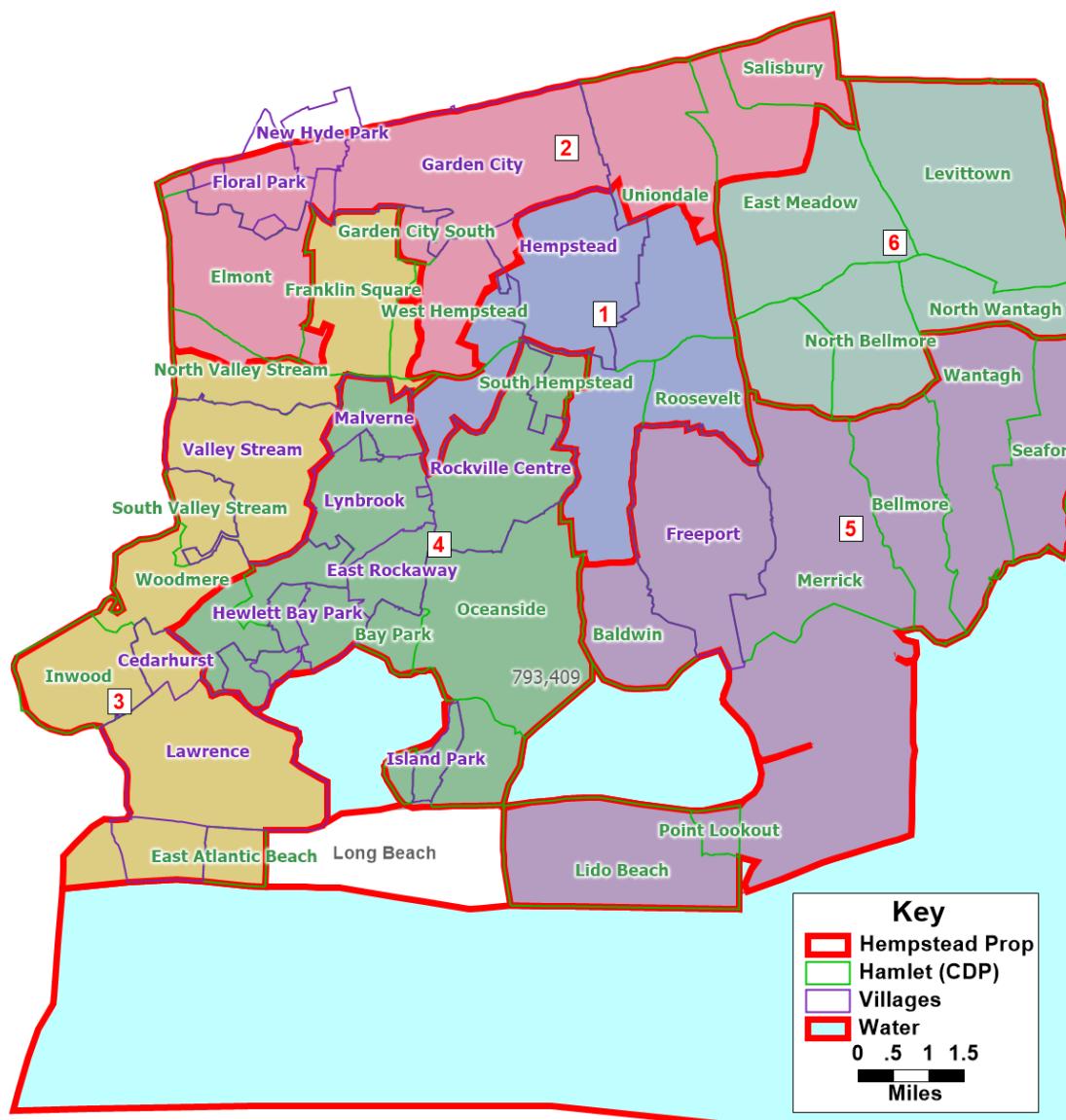
¹⁹ N.Y. Elec. Law § 17-206(2)(c)(vi).

²⁰ N.Y. Elec. Law § 17-206(2)(c)(vii).

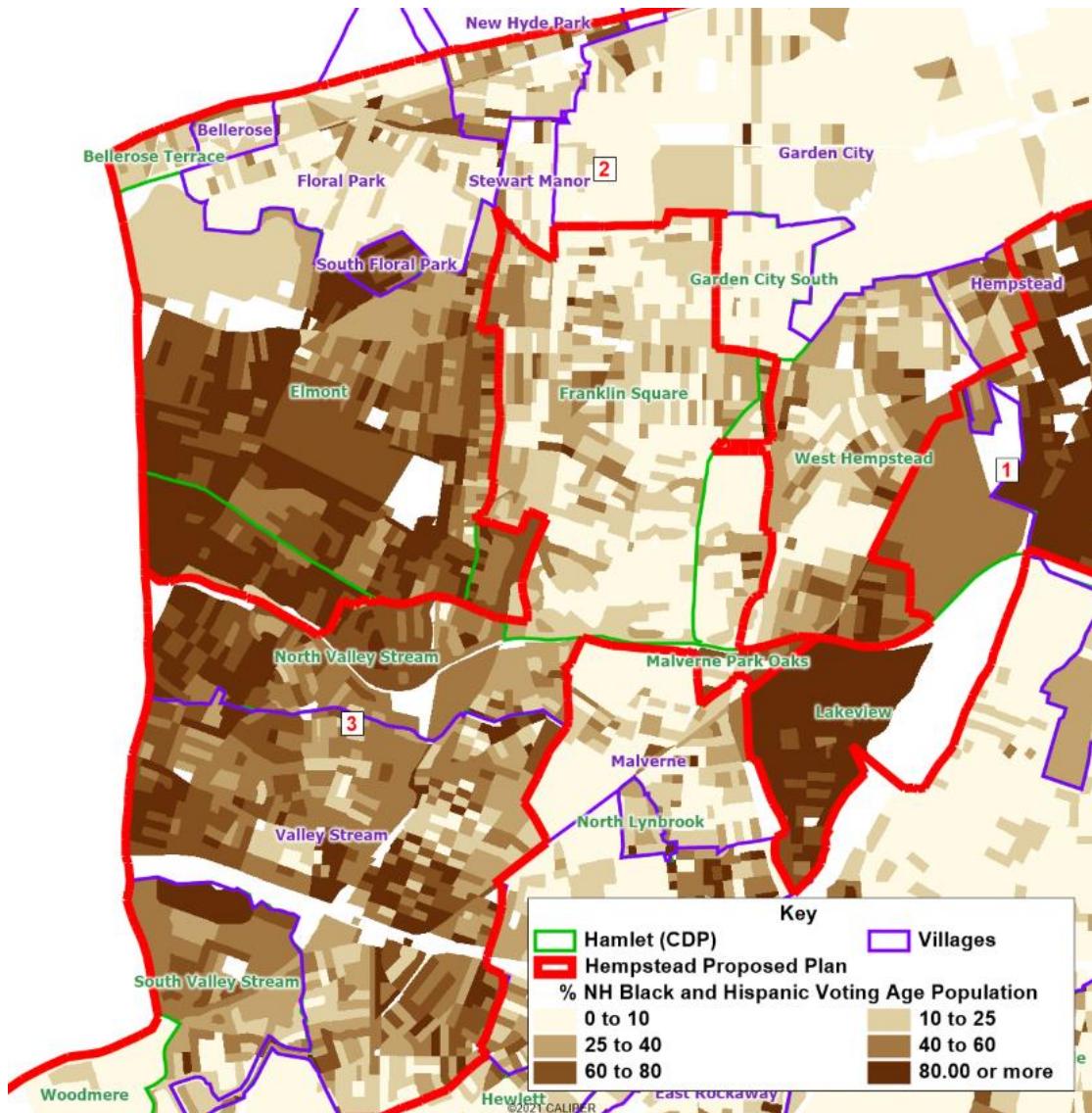
must ensure that any map it adopts now complies with the NYVRA to avoid litigation once the law takes effect.

III. The Commission's December 20, 2022 Proposed Map Risks Violating Section 2 and the NYVRA.

The Commission's December 20, 2022 proposed map risks violating both Section 2 and the NYVRA. As shown below, the proposal cracks Black and Latino voters in the Elmont/Valley Stream community into two majority-white districts (districts 2 and 3), creating a risk that Black and Latino voters in Elmont/Valley Stream community will be unable to elect candidates of their choice.

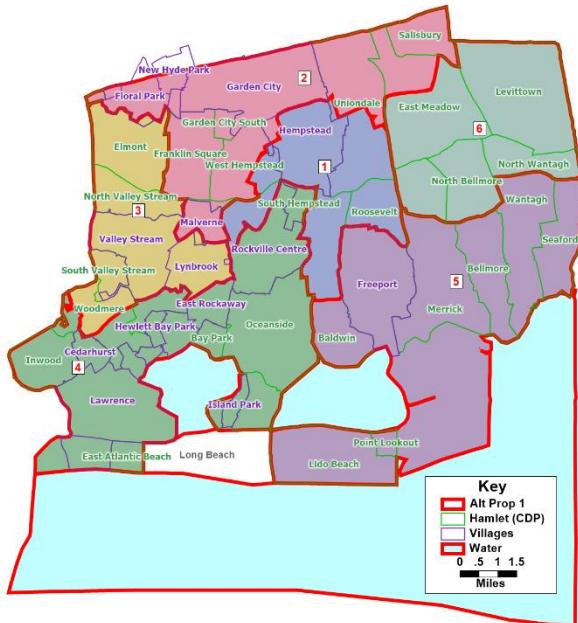


Map: The Commission's December 20, 2022 Proposal

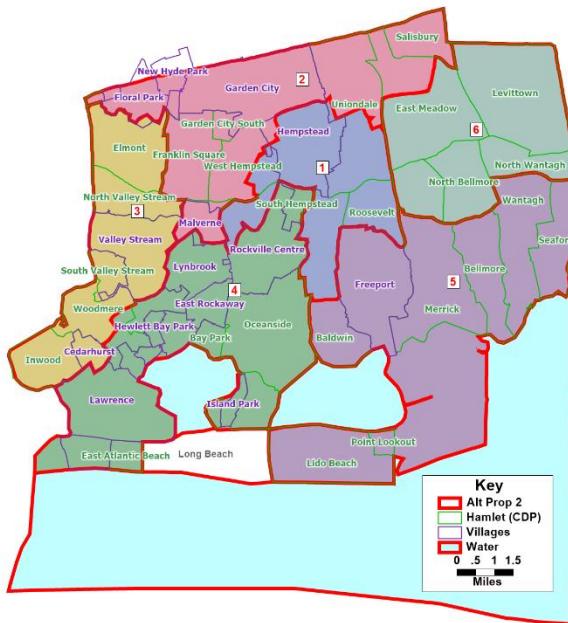


Map: The Commission's December 20, 2022 Proposal (Valley Stream/Elmont Region With Black and Latino Population Overlay)

It is possible to draw an alternate map that unifies the Elmont/Valley Stream community to form a majority-minority district. Below are two alternate proposals that achieve this goal. These maps are just two of many configurations that could be drawn to unify the Elmont/Valley Stream community to achieve an additional majority-minority district.



Map: Alternate Proposal #1, available at
<https://davesredistricting.org/join/34ea4d8a-a697-4f58-9d68-5a31298ddbde>



Map: Alternate Proposal #2, available at
<https://davesredistricting.org/join/65d8bfc3-a93b-4259-98f8-5ce75d606b7e>

Both of these alternate proposals preserve districts 1, 5, and 6 from the Commission's December 20, 2022 proposed map with no changes. The alternate proposals adjust only districts 2, 3, and 4 to provide for a unified district in the Elmont and Valley Stream community.²¹ In both proposals, the new version of district 3 becomes a majority-minority Black-Latino district, providing Black and Latino voters an opportunity to elect candidates of their choice.

The alternate proposals are superior to the Commission's December 20, 2022 proposal in numerous other ways. Both alternate proposals have a total population deviation of only 1.27% – a lower population deviation than the Commission's December 20, 2022 proposal. Both alternate proposals unify numerous communities that are split in the Commission's December 20, 2022 proposal.²² Both alternate proposals are more compact than the Commission's December 20, 2022 proposal according to at least one (if not multiple) measures of geographic compactness.

These alternate proposals demonstrate that it is *easy* to draw a map that unifies the Elmont and Valley Stream community in a single district. Moreover, it is possible to do so

²¹ Specifically, both proposals unify the incorporated villages of South Floral Park and Valley Stream and the hamlets of Elmont, North Valley Stream, and South Valley Stream in a single district.

²² The Town's proposal splits North Valley Stream and Franklin Square into two districts; they are unified into one district in both alternate proposals. The Town's proposal splits West Hempstead into three districts; it is split into just two districts in both alternate proposals. The alternate proposals do not introduce any new splits of hamlets.

while simultaneously respecting the relevant redistricting criteria to a greater extent than the Commission's December 20, 2022 proposal.

IV. The Town of Hempstead Should Unify the Elmont/Valley Stream Community Into a Single Majority-Minority District.

For the reasons explained above, the Town should adopt a map that unifies the Elmont and Valley Stream community into a single majority-minority district to avoid risking a violation of Section 2 and the NYVRA. The Commission should also undertake a racially polarized voting analysis to ensure that any map that is adopted complies with Section 2 and the NYVRA.

A failure by the Town to comply with Section 2 and the NYVRA may lead to unnecessary and costly litigation at significant taxpayer expense.²³ Both the federal VRA and the NYVRA provide that defendant jurisdictions are responsible for paying legal fees for prevailing plaintiffs. Recent Section 2 litigation in New York shows how costly this can be: For example, the East Ramapo Central School District recently paid in excess of \$7 million in legal fees for unsuccessfully defending a Section 2 lawsuit, and were ordered to pay an additional \$4 million in plaintiffs' attorneys' fees and costs.²⁴ Here on Long Island, the Town of Islip paid its lawyers over \$3 million to defend a Section 2 lawsuit and paid plaintiffs' attorneys nearly \$1 million to settle the claims.²⁵

We request a meeting with Town officials to discuss the concerns outlined in this letter and to explore alternate district maps that can avoid unnecessary litigation. Please feel free to contact Michael Pernick at (917) 653-3401 or by email at mpernick@naacpldf.org with any questions or to discuss these issues in more detail.

²³ NAACP Legal Defense and Educational Fund, Inc., *The Cost (in Time, Money, and Burden) of Section 2 of the Voting Rights Act Litigation as of February 21*, NAACP Legal Defense and Educational Fund, <https://www.naacpldf.org/wp-content/uploads/Section-2-costs-2.19.21.pdf> (last visited Aug. 2, 2021).

²⁴ Jennifer Korn, *ERCSD Threatens to Fire Teachers if Legal Fees Not Cut to \$1: NAACP Leaders Respond*, Rockland County Times (Jan. 21, 2020); Report and Recommendation, *NAACP, Spring Valley Branch v. East Ramapo Central School Dist.*, No. 7:17-08943-CS-JCM (S.D.N.Y. Dec. 29, 2020).

²⁵ Sophia Chang, *Islip Spends Nearly \$3M So Far to Fight Voting Rights Case*, Newsday (Dec. 16, 2019); Priscilla Korb, *Judge Rules in Town of Islip Voting Rights Case*, Patch (Oct. 27, 2020).

Sincerely,

/s/ Michael Pernick

Michael Pernick

Stuart Naifeh

Legal Defense Fund

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Legal Defense Fund (“LDF”)

Since its founding in 1940, LDF has used litigation, policy advocacy, public education, and community organizing strategies to achieve racial justice and equity in education, economic justice, political participation, and criminal justice. Throughout its history, LDF has worked to enforce and promote laws and policies that increase access to the electoral process and prohibit voter discrimination, intimidation, and suppression. LDF has been fully separate from the National Association for the Advancement of Colored People (“NAACP”) since 1957, though LDF was originally founded by the NAACP and shares its commitment to equal rights.

LatinoJustice PRLDEF

LatinoJustice PRLDEF, originally established as the Puerto Rican Legal Defense and Education Fund (PRLDEF) in 1972, is one of the country’s leading nonprofit civil rights public interest law organizations. LatinoJustice works to advance, promote, and protect the legal rights of Latinos throughout the nation. Historically, LatinoJustice’s work has focused on addressing systemic discrimination and ensuring equal access to justice in the advancement of voting rights, housing rights, educational equity, immigrant rights, language access rights, employment rights, and workplace justice, seeking to address all forms of discriminatory bias that adversely impact Latinos.