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March 28, 2012

T. Christian Herren, Jr.
Chief, Voting Section
Civil Rights Division
United States Department of Justice
Room 7254 – NWB
1800 G Street, NW
Washington, D.C. 20006

Re:

Submission under Section 5 of the Voting Rights Act: Request for Preclearance, New York Assembly Districts

in Kings, New York, and Bronx Counties

Dear Mr. Herren:

On behalf of the State of New York, we are submitting for preclearance the Assembly redistricting plan contained in S.6696-A.9525, Chapter 16 of the of the Laws of 2012 ("Chapter 16"), an act enacted by the New York Legislature on March 14, 2012, and signed into law by the Governor of New York on March 15, 2012, as amended by S.6755-A.9584, Chapter 20 of the Laws of 2012 ("Chapter 20"), enacted by the New York State Legislature on March 21, 2012, and signed by the Governor of New York on March 26, 2012 (collectively, "Chapters 16 and 20" or the "2012 Plan").

Chapters 16 and 20 provide for the decennial redistricting of New York's State Assembly districts and will take effect in the regularly scheduled 2012 primary and general elections, which are respectively scheduled to occur on September 11, 2012 and November 6, 2012. Given the impending commencement of the electoral calendar, the New York Assembly respectfully requests that a decision on preclearance be issued on an expedited basis so as to avoid uncertainty in the elective process. See 28 C.F.R. § 51.34.

The State of New York is not itself a jurisdiction covered by and subject to the "preclearance" requirement of Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. § 1973c ("Section 5"), but three counties in New York City (Bronx, Kings, and New York Counties) are covered by and subject to Section 5. See 28 C.F.R. pt. 51, app. Thus, the

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2012 Plan is subject to Section 5's "preclearance" requirement to the extent (and only to the extent) that it affects minority populations in these three covered counties.

The changes embodied in the 2012 Plan comply with the United States Constitution's one-person-one-vote requirement and preserve minority voting strength within the covered counties to the extent possible given demographic changes since the last decennial census and redistricting.

Pursuant to 42 U.S.C. § 1973c and 28 C.F.R. §§ 51.27 & 51.28, as amended, the New York Assembly submits the following information, which constitutes a complete administrative preclearance submission under your regulations:

§ 51.27 (a) A copy of any ordinance, enactment, order, or regulation embodying the change affecting voting for which Section 5 preclearance is being requested.

A certified copy of S.6696-A.9525, Chapter 16, is included as **Joint Exhibit 1.** A certified copy of S.6755-A.9584, Chapter 20, is included as **Assembly Exhibit 1A**. A block equivalency file for the 2012 Plan is included as **Assembly Exhibit 2**, and maps illustrating the plan are included as **Assembly Exhibit 3**.

The 2012 Plan is the result of an extensive process undertaken by the New York Legislature and the New York State Legislative Task Force on Demographic Research and Reapportionment ("LATFOR"), the technical arm of the Legislature in respect to the redistricting process. LATFOR consists of six members, two of whom are appointed by the Majority Leader of the Senate, two by the Speaker of the Assembly, and one each by the Minority Leaders. LATFOR's primary function, as charged by law, is to compile and analyze data, conduct research, and make reports and recommendations to the Legislature in connection with the redistricting of the State Senate, State Assembly, and Congressional districts, based on the 2010 Census.

LATFOR held 23 public hearings across the state, including in each of the three Section 5 covered counties. Following the first round of 14 public hearings, LATFOR publicized a proposed Assembly redistricting plan, then held an additional 9 public hearings to gather comments on the proposed plan. In addition, LATFOR encouraged members of the

The New York State Senate and New York State Assembly have compiled a joint appendix of exhibits for their respective preclearance submissions. Exhibits that pertain to both submissions are labeled "Joint Exhibit," while exhibits that pertain solely to the Assembly Plan submission are labeled "Assembly Exhibit." The State Senate submitted its redistricting plan for preclearance on March 16, 2012. The Joint Exhibits were submitted therewith.

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public to create and submit their own plan proposals. The plan proposals submitted to LATFOR are included in **Joint Exhibit 22**.

Throughout the process, LATFOR has maintained a public website. Among other things, the website provides the public with: (1) information on the current districts; (2) information on LATFOR's proposed plans; (3) answers to frequently asked questions; (4) instructions on how to submit comments or proposals; and (5) calendars, agendas, locations, transcripts, and videos of public hearings. In addition, the website promptly informed the public where and when public hearings and other meetings were scheduled, notified the public when plans were proposed, and provided relevant materials explaining each proposal. The website can be accessed at: http://www.latfor.state.ny.us. In addition, LATFOR placed 37 public service announcements in daily newspapers around the state, including newspapers that specifically serve minority communities and foreign language newspapers.

§ 51.27 (b) A copy of any ordinance, enactment, order, or regulation embodying the voting standard, practice, or procedure that is proposed to be repealed, amended, or otherwise changed.

The current plan under which members of the New York Assembly have been elected, which was embodied in S.6796-A.11014, Chapter 35 of the Laws of 2002, and S.7300-A.11184, Chapter 38 of the Laws of 2002 ("2002 Plan"), was passed by the Legislature, signed into law by the Governor, and precleared by the Attorney General in 2002. A copy of this law is included as **Joint Exhibit 4**. A block equivalency file of the 2002 Plan is included as **Assembly Exhibit 5**. Maps of the 2002 Plan are also included as **Assembly Exhibit 6**. The New York Assembly elections in 2002, 2004, 2006, 2008, and 2010 were held under the 2002 Plan. *See* **Joint Exhibit 13** for election return data for these elections.

§ 51.27 (c) A statement that identifies with specificity each change affecting voting for which Section 5 preclearance is being requested and that explains the difference between the submitted change and the prior law or practice.

The following reports summarize the changes between the current covered districts under the 2002 Plan and the covered districts under the 2012 Plan.<sup>2</sup>

Part XX of Chapter 57 of the Laws of 2010, which was precleared by the Department of Justice on May 9, 2011, requires the Legislature to adjust the Census data for state and local redistricting purposes by removing federal and state prisoners from where they were incarcerated on April 1, 2010. State prisoners are re-assigned to their residence of record prior to incarceration. Federal prisoners are subtracted from the state total and are not reassigned. In accordance with this law, the Legislature used adjusted data in the creation of new State Assembly and State Senate districts. The Plan Components Reports included with this submission provide district demographics based on the adjusted

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- 1. A Plan Components Report for the 2002 Plan with the 2010 Census data, providing a population summary for each district, including the district's NH Black Voting Age Population ("BVAP"), Hispanic Voting Age Population ("HVAP") and NH Asian Voting Age Population ("AVAP"), as well as the precincts (VTDs) in each district. This report is included as **Assembly Exhibit 8**.
- 2. A Plan Components Report for the 2012 Plan with the 2010 Census data, providing a population summary for each district, including the BVAP, HVAP and AVAP, as well as the precincts (VTDs) in each district. This report is included as **Assembly Exhibit 9**.
- 3. A Comparison Chart showing the BVAP, HVAP and AVAP percentages in each covered Assembly district under the 2002 Plan with the 2000 Census data, the 2002 Plan with the 2010 Census data, and the 2012 Plan with the 2010 Census data. This chart is included as **Assembly Exhibit 10**. Please note that some district numbers change between the 2002 Plan and the 2012 Plan. Those changes are identified in **Assembly Exhibits 10 and 11**.

§ 51.27 (d) The name, title, mailing address, and telephone number of the person making the submission. Where available, a telefacsimile number and an email address for the person making the submission also should be provided.

The Honorable Sheldon Silver Speaker of the New York State Assembly c/o C. Daniel Chill Graubard Miller 405 Lexington Avenue New York, New York 10174 Telephone: (212) 818-8800

Fax: (212) 818-8881

E-mail: dchill@graubard.com

§ 51.27 (e) The name of the submitting authority and the name of the jurisdiction responsible for the change, if different.

(continued...)

Census. Memoranda and population summaries explaining the adjustment process are included as **Joint Exhibit 7**.

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The State of New York is the submitting authority and jurisdiction responsible for this change. Chapter 16 designates the Speaker of the New York Assembly as the official responsible for making this submission.

§ 51.25 (f) If the submission is not from a State or county, the name of the county and State in which the submitting authority is located.

The submission is from the State of New York.

§ 51.27 (g) Identification of the person or body responsible for making the change and the mode of decision (e.g., act of State legislature, ordinance of city council, administrative decision by registrar).

Chapters 16 and 20 were duly enacted by the New York Legislature and signed into law by the Governor of New York.

§ 51.27 (h) A statement identifying the statutory or other authority under which the jurisdiction undertakes the change and a description of the procedures the jurisdiction was required to follow in deciding to undertake the change.

The New York Assembly enacted Chapters 16 and 20 in compliance with its duty to carry out decennial reapportionment and in accordance with the Fourteenth Amendment to the United States Constitution, as interpreted by the United States Supreme Court in *Reynolds v. Sims*, 377 U.S. 533 (1964), as well as other Supreme Court and lower federal court decisions applicable to New York, and also in accordance with Article III, Section 5 of the New York Constitution. Chapters 16 and 20 became law after a majority in both houses of the New York Legislature voted to pass the bills and the Governor signed them into law.

# § 51.27 (i) The date of adoption of the change affecting voting.

The New York Legislature passed Chapter 16 on March 14, 2012, and the Governor signed it into law on March 15, 2012. The New York Legislature passed Chapter 20 on March 21, 2012, and the Governor signed it into law on March 26, 2012.

# § 51.27 (j) The date on which the change is to take effect.

Chapters 16 and 20 took effect upon the Governor's signature on March 15, 2012 and March 26, 2012, respectively, and are now subject to the requirement for preclearance, within the three covered counties, pursuant to 42 U.S.C. § 1973c.

Following preclearance, the 2012 Plan will become effective in the three covered counties for the 2012 primary and general elections for the New York State Assembly. The schedule for those elections is as follows:

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- 1. State Assembly candidates may begin gathering petition signatures on June 5, 2012, N.Y. Elec. Law § 6-134(4), and candidates must file notices of their candidacies and sufficient petition signatures no later than July 12, 2012. N.Y. Elec. Law § 6-158(1).
- 2. Primary elections will be held on September 11, 2012. N.Y. Elec. Law § 8-100(1)(a).
- 3. General elections will be held on November 6, 2012. N.Y. Elec. Law § 8-100(1)(c).

# § 51.27 (k) A statement that the change has not yet been enforced or administered, or an explanation of why such a statement cannot be made.

The changes embodied in Chapters 16 and 20 have not yet been enforced or administered.

# § 51.27 (l) Where the change will affect less than the entire jurisdiction, an explanation of the scope of the change.

The changes embodied in the 2012 Plan, Chapters 16 and 20, affect the entire New York State Assembly, but the 2012 Plan is submitted for preclearance only with respect to the changes affecting the minority populations in Kings, New York, and Bronx Counties because those are the only New York counties covered under Section 5.

## § 51.27 (m) A statement of the reasons for the change.

Please see the answer to § 51.27 (h) above. The changes embodied in Chapters 16 and 20 were enacted to comply with the United States Constitution and the New York Constitution.

# § 51.27 (n) A statement of the anticipated effect of the change on members of racial or language minority groups.

As demonstrated in **Assembly Exhibit 11**, the 2012 Plan "neither has the purpose nor will have the effect of denying or abridging the right to vote on account of race or color" or membership in a language minority group. 42 U.S.C. § 1973c(a). Under Section 5 of the Voting Rights Act, a redistricting plan impermissibly "denies or abridges the right to vote" if it "has the purpose of or will have the effect of diminishing the ability of any citizens of the United States on account of race or color [or membership in a language minority group] to elect their preferred candidates of choice." 42 U.S.C. § 1973c(b). In its 2006 reauthorization of the Voting Rights Act, Congress specified that "[t]he term 'purpose' . . . shall include any discriminatory purpose." 42 U.S.C. § 1973c(c). Congress further explained that Section 5's aim "is to protect the ability of [minority] citizens to elect their preferred candidates of choice." 42 U.S.C. § 1973c(d); see also Beer v. United States, 425 U.S. 130, 141 (1976) (holding that a redistricting plan violates

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Section 5 if it "would lead to a retrogression in the position of racial minorities with respect to their effective exercise of the electoral franchise").

"The 'benchmark' against which a new plan is compared is the last legally enforceable redistricting plan in force or effect." Guidance Concerning Redistricting Under Section 5 of the Voting Rights Act, 76 Fed. Reg. 7470 (Feb. 9, 2011) (DOJ Guidance) (citing Riley v. Kennedy, 553 U.S. 406 (2008)); see also 28 C.F.R. § 51.54(c)(1). The "comparison of the benchmark and proposed plans at issue" is based on "updated census data in each." DOJ Guidance, 76 Fed. Reg. at 7471. In these plans, the "ability of [minority] citizens to elect their preferred candidates of choice" in a district—which is protected by Section 5's anti-retrogression requirement—"either exists or it does not." Id.

As demonstrated in **Assembly Exhibit 11**, the 2012 Plan preserves minority voting strength in all Section 5 covered districts. Most importantly, all of the districts where minority populations are able to elect their preferred candidates of choice remain electable under the 2012 Plan. The 2012 Plan also appropriately adjusts districts to account for minority population shifts over the past decade. These necessary adjustments result in increases in BVAP or HVAP in some districts where minorities have an ability to elect their preferred candidates of choice, and reductions in other such districts, but any such reductions are not retrogressive because the minority populations in the districts continue to possess the ability to elect their preferred candidates of choice.<sup>3</sup>

See Assembly Exhibit 11 for a district by district analysis against the benchmark plan of the new districts in the covered counties. The analysis reveals that all 23 majority minority districts have been preserved in 2012 Plan. In addition, the 2012 Plan includes two new minority opportunity districts in Kings County.

§ 51.27 (o) A statement identifying any past or pending litigation concerning the change or related voting practices.

There is one pending case concerning redistricting of the New York Assembly. The case, *Favors v. Cuomo*, No. 1:11-cv-05632 (E.D.N.Y. filed on Nov. 17, 2011), is an "impasse" suit that was filed in the U.S. District Court for the Eastern District of New York. On March 27, 2012, Intervenor Plaintiffs Ramos, et al. filed a First Amended Complaint which, inter alia, seeks the creation of two majority Hispanic VAP Assembly districts in Washington Heights (New York County).

§ 51.27 (p) A statement that the prior practice has been precleared (with the date) or is not subject to the preclearance requirement and a statement that the procedure for the

All statistics referenced in **Assembly Exhibit 11** are based on the adjusted 2010 Census data. *See supra* note 2.

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adoption of the change has been precleared (with the date) or is not subject to the preclearance requirement, or an explanation why such statements cannot be made.

The New York Assembly submitted the 2002 Plan for preclearance on April 30, 2002. The Attorney General made no objection and notified the State of preclearance on June 17, 2002. The procedure employed to adopt Chapters 16 and 20 was the process constitutionally required for all legislation in New York and is not subject to preclearance.

- § 51.27 (q) For redistrictings and annexations: the items listed under § 51.28(a)(1) and (b)(1); for annexations only: the items listed under § 51.28(c)(3).
  - (a) Demographic information.
    - (1) Total and voting age population of the affected area before and after the change, by race and language group. If such information is contained in publications of the U.S. Bureau of the Census, reference to the appropriate volume and table is sufficient.

Please see Assembly Exhibits 2, 5, 8, 9, and 10.

- (b) Maps. Where any change is made that revises the constituency that elects any office or affects the boundaries of any geographic unit or units defined or employed for voting purposes (e.g., redistricting, annexation, change from district to at-large elections) or that changes voting precinct boundaries, polling place locations, or voter registration sites, maps in duplicate of the area to be affected, containing the following information:
  - (1) The prior and new boundaries of the voting unit or units.

Please see Assembly Exhibits 3 and 6.

§ 51.27 (r) Other information that the Attorney General determines is required for an evaluation of the purpose or effect of the change. Such information may include items listed in § 51.28 and is most likely to be needed with respect to redistrictings, annexations, and other complex changes. In the interest of time such information should be furnished with the initial submission relating to voting changes of this type. When such information is required, but not provided, the Attorney General shall notify the submitting authority in the manner provided in § 51.37.

## ADDITIONAL INFORMATION PURSUANT TO 28 C.F.R. § 51.28

§ 51.28 (a)(2) The number of registered voters for the affected area by voting precinct before and after the change, by race and language group.

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Please see the information for 2002, 2004, 2006, 2008 and 2010, provided in **Joint Exhibit 12**. Registration is provided by voting tabulation district ("VTD"). The VTDs for the 2002 and 2004 data are the VTDs that were used in the 2000 Census, and the VTDs for the 2006, 2008, and 2010 data are the VTDs that were used in the 2010 Census.

§ 51.28 (a)(3) Any estimates of population, by race and language group, made in connection with the adoption of the change.

Other than the prisoner allocation adjustments explained in footnote 2 and **Joint Exhibit 7**, no population estimates were prepared. Please see **Assembly Exhibits 8** and 9 for Plan Component Reports for the 2002 Plan and 2012 Plan.

§ 51.28 (b) Maps. Where any change is made that revises the constituency that elects any office or affects the boundaries of any geographic unit or units defined or employed for voting purposes (e.g., redistricting, annexation, change from district to at-large elections) or that changes voting precinct boundaries, polling place locations, or voter registration sites, maps in duplicate of the area to be affected, containing the following information: (1) The prior and new boundaries of the voting unit or units; (2) The prior and new boundaries of voting precincts; (3) The location of racial and language minority groups; (4) Any natural boundaries or geographical features that influenced the selection of boundaries of the prior or new units; (5) The location of prior and new polling places; (6) The location of prior and new voter registration sites.

Please see the information provided above in **Assembly Exhibits 3** and 6. Otherwise, not applicable.

§ 51.28 (c) Annexations.

Not applicable.

§ 51.28 (d) Election returns. Where a change may affect the electoral influence of a racial or language minority group, returns of primary and general elections conducted by or in the jurisdiction, containing the following information: (1) The name of each candidate; (2) The race or language group of each candidate, if known; (3) The position sought by each candidate; (4) The number of votes received by each candidate, by voting precinct; (5) The outcome of each contest; (6) The number of registered voters, by race and language group, for each voting precinct for which election returns are furnished. Information with respect to elections held during the last ten years will normally be sufficient; (7) Election related data containing any of the information described above that are provided on magnetic media shall conform to the requirements of § 51.20(b) through (e). Election related data that cannot be accurately presented in terms of census blocks may be identified by county and by precinct.

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For election information from the past ten years, by VTD, please see **Joint Exhibit 13**. The VTDs for the 2002 and 2004 data are the VTDs that were used in the 2000 Census, and the VTDs for the 2006, 2008, and 2010 data are the VTDs that were used in the 2010 Census. The race of a candidate is provided when known. Registered voters by VTD for 2002, 2004, 2006, 2008 and 2010 are included in **Joint Exhibit 12**.

For additional information on New York elections, please see the Election Results information from the New York State Board of Elections website at: http://www.elections.ny.gov.

§ 51.28 (e) Language usage. Where a change is made affecting the use of the language of a language minority group in the electoral process, information that will enable the Attorney General to determine whether the change is consistent with the minority language requirements of the Act. The Attorney General's interpretation of the minority language requirements of the Act is contained in Interpretative Guidelines: Implementation of the Provisions of the Voting Rights Act Regarding Language Minority Groups, 28 CFR Part 55.

Not applicable.

- § 51.28 (f) Publicity and participation. For submissions involving controversial or potentially controversial changes, evidence of public notice, of the opportunity for the public to be heard, and of the opportunity for interested parties to participate in the decision to adopt the proposed change and an account of the extent to which such participation, especially by minority group members, in fact took place. Examples of materials demonstrating public notice or participation include:
  - (1) Copies of newspaper articles discussing the proposed change.

Please see Joint Exhibit 14 and Assembly Exhibit 14A, which contain media articles dating from the beginning of the Assembly Redistricting process in 2011 to the enactment of the 2012 Plan. Please also see Joint Exhibit 15, a media contact list that was used to send information out to different media.

(2) Copies of public notices that describe the proposed change and invite public comment or participation in hearings and statements regarding where such public notices appeared (e.g., newspaper, radio, or television, posted in public buildings, sent to identified individuals or groups).

Please see Joint Exhibit 16, which contains copies of all public notices.

(3) Minutes or accounts of public hearings concerning the proposed change.

Please see Joint Exhibit 18, which contains transcripts of all statewide public hearings.

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(4) Statements, speeches, and other public communications concerning the proposed change.

Please see **Assembly Exhibit 19**, for a transcript of the Assembly proceedings leading to passage of Chapter 16 on March 14, 2012 and the passage of Chapter 20 on March 21, 2012. For digital video recordings of the legislative sessions, please see the two separate DVDs included as **Assembly Exhibit 20**.

(5) Copies of comments from the general public.

For comments from the general public, please see **Joint Exhibit 21**. Additionally, for the redistricting plan proposals that were submitted by interested parties, please see **Joint Exhibit 22**.

(6) Excerpts from legislative journals containing discussion of a submitted enactment, or other materials revealing its legislative purpose.

Please see answer to § 51.28 (f)(4) above.

## § 51.28 (g) Availability of the submission.

(1) Copies of public notices that announce the submission to the Attorney General, inform the public that a complete duplicate copy of the submission is available for public inspection (e.g., at the county courthouse) and invite comments for the consideration of the Attorney General and statements regarding where such public notices appeared.

Simultaneous with this filing, a press release is being issued and a public notice sent to all interested parties containing the information in **Assembly Exhibit 23**, which informs the public that the New York Assembly has submitted its Assembly Redistricting Plan to the United States Attorney General for preclearance and that a duplicate copy of the Assembly's submission is available for public inspection at the LATFOR offices and on LATFOR's website at: http://www.latfor.state.ny.us. This notice also informs the public that any comments on the 2012 Assembly redistricting plan should be labeled on the first page and envelope with the notation "Comment under Section 5 of the Voting Rights Act" and sent to:

Chief, Voting Section Civil Rights Division U.S. Department of Justice Room 7254 – NWB 950 Pennsylvania Avenue, NW Washington, DC 20530

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(2) Information demonstrating that the submitting authority, where a submission contains magnetic media, made the magnetic media available to be copied or, if so requested, made a hard copy of the data contained on the magnetic media available to be copied.

All of the electronic information contained with this submission is provided on the LATFOR website at: http://www.latfor.state.ny.us.

§ 51.28 (h) Minority group contacts. For submissions from jurisdictions having a significant minority population, the names, addresses, telephone numbers, and organizational affiliation (if any) of racial or language minority group members residing in the jurisdiction who can be expected to be familiar with the proposed change or who have been active in the political process.

Please see Joint Exhibit 24 and Assembly Exhibit 24A, which contain the names and contact information for minority groups and individuals who have been active in the redistricting process.

The Assembly wishes to complete the preclearance process as expeditiously as possible. Please let me know if you should require any additional information or if you have any concerns that we need to address.

With best wishes, I am,

Sincerely yours,

C. Daniel Chill, Esquire

On behalf of

The Honorable Sheldon Silver

Speaker of the New York State Assembly

Daniel Chilo

#### New York

## Submission under Section 5 of the Voting Rights Act Request for Preclearance, New York Assembly Districts, 2012 Plan

### Electronic Media CD-ROM

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- Assembly Exhibit 2 2012 Plan Block Equivalency
- Assembly Exhibit 3 2012 Plan Maps
- Assembly Exhibit 5 2002 Plan Block Equivalency
- Assembly Exhibit 6 2002 Plan Maps
- Assembly Exhibit 8 2002 Plan Component Reports
- Assembly Exhibit 9 2012 Plan Component Reports
- Assembly Exhibit 10 VAP Comparison Chart
- Assembly Exhibit 11 District by District Analysis Against Benchmark Plan
- Assembly Exhibit 14A Supplemental Media Articles
- Assembly Exhibit 19 Legislative Session Transcripts
- Assembly Exhibit 20 Videos (on separate disks)
- Assembly Exhibit 23 Public Notice on Submission
- Assembly Exhibit 24A Supplemental Minority Contacts List

**JOINT EXHIBITS** were submitted by New York Senate on March 16, 2012 and comprise the following:

- Joint Exhibit 1 Copy of Chapter 16 of the Laws of 2012
- Joint Exhibit 4 Copy of the 2002 Plan Legislation
- Joint Exhibit 7 Prisoner Allocation Documents
- Joint Exhibit 12 Registration Data
- Joint Exhibit 13 Election Returns
- Joint Exhibit 14 Media Articles
- Joint Exhibit 15 Media Contact List
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- Joint Exhibit 18 Public Hearing Transcripts
- Joint Exhibit 21 Public Comments
- Joint Exhibit 22 Alternative Plan Proposals
- Joint Exhibit 24 Minority Contact List