

STATE OF NEW YORK  
SUPREME COURT, COUNTY OF NEW YORK

In the Matter of the Application of

Index No.: \_\_\_\_\_

DESI RISING UP AND MOVING, AARON FERNANDO, PAUL PERSAUD, SARWAN PERSAUD, NADIA PERSAUD, NADIRA PERSAUD, BISHAM PERSAUD, HARBHAJAN S. SURI, CHARANJIT S. SURI, DAVINDER S. SURI, SUKHVIR SINGH, SWARAN SINGH, LOVEDEEP MULTANI, PRINTHPAL S. BAWA, KAMLESH TANEJA, RAJWINDER KAUR, INDERBIR SINGH, PARAMJIT KAUR, and RAJBIR SINGH

Petitioners,

**Verified Petition**

For and Order Pursuant to Article 78 of the N.Y. C.L.P.R.

-against-

NEW YORK CITY DISTRICTING COMMISSION, CHAIR DENNIS M. WALCOTT, HON. MARILYN D. GO, MARIA MATEO, JOSHUA SCHNEPS, LISA SORIN, MSGR. KEVIN SULLIVAN, KAI-KI WONG, MAF MISBAH UDDIN, MICHAEL SCHNALL, KRISTEN A. JOHNSON, YOVAN SAMUEL COLLADO, GREGORY W. KIRSCHENBAUM, MARC WURZEL, KEVIN JOHN HANRATTY, and DR. DARRIN K. PORCHER each in their capacity as members of the New York City Districting Commission, BOARD OF ELECTIONS IN THE CITY OF NEW YORK, NEW YORK STATE BOARD OF ELECTIONS,

Respondents.

## Preliminary Statement

Richmond Hill/South Ozone Park, Queens is home to a vibrant, growing Asian community, but districting plans have repeatedly carved up the area and diluted the community's voting strength.<sup>1</sup> The Asian community in Richmond Hill/South Ozone Park has consequently long been denied fair and effective representation in local, state, and federal legislative bodies. The most recent example of unlawfully separating the Asian community came with the New York City Districting Commission certification of its 2022 redistricting plan splitting Richmond Hill/South Ozone Park into three city council districts—despite immense community support for a unified district.

Petitioners respectfully submit this petition seeking review under Article 78 of the New York Civil Practice Laws and Rules to contest the certification of the New York City Districting Commission's ("the Commission") Final Plan ("Final Certified Plan")<sup>2</sup> for failure to comply with the New York City Charter ("the Charter.") The Commission violated the Charter by failing to ensure the fair and effective representation of a racial or language minority group, to the maximum extent practicable. The Commission's illegal actions necessitate revisions to the district plan so that it complies with the law.

Richmond Hill/South Ozone Park is home to a robust Indo-Caribbean and Punjabi community, centered on Liberty Avenue, which has rapidly grown since the late 1970s.<sup>3</sup> Today, roughly half the population is foreign born, with immigrants from Guyana, Trinidad, and India, making Richmond Hill/South Ozone Park one of the largest South Asian communities in New

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<sup>1</sup> Exhibit A; Exhibit B.

<sup>2</sup> Exhibit C.

<sup>3</sup> *Id.*

York City.<sup>4</sup> The Asian community shares institutions including schools, community-based organizations, places of worship, transportation networks, and hundreds of ethnic small businesses along a two-mile stretch of Liberty Avenue.<sup>5</sup> Petitioners are registered Asian American voters who live in Richmond Hill/South Ozone Park and a membership-based organization with members who reside in this community.

On November 1, 2022, despite repeated and explicit testimony from community members and organizations as to the nature of Richmond Hill/South Ozone Park's protected racial minority community and the Commission's legal obligations to prioritize its representation, the Commission certified a City Council districting plan—the Final Certified Plan—that splinters the Richmond Hill/South Ozone Park Asian community among three councilmanic districts. The Commission illegally split the Richmond Hill/South Ozone Park Asian community down its major thoroughfare, Liberty Avenue, and then again by 100<sup>th</sup> and 99<sup>th</sup> Streets to the west.

Following each decennial Census, jurisdictions are required to redistrict to ensure their legislative boundaries comply with the one person, one vote principle. In New York City, redistricting is governed by Charter Chapter 2–A. Section 52(1)(b) of that Chapter orders the Commission to prioritize the representation of such racial or language minority groups in its district plans over all other factors except the traditional one person, one vote principle. In doing so, the Charter provides protection supplementary to federal law to ensure the voting power of racial and language minority groups.

Keeping the Richmond Hill/South Ozone Park Asian community intact in District 32 would not require the Commission to dilute the representation of any other racial or language

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<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

minority groups, nor violate the one person, one vote principle. A coalition of racial justice organizations, consisting of the Asian American Legal Defense and Education Fund, LatinoJustice PRLDEF, and the Center for Law and Social Justice at Medgar Evers College submitted the Unity Map, a potential citywide 51-district plan, to the Commission on July 18, 2022. As demonstrated by the Unity Map,<sup>6</sup> it was possible for the Commission to certify a districting plan that would ensure the fair and effective representation of the Richmond Hill/South Ozone Park Asian community while complying with the Charter and state and federal law. Indeed, the Unity Map upgrades District 28 from a Black plurality district into a majority Black district, while also ensuring fair and effective representation for Asian Americans in District 32.

Despite comments from Commission members that the Richmond Hill/South Ozone Park Asian community could not be kept intact, the Unity Map demonstrates it could have done so by eschewing the creation/maintenance of a white plurality district along the coastline of the Western Rockaways and Howard Beach, a district that the Commission chose to include in the Final Certified Plan. By doing so, the Commission arbitrarily and capriciously prioritized the representation of a white community of interest over fair and effective representation of a protected minority racial group, violating the clear mandate of the Charter.

Due to population equality requirements and the geography of this area of South Queens, JFK airport and the Rockaways, Districts 27, 28, 31 and 32 are all interconnected. Districts 27, 28 and 31 are all either majority or plurality Black districts that elect Black representatives. According to the Charter's mandates, these districts, at minimum, should remain so to ensure fair

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<sup>6</sup> Exhibit D.

and effective representation of the protected Black population in this area, but the Charter also requires the protected Asian community to be kept mostly whole with a reasonable opportunity to elect a candidate of their choice in District 32, as illustrated in the Unity Map. Compliance with the Charter’s mandate to ensure fair and effective representation for protected racial and language minority groups, to the maximum extent practicable, should result in three Black majority districts and one Asian opportunity district in this region, not two Black majority districts, one plurality Black district and one plurality white district—as currently contemplated by the Final Plan.

As a result of the Commission’s violation of the Charter, implementation of this defective Final Certified Plan must be halted, and the Commission must be ordered to create and certify a plan in compliance with the Charter.

### Venue

1. This action is properly commenced in New York County because it is the county where the Districting Commission made the decision to certify the defective districting plan. An Article 78 petition may be filled in “any county within the judicial district where the respondent made the determination complained of” pursuant to Civil Practice Laws and Rules (“CPLR”) § 506(b) and § 7804(b). Thus, this action is properly commenced in New York County.

### Parties

2. Petitioner Desis Rising Up and Moving (“DRUM”) is a non-profit, non-partisan multigenerational, membership-led organization representing low-wage South Asian and Indo-Caribbean New Yorkers. DRUM’s members include residents of Richmond Hill/South Ozone Park, including Petitioner Aaron Fernando. As part of its mission to build power among the

community and obtain political representation for its members, DRUM was actively involved in the New York City redistricting process. DRUM's Political Director Jagpreet Singh submitted written testimony to the Districting Commission stating that the South Asian community in Richmond Hill/South Ozone Park should be kept intact.<sup>7</sup>

3. Petitioner Aaron Fernando is a registered voter and resident of Richmond Hill/South Ozone Park.

4. Petitioner Paul Persaud is a registered voter and resident of Richmond Hill/South Ozone Park.

5. Petitioner Sarwan Persaud is a registered voter and resident of Richmond Hill/South Ozone Park.

6. Petitioner Nadia Persaud is a registered voter and resident of Richmond Hill/South Ozone Park.

7. Petitioner Nadira Persaud is a registered voter and resident of Richmond Hill/South Ozone Park.

8. Petitioner Bisham Persaud is a registered voter and resident of Richmond Hill/South Ozone Park.

9. Petitioner Harbhajan S. Suri is a registered voter and resident of Richmond Hill/South Ozone Park.

10. Petitioner Charanjit S. Suri is a registered voter and resident of Richmond Hill/South Ozone Park.

11. Petitioner Davinder S. Suri is a registered voter and resident of Richmond Hill/South Ozone Park.

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<sup>7</sup> Exhibit E.

12. Petitioner Sukhvir Singh is a registered voter and resident of Richmond Hill/South Ozone Park.
13. Petitioner Swaran Singh is a registered voter and resident of Richmond Hill/South Ozone Park.
14. Petitioner Lovedeep Multani is a registered voter and resident of Richmond Hill/South Ozone Park.
15. Petitioner Prithpal S. Bawa is a registered voter and resident of Richmond Hill/South Ozone Park.
16. Petitioner Kamlesh Taneja is a registered voter and resident of Richmond Hill/South Ozone Park.
17. Petitioner Rajwinder Kaur is a registered voter and resident of Richmond Hill/South Ozone Park.
18. Petitioner Inderbir Singh is a registered voter and resident of Richmond Hill/South Ozone Park.
19. Petitioner Paramjit Kaur is a registered voter and resident of Richmond Hill/South Ozone Park.
20. Petitioner Rajbir Singh is a registered voter and resident of Richmond Hill/South Ozone Park.
21. Respondent New York City Districting Commission (“the Commission”) is responsible for preparing a districting plan for election of city council members, subject to the rules of the New York City Charter. The Commission is comprised of fifteen full-time members, including a chair, Dennis M. Walcott.

22. Respondent Dennis M. Walcott is the Chair of the Commission and is named in this action in their official capacity.
23. Respondent Hon. Marilyn D. Go is a member of the Commission and is named in this action in their official capacity.
24. Respondent Maria Mateo is a member of the Commission and is named in this action in their official capacity.
25. Respondent Joshua Schneps is a member of the Commission and is named in this action in their official capacity.
26. Respondent Lisa Sorin is a member of the Commission and is named in this action in their official capacity.
27. Respondent Msgr. Kevin Sullivan is a member of the Commission and is named in this action in their official capacity.
28. Respondent Kai-Ki Wong is a member of the Commission and is named in this action in their official capacity.
29. Respondent Maf Misbah Uddin is a member of the Commission and is named in this action in their official capacity.
30. Respondent Michael Schnall is a member of the Commission and is named in this action in their official capacity.
31. Respondent Kristen A. Johnson is a member of the Commission and is named in this action in their official capacity.
32. Respondent Yovan Samuel Collado is a member of the Commission and is named in this action in their official capacity.



33. Respondent Gregory W. Kirschenbaum is a member of the Commission and is named in this action in their official capacity.

34. Respondent Marc Wurzel is a member of the Commission and is named in this action in their official capacity.

35. Respondent Kevin John Hanratty is a member of the Commission and is named in this action in their official capacity.

36. Respondent Dr. Darrin K. Porcher is a member of the Commission and is named in this action in their official capacity.

37. Respondent Board of Elections in the City of New York (“City BOE”) is a public agency of the City of New York responsible for election administration.

38. Respondent New York State Board of Elections (“State BOE”) is a public agency responsible for the execution and enforcement of all “statutes governing campaigns, elections and related procedures.”<sup>8</sup>

39. Complete relief cannot be accorded to Petitioners without the involvement of the City BOE and State BOE, as these Respondents are set to begin the elections process under the challenged Final Certified Plan on February 28, 2023,<sup>9</sup> which will cause immediate and irreparable injury to members of the public unless they are restrained by the relief requested herein.

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<sup>8</sup> N.Y. ELEC. LAW § 3–104 (McKinney 2022).

<sup>9</sup> NEW YORK STATE BOARD OF ELECTIONS, 2023 POLITICAL CALENDAR (2023), <https://www.elections.ny.gov/NYSBOE/law/2023PoliticalCalendar.pdf>.

## Statement of Facts

### **The 1989 Charter Revisions: Legislative History**

40. The 1989 revisions to the Charter require the appointment of a districting commission to redraw councilmanic districts each decade.<sup>10</sup> The Charter instructs that the commissions “shall be guided by the criteria set forth in section fifty-two.”<sup>11</sup>

41. Section 52 of the Charter instructs the Commission to divide the city into districts subject to a prioritized list of criteria that “shall be applied and given priority *in the order in which they are listed*” and “*to the maximum extent practicable.*” (emphasis added).<sup>12</sup>

42. The highest priority criteria mandates districts stay within acceptable bounds of population equality, essentially codifying the one person, one vote principle.

43. The second highest priority criteria mandates the Commission create a districting plan “established in a manner that ensures the fair and effective representation of the racial and language minority groups in New York City which are protected by the United States Voting Rights Act.”<sup>13</sup>

44. The Charter then instructs the Commission to give weight, in descending priority, to maintaining communities and neighborhoods of common interest, creating geographically compact districts, not crossing borough lines, and minimizing the sum length of all boundary lines.<sup>14</sup>

45. In its submission to the Department of Justice (“DOJ”) for preclearance under Section 5 of the Voting Rights Act following the adoption of the 1989 Charter, the New York City Charter

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<sup>10</sup> NY CITY CHARTER § 50.

<sup>11</sup> NY CITY CHARTER § 51.

<sup>12</sup> NY CITY CHARTER § 52(1).

<sup>13</sup> NY CITY CHARTER § 52(1)(b).

<sup>14</sup> NY CITY CHARTER § 52(1).

Revision Commission (“Revision Commission”), responsible for drafting the new Charter, wrote that the purpose of the new districting scheme was “to ensure that council district lines are drawn to maximize electoral opportunities of racial and language minority groups” and that the Charter “explicitly requires the Districting Commission to accord extremely high priority to fair and effective representation of racial and language minority groups.”<sup>15</sup>

46. In the Revision Commission meeting minutes, a Commission member called § 52(1)(b), the second priority criteria, “the single most important thing” for protecting racial and language groups in the districting process.<sup>16</sup>

47. The Revision Commission further highlighted the importance of § 52(1)(b) in the larger districting scheme, commenting that “we made a number of changes from the current system, both, in substance of the criteria for districting which, as when you go through that, you’ll see stresses the importance of the fair and effective representation of racial and language groups covered by the Voting Rights Act.”<sup>17</sup>

48. The Revision Commission wrote that its interest in expanding the size of the City Council from 35 members to 51 was “in seeing if a change in the size of the City Council - - that is an enlargement in the size of the City Council, would enhance the opportunities for minorities to be elected” and “the principle issue we want to look at is, whether expansion of the Council would add opportunities for minorities to get elected to the Council.”<sup>18</sup>

49. In its submission to the DOJ, the Revision Committee stated that by expanding the size of the City Council, “the Districting Commission should, . . . be able to establish a council district in [both Chinatown and Flushing] in which Asian Americans would have a reasonable

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<sup>15</sup> Exhibit F, at 22.

<sup>16</sup> Exhibit G, at 8.

<sup>17</sup> Exhibit G, at 2–3.

<sup>18</sup> Exhibit G, at 127.

opportunity to elect council members of their choice” by keeping the Asian community in these respective areas in a single council district.<sup>19</sup> The Revision Commission stated, the Charter “requires the Districting Commission to accord very high priority to this need.”<sup>20</sup>

50. The Revision Commission proffered a prototype 51-district plan illustrating how, even using the old 1980 Census data, it was possible to draw a district wholly containing Manhattan’s Chinatown where the Revision Commission believed Asians would have an opportunity to receive fair and effective representation in accordance with the protections created in § 52(1)(b).<sup>21</sup> The Revision Commission drew two variations of a prototypical Chinatown district in which, “Asian Americans would have a reasonable opportunity to elect council members of their choice”<sup>22</sup> The variations had the Asian share of total population at 28.7% and 30.6%, respectively, and the total non-white share of population at 76.8% and 62.5%, respectively.<sup>23</sup> The Section 5 submission states that “the Districting Commission should, as part of a 51-district plan based on the results of the 1990 census, be able to establish a council district in each of these areas in which Asian Americans would have a reasonable opportunity to elect council members of their choice.”<sup>24</sup>

51. Likewise, the Inaugural Districting Commission in 1991, when certifying the first plan under the new Charter criteria, stated, it “drew district lines to enhance the opportunities of protected racial and language minority groups to participate in the political process and elect candidates of their choice, *to the greatest extent feasible.*” (emphasis added).<sup>25</sup>

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<sup>19</sup> Exhibit F, at 21.

<sup>20</sup> *Id.*

<sup>21</sup> *Id.* at 19–21; *See also* Exhibit H.

<sup>22</sup> Exhibit F, at 21.

<sup>23</sup> Exhibit H.

<sup>24</sup> Exhibit F, at 21.

<sup>25</sup> Exhibit I, at 5.

52. The current Commission has expressed awareness that the Chinatown district was considered an opportunity district for racial and language minority voters by the drafters of the revised Charter. Chair Walcott explicitly acknowledged that “it was a clear intention” of the 1990 Districting Commission to create the Chinatown district “as an opportunity district to elect an Asian American candidate.”<sup>26</sup>

### **The History of the Richmond Hill/South Ozone Park Asian Community**

53. The Richmond Hills/South Ozone Park area contains an Asian community that is made up of, among others, Guyanese, Punjabi, Trinidadian, Surinamese, and Bengali New Yorkers. The influx of immigrants of largely South Asian and Indo-Caribbean descent since the late 1970s has transformed the Richmond Hills/South Ozone Park area into one of the highest concentrations of Asians in New York City.

54. The Richmond Hill/South Ozone Park Asian community defines itself geographically as the area contained approximately by the Van Wyck Expressway to the east, Woodhaven Avenue to the west, Forest Park and Hillside Avenue to the north, and the South Conduit/Belt Parkway to the South. Community groups and members testified to such boundaries prior to the Commission release of its Preliminary Map on July 15, 2022, including Petitioner Aaron Fernando on June 27, 2022.<sup>27</sup> Likewise, AALDEF, in collaboration with community-based organizations, developed a map of the Richmond Hill/South Ozone Park Asian community based on those boundaries and submitted it to the Commission on May 31, 2022.<sup>28</sup>

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<sup>26</sup> NYC Districting Commission, Public Meeting - September 29, 2022, YOUTUBE (Sep. 29, 2022), at 1:38:05–1:38:24, [https://www.youtube.com/watch?v=Z6fRZr0Qi\\_0](https://www.youtube.com/watch?v=Z6fRZr0Qi_0) (“It was a clear intention to create District 1 as an opportunity district to elect an Asian American candidate.”).

<sup>27</sup> Exhibit J.

<sup>28</sup> Exhibit K.

55. The City of New York, itself, has recognized the Indo-Caribbean community in Richmond Hill/South Ozone Park, with the City Council voting to co-name Liberty Avenue, between the Van Wyck Expressway and Woodhaven Ave, as Little Guyana Avenue.<sup>29</sup>

56. Additionally, community members confirmed those boundaries during the Queens Public Hearing on August 18, 2022, including Albert Baldeo (District 24b Leader), Ambika Persaud (South Queens Women’s March Summer Organizer), Mohammed Ahmed (Caribbean Equality Project Founder), Anlisa Outar (Chhaya CDC Housing Counselor), Nalima Ahmed (Caribbean Equality Project Volunteer), and Richard David (Indo-Caribbean Alliance Co-Founder).<sup>30</sup>

57. The Richmond Hills/South Ozone Park Asian community has historically been divided up and robbed of the opportunity to elect representatives of choice, and even hold particular representatives responsible for the issues facing the community. As reported by the New York Times, community members in Richmond Hills/South Ozone Park are divided into as many as seven state assembly districts and a myriad of city council and senate districts, which has frustrated and impeded the ability for the community to secure services from legislative representatives, including urgent COVID measures such as PPE and vaccine doses.<sup>31</sup>

58. In fact, none of the three sitting Council Members who are supposed to represent the divided Richmond Hill/South Ozone Park Asian community have offices in the area.

59. On the U.S. Census, many Indo-Caribbean residents enter “Other” as their racial categorization due to the complex nature of their identity but are members of Asian diasporas who in turn count as members of the Asian racial grouping for redistricting purposes.<sup>32</sup>

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<sup>29</sup> Exhibit A, at 3.

<sup>30</sup> Exhibit L.

<sup>31</sup> Nicholas Fandos, *Split 7 Ways, Immigrant Neighborhood Seeks to Unify Its Political Power*, N.Y. TIMES (Nov. 10, 2021), <https://www.nytimes.com/2021/11/10/nyregion/redistricting-queens-asians-nyc.html>.

<sup>32</sup> Exhibit A, at 4-6..

60. The Commission was aware of this fact. During the September 29, 2022, public mapping session, while discussing Southeast Queens, Bryn Hammarberg, one of the Commission's mappers, stated, in the "Richmond Hill area, we're talking about an Indo-Caribbean population that isn't always reflected in the [] Census designated racial and ethnic groups."<sup>33</sup> Two Commission members subsequently acknowledged that these community members should be considered a part of the Asian racial categorization.<sup>34</sup>

### The 2022 Redistricting Cycle

61. The Commission released its Preliminary Map<sup>35</sup> on July 15, 2022. Despite significant community testimony to the contrary, the Commission once again divided the Richmond Hill/South Ozone Park community into Council Districts 32, 29, 28 and 27. Under the Preliminary Map, the Commission divided the Richmond Hill/South Ozone Park Asian community into four districts, none of which would be plurality Asian.

62. The Commission violated the Charter criteria's prioritization in its Preliminary Plan by making its main objective the lower priority criteria of not crossing borough lines. The Preliminary Plan maintained three Staten Island districts which did not cross into another borough, despite Staten Island having the lowest growth rate of the boroughs and being the borough with the least portion of protected racial and language minorities. Preliminary Plan Districts 49, 50, and 51 deviated from the idea population of 172,882 by 4.3%, meaning, under the amended Municipal Home Rule Law, the most any of the other 48 districts could exceed the ideal population was 0.7%.<sup>36</sup> The Preliminary Map also divided two effective Hispanic-Asian

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<sup>33</sup> NYC Districting Commission, Public Meeting - September 29, 2022, YOUTUBE (Sep. 29, 2022), at 2:54:58–2:55:20, [https://www.youtube.com/watch?v=Z6fRZr0Qi\\_0](https://www.youtube.com/watch?v=Z6fRZr0Qi_0).

<sup>34</sup> *Id.*

<sup>35</sup> Exhibit M.

<sup>36</sup> N.Y. Mun. Home Rule Law § 32(4)(a) ("the difference in population between the most and least populous district shall not exceed five percent of the mean population of all districts").

coalition districts, Districts 38 and 26, where the minority communities consistently elected candidates of choice, replacing them districts with large white plurality.

63. AALDEF and others testified against these divisions as well as the division of the Richmond Hill/South Ozone Park Asian community stating they were clear Charter violations. Despite this testimony, the Commission only undid its Charter violations with relation to Districts 38 and 26, keeping the Richmond Hill/South Ozone Park divided.

64. In response to the Commission's Preliminary Map, on July 18, 2022, the Unity Map Coalition, a nonpartisan group composed of AALDEF, the Center for Law and Social Justice at Medgar Evers College (CLSJ), and LatinoJustice PRLDEF, submitted the Unity Map which illustrated how the Commission could draw districts that provided racial and language minorities fair and effective representation as required by the City Charter, and comply with state and federal law.

65. The Unity Map placed the Richmond Hill/South Ozone Park Asian community in an Asian opportunity district. A minority opportunity district is one in which the protected racial minority group has a reasonable opportunity to elect candidates of choice.<sup>37</sup>

66. When discussing her evaluation of the Commission's Preliminary Map under Section 2 of the Voting Rights Act during the Commission's August 11, 2022 public meeting, the Commission's expert, Dr. Lisa Handley, stated, "if you have polarized voting, then you have to make sure that you create districts that give minority voters an opportunity to elect their candidates of choice."<sup>38</sup> Such an opportunity district, according to Dr. Handley, need not be

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<sup>37</sup> Exhibit N, at 66–69.

<sup>38</sup> Exhibit N, at 29.



greater than 50% minority residents or citizens; it must simply grant the minority community the opportunity to elect candidates of choice.<sup>39</sup>

67. But Dr. Handley's analyses of Black, Hispanic, and Asian opportunity districts shared for the September 22, 2022 and October 6, 2022 Commission meetings were flawed.<sup>40</sup> Handley's analyses were primarily based on the 2021 Mayoral election, an exogenous race, rather than the endogenous 2021 City Council race which would have shown racially polarized voting in Richmond Hill/South Ozone Park.<sup>41</sup>

68. Under the Final Certified Plan, the Richmond Hill/South Ozone Park Asian community does not have an opportunity to elect candidates of choice in Districts 28 or 32. The results of City Council elections under the 2013–2022 Plan illustrate that. Racial bloc voting analysis of the 2021 general election for then open City Council District 32 shows that the Asian candidate of choice in District 32, Felicia Singh, was defeated by the white candidate of choice, Joann Ariola.<sup>42</sup> Felicia Singh is of Punjabi and Guyanese descent. Singh was defeated despite disproportionate support for her from the sizable Hispanic community as well.

69. Under the 2013–2022 Plan, District 28 contained the portion of the Richmond Hill/South Ozone Park Asian community south of Atlantic Avenue. District 28 was 36.7% Black, 20.5% Asian, and 18.4% Hispanic. Asians were unable to elect candidates of choice. In the last competitive primary for the City Council seat, in 2017, the Asian candidate of choice, Richard David, a Guyanese resident of Richmond Hill/South Ozone Park, was defeated by the Black community's candidate of choice, Adrienne E. Adams, the now Speaker of the City Council.<sup>43</sup>

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<sup>39</sup> See *id.* at 30-34

<sup>40</sup> See Exhibit O; Exhibit P.

<sup>41</sup> Exhibit Q.

<sup>42</sup> *Id.*

<sup>43</sup> *Id.*

70. The Unity Map drew District 32 to encompass the entirety of the Richmond Hill/South Ozone Park Asian community, resulting in an Asian plurality district. Under the Unity Map, District 32 would be 33.3% Asian and Other, 29.3% Hispanic, 21.0% white, and 7.9% Black by total population.

71. District 32 can be an Asian opportunity district, as demonstrated by the Unity Map. As seen in the 2021 City Council general election, Asian voters are cohesive while white voters vote as a bloc against Asian candidates of choice. The Hispanic voters tend to support the Asian candidates of choice. By bringing the Asian and Other share of total population to 33.3% and the non-white population to 79.0%, the Unity Map version of District 32 is an opportunity district for Asian residents in the mold of what the Revision Commission envisioned under the new 1989 Charter. -k

72. Drawing District 32 in this manner does not compromise neighboring opportunity districts drawn for other protected racial minorities. While ensuring fair and effective representation for Asian voters in District 32, the Unity Map maintains opportunity districts for Black voters in Districts 27, 28, and 31, and in fact bolsters District 28 from a Black plurality to a Black Majority district while maintaining the integrity of communities of interest like Jamaica and Rochdale Village.

73. On September 22, 2022, the Commission voted on whether to release the Revised Plan<sup>44</sup> as required by Section 51(e) of the Charter. The Commission rejected the Revised Plan.

74. The Commission then held two public mapping sessions for a total of 7.75 hours on September 29 and 30, 2022, attended by the Commission members, counsel, and mappers, which

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<sup>44</sup> Exhibit R.

were the only portions of roughly 77 total hours of mapping sessions made available to the public.<sup>45</sup>

75. During the September 29, 2022 mapping session, Commission member Uddin stated, the Commission “wanted originally [] Richmond Hill and South Ozone Park in one district. We could not do that.”<sup>46</sup> Instead, the Commission used Liberty Avenue, the community’s central throughfare to divide the Asian community of Richmond Hill/South Ozone Park.

76. During the September 30, 2022 mapping session, Commission member Uddin stated that many people from the Richmond Hill/South Ozone Park community testified regarding keeping their community intact.<sup>47</sup>

77. On October 6, 2022, the Commission voted to submit its Updated Revised Plan<sup>48</sup> to the New York City Council as required by Section 51(f) of the Charter. Despite the significant amount of community testimony and the Unity Map, the Commission’s Updated Revised Plan continued to divide the Richmond Hill/South Ozone Park Asian community, placing portions into Districts 32, 29, and 28, and preserve a white plurality in District 32.

78. On October 27, 2022, the City Council sent a letter to Commission Chair Walcott stating the City Council did not object to the Updated Revised Plan.

79. On November 1, 2022, the Commission certified the Updated Revised Plan as the Final Certified Plan. The Final Certified Plan divided the Asian community of Richmond Hill/South Ozone Park into three city council districts: Districts 32, 28, and 29.<sup>49</sup> The border between

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<sup>45</sup> A FOIL Request seeking the minutes or transcripts to these non-public sessions was made on by Ronak Patel, Legal Fellow at AALDEF, on February 1, 2022 and denied by the NYC Districting Commission on February 7, 2022.

<sup>46</sup> NYC Districting Commission, Public Meeting - September 29, 2022, YOUTUBE (Sep. 29, 2022), at 2:55:15–2:55:51, [https://www.youtube.com/watch?v=Z6fRZr0Qi\\_0](https://www.youtube.com/watch?v=Z6fRZr0Qi_0).

<sup>47</sup> NYC Districting Commission, Public Meeting - September 30, 2022, YOUTUBE (Sep. 30, 2022), at 00:09:10–00:10:28, <https://www.youtube.com/watch?v=f7GRPL4X48w&t=128s>.

<sup>48</sup> Exhibit S.

<sup>49</sup> See Exhibit C.

Districts 28 and 29 is drawn at Liberty Avenue, dividing the Asian community in half, right though its main throughfare. The western portion of the Community was cleaved off into District 32 at 100th Street below Atlantic Ave, and 99th Street above.

80. In the Final Certified Plan, District 32 is 38.2% white—higher than it was under the 2013–2022 Plan. District 32 is 36.0% Hispanic and 16.7% Asian and Other. District 28 is 44.5% Black, 25.4% Asian and Other (lower than it was under the 2013–2022 Plan), and 16.2% Hispanic.

81. This certification came in spite of the testimony of community members and organizations such as the Asian American Federation<sup>50</sup>, South Queens Women’s March,<sup>51</sup> the Hispanic & South Asian Alliance for Fair Redistricting in South Queens<sup>52</sup>, and the Caribbean Equality Project<sup>53</sup>—all stating that the Richmond Hills/South Ozone Park Asian community was a geo-compact, protected racial group that must be protected by the Commission.

82. The Commission was informed through testimony that this districting scheme would specifically violate their legal obligation under § 52(1)(b) of the Charter. In testimony at public hearing, Jerry Vattamala (misspelled in the official transcript as Jerry Guatemala) testified

“What about Richmond Hill, South Ozone Park? That is a protected community of interest, it is an Asian-American community of interest. It is a group protected under the federal Voting Rights Act and you must first ensure that there is fair and effective representation for that community before you look at Howard Beach and Breezy Point and Broad Channel and those other areas that you’ve drawn and consolidated into District 32. What about Richmond Hill and South Ozone Park? You’ve lumped them together in 28 with Rochdale Village, where they have no opportunity to elect a candidate of their choice . . . Before you move on, after the three Black districts in 27, 28, and 31, you must then next look at Richmond Hill, South Ozone Park and make sure they have fair and effective representation.”<sup>54</sup>

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<sup>50</sup> Exhibit T.

<sup>51</sup> Exhibit U.

<sup>52</sup> Exhibit V.

<sup>53</sup> Exhibit W.

<sup>54</sup> Exhibit L, at 237-238.

83. The Commission was informed by a letter submitted by the Unity Map Coalition that failing to create an Asian opportunity district in Richmond Hill/South Ozone Park would violate the Commission's legal obligations under the Charter. The Coalition wrote:

The Asian American community of interest in Richmond Hill/South Ozone Park (Districts 28 and 32) - this protected group does not have fair and effective representation to the maximum extent practicable, without harming another racial minority group, as is required under the Charter. Liberty Avenue is a major thoroughfare in the community, and the commission's plan divides the community in half - in violation of the Charter. The neighboring communities in district 32, cannot be prioritized above the Asian American community in Richmond Hill/South Ozone Park. The Charter requires that the Asian American community in Richmond Hill/South Ozone Park first be given fair and effective representation to the maximum extent practicable, only after ensuring that requirement is satisfied, is the commission to look to other surrounding communities.<sup>55</sup>

84. The Commission's Final Certified Plan did not create an opportunity district for the Richmond Hill/South Ozone Park Asian Community. Instead, the Final Certified Plan prioritized the preservation of a white community of interest in District 32, comprising the populations found in the Rockaways, Breezy Point, Broad Channel, and Howard Beach.

85. As seen in the 2021 District 32 general election, the Asian candidate of choice Felicia Singh (D-Ozone Park) lost in a landslide to the white candidate of choice, Joann Ariola (R-Howard Beach), 66% of the vote to 32%, and likewise in the most recent competitive primary in District 28, the Asian Candidate of choice, Richard David, was defeated by the Black candidate of choice, Adrienne E. Adams.

86. The Final Certified Plan's continued division of the Richmond Hill/South Ozone Park Asian Community continues to deny a protected racial minority's opportunity to elect candidates of choice in violation of the Charter.

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<sup>55</sup> Exhibit X.

### Claim for Relief

87. In an Article 78 proceeding, “judgment may grant the petitioner the relief to which he is entitled” and “if the proceeding was brought to review a determination, the judgment may annul or confirm the determination in whole or in part, or modify it, and may direct or prohibit specified action by the respondent.” CPLR § 7806. The court is “empowered to annul the determinations and fashion a proper remedy.” Matter of Garrett v. Coughlin, 128 A.D.2d 210, 212 (3d Dept. 1987; see also Bower Assocs. v. Planning Bd. of Town of Pleasant Valley, 289 A.D.2d 575, 575–76 (2nd Dept. 2001) (in which the court directs the respondent to perform a specific remedy following a determination by respondent that was arbitrary and capricious, rather than remit the decision to the respondent).

88. In light of the facts above, Petitioners respectfully requests that this Court enters judgement, pursuant to CPLR § 7806, and:

- a. Vacate the Final Certified Plan;
- b. Instruct the Districting Committee to certify an amended plan that correctly applies the criteria of § 52(1)(b) to the Richmond Hill/South Ozone Park Asian community as exemplified in the Unity Map;
- c. Grant temporary injunctive relief to Petitioners with a Temporary Restraining Order enjoining Respondents City BOE and State BOE from administering City Council elections in New York City until an amended plan that satisfies § 52(1)(b) is certified;
- d. Grant Petitioners such other and further relief as this Court deems necessary and equitable.

Dated: February 24, 2023

Respectfully Submitted,



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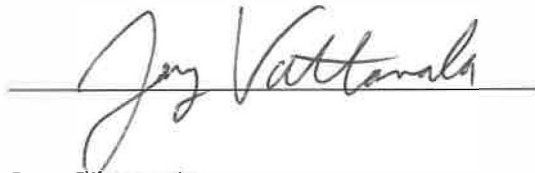
Jerry Vattamala  
Director, Democracy Program  
Asian American Legal Defense and Education  
Fund  
99 Hudson Street, 12th Floor  
New York, NY 10013  
(212) 966-5932  
jvattamala@aaldef.org

**ATTORNEY VERIFICATION**

JERRY VATTAMALA, an attorney duly admitted to practice before the courts of this state, and associated with the Asian American Legal Defense and Education Fund, hereby affirms under penalty of perjury that I have read the annexed verified petition, know the contents thereof, and state that the same are true to my knowledge, except for those matters alleged to be upon information and belief, and as to those matters I believe them to be true.

New York, New York  
February 23, 2023

State of New York, County of Queens  
Subscribed and Sworn to (or affirmed)  
before me this 23 day of February  
20 23 by Jerry Vattamala



**LILY ZHENG**  
Notary Public, State of New York  
Reg. No. 01ZH6362341  
Qualified in Queens County  
Commission Expires 07/31/2025

Jerry Vattamala  
Director, Democracy Program  
Asian American Legal Defense and Education Fund  
99 Hudson Street, 12th Floor  
New York, NY 10013  
(212) 966-5932  
jvattamala@aaldef.org