

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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MARK A FAVORS, HOWARD LIEB, LILLIE H.
GALAN, EDWARD A. MULRAINE, WARREN
SCHREIBER, and WEYMAN A. CAREY,

Plaintiffs,

11-cv-5632(DLI)(RLM)

ANDREW M. CUOMO, as Governor of the State of
New York, ERIC T. SCNEIDERMAN, as Attorney
General of the State of New York, ROBERT DUFFY,
as President of the Senate of New York, DEAN G.
SKELOS, as Majority Leader and President Pro
Tempore of the Senate of the State of New York,
SHELDON SILVER, as Speaker of the Assembly of
the State of New York, JOHN L. SAMPSON, as
Minority Leader of the Senate of the State of New
York, BRIAN M. KOLB, as Minority Leader of the
Assembly of the State of New York, the NEW YORK
STATE LEGISLATIVE TASK FORCE ON
DEMOGRAPHIC RESEARCH AND
REAPPORTIONMENT (“LATFOR”), JOHN J.
McENENY, as Member of LATFOR,, ROBERT
OAKES, as Member of LATFOR, ROMAN
HEDGES, as Member of LATFOR, MICHAEL F.
NOZZOLIO, as Member of LATFOR, MARTIN
MALAVE DILAN, as Member of LATFOR, and
WELQUIS R. LOPEZ, as Member of LATFOR,

Defendants.

**MEMORANDUM OF LAW IN SUPPORT
OF DEFENDANT ROBERT OAKS’ MOTION TO DISMISS**

SINNREICH KOSAKOFF & MESSINA LLP
Attorneys for Defendant Robert Oaks
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Defendant Robert Oaks, by his attorneys, Sinnreich Kosakoff & Messina LLP, hereby respectfully submits this Memorandum of Law in support of the instant motion for an Order, pursuant to Rules 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure (FRCP), dismissing the Complaint in its entirety as against Oaks, together with such other and further relief as the Court deems just and proper.

This office has had the opportunity to review the motion being prepared and filed on behalf of co-defendant Brian M. Kolb, Minority Leader of the Assembly of the State of New York (“Kolb”), likewise seeking dismissal under FRCP 12(b)(1) and (6), and has conferred with counsel for said co-defendant with respect to these motions.

In the interest of brevity and so as to not burden the Court with duplicative motion papers or redundant arguments, defendant Oaks hereby incorporates the factual background and arguments for dismissal set forth in the Memorandum of Law dated December 28, 2011, supporting the Kolb motion to dismiss, and adopts each and all such arguments in their entirety as his own. Briefly restated, the grounds for dismissal are as follows.

POINT I

THE COURT SHOULD NOT USURP THE STATE’S REAPPORTIONMENT PROCESS

First, the action improperly asks the federal judiciary to intervene in political questions and procedures reserved to the States—including specifically the reapportionment plan that LATFOR is charged with developing, a process the courts have recognized to be within the province of the States and their legislative branches. *See Chapman v. Meier*, 420 U.S. 1, 27 (1975); *see also Miller v. Johnson*, 515 U.S. 900, 915 (1995). Because LATFOR is actively engaged in the process of developing its reapportionment plan, plaintiffs’ speculative challenge is premature and unnecessary.

POINT II

THE PLAINTIFFS LACK STANDING

Based upon the principles set forth in *Lujan v. Defenders of Wildlife*, 504 U.S. 555 (1992), the plaintiffs lack standing as a matter of law. No plaintiff herein has suffered an “injury in fact” or otherwise alleged facts to confer standing. Indeed, LATFOR has not yet finalized its reapportionment plan. Instead, plaintiffs merely offer conjecture as to *future* events, which speculation is plainly insufficient to establish standing for the claims asserted herein.

POINT III

THE CLAIMS ARE NOT RIPE

The claims presented herein are not ripe. As such, the plaintiffs have not presented an actual case or controversy and thereby deprive the Court of subject matter jurisdiction. The claims asserted by plaintiffs are not ripe because LATFOR has not yet finalized its reapportionment plan. Similarly, so much of the Complaint as is based upon the Prisoner Reallocation Law is not only unripe, but likely moot as well given recent developments concerning an agreement reached on that issue—illustrating the fundamentally premature nature of the action. *See Longway v. Jefferson County Bd. of Supervisors*, 24 F.3d 397 (2d Cir.1994). The ripeness doctrine applies to all of the counts in the Complaint and compels dismissal of the action in its entirety.

POINT IV

PLAINTIFFS FAIL TO STATE AN EQUAL PROTECTION CLAIM

Fourth, in addition to the foregoing defects, the plaintiffs’ Equal Protection claim fails as a matter of law because the Complaint does not plead the essential elements of such a claim—*i.e.*, that plaintiffs were treated differently from those similarly situated based upon

constitutionally impermissible considerations. Plaintiffs state no claim under the one-person one-vote principle since a.) their allegations as to the prior existing districts are patently immaterial and b.) their allegations as to the presently ongoing and developing reapportionment plan are premature and speculative.

POINT V

PLAINTIFFS FAIL TO STATE AN EQUAL PROTECTION CLAIM

Finally, the due process claim likewise fails as a matter of law since it is undisputed and acknowledged that LATFOR's procedures offer the public notice and access and afford so much process as is due under the circumstances, because the claim is premature, and because plaintiffs have suffered no injury or constitutional deprivation.

Conclusion

Based upon the foregoing, and for the reasons more fully set forth in the Memorandum of Law submitted in support of the motion by co-defendant Kolb, which arguments are incorporated herein by reference, it is respectfully submitted that the Complaint, and each and every Count thereof, should be dismissed in its entirety as against defendant Oaks pursuant to FRCP Rule 12(b)(1) and (6).

Respectfully submitted,

SINNREICH KOSAKOFF & MESSINA LLP

_____/s/_____
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Timothy Hill

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