

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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

Plaintiffs, :

and :

DONNA KAY DRAYTON, EDWIN ELLIS, :
AIDA FORREST, GENE A. JOHNSON, JOY :
WOOLLEY, and SHELIA WRIGHT, :

Plaintiff-Intervenors, :

and :

LINDA LEE, SHING CHOR CHUNG, JULIA :
YANG, JUNG HO HONG, :

Plaintiff-Intervenors, :

and :

JUAN RAMOS, NICK CHAVARRIA, :
GRACIELA HEYMANN, SANDRA :
MARTINEZ, EDWIN ROLDAN, MANOLIN :
TIRADO, :

Plaintiff-Intervenors, :

and :

LINDA ROSE, EVERET MILLS, ANTHONY :
HOFFMANN, KIM THOMPSON- :
WEREKOH, CARLOTTA BISHOP, CAROL :
RINZLER, GEORGE STAMATIADES, :
JOSEPHINE RODRIGUEZ, and SCOTT :
AUSTER, :

Proposed Plaintiff-Intervenors, :

v. :

ANDREW M. CUOMO, as Governor of the :
State of New York, ROBERT J. DUFFY, as :
President of the Senate of the State of New :
York, DEAN G. SKELOS, as Majority Leader :
and President Pro Tempore of the Senate of the :

Case No. 1:11-cv-05632 (DLI)(RR)(GEL)

**[PROPOSED] INTERVENORS'
COMPLAINT**

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 OAKS, 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.

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COMPLAINT

Intervenors Linda Rose, Everet Mills, Anthony Hoffmann, Kim Thompson-Werekoh, Carlotta Bishop, Carol Rinzler, George Stamatiades, Josephine Rodriguez, and Scott Auster (“Intervenors”) bring this action to challenge the validity of New York’s congressional districts on grounds that they contravene the United States Constitution. Intervenors, for their cause of action against Defendants, state and allege as follows:

PARTIES

1. Intervenor Linda Rose is a United States Citizen and registered voter in the State of New York. She resides at 306 Mt. Pleasant Road in Smithtown, New York. Under the current congressional redistricting plan, she resides in Congressional District 1. She voted in the 2010 election and intends to vote in the 2012 election for the United States House of Representatives.

2. Intervenor Everet Mills is a United States Citizen and registered voter in the State of New York. She resides at 183-24 140th Avenue in Springfield Gardens, New York. Under

the current congressional redistricting plan, she resides in Congressional District 6. She voted in the 2009 election and intends to vote in the 2012 election for the United States House of Representatives.

3. Intervenor Anthony Hoffmann is a United States Citizen and registered voter in the State of New York. He resides at 100 Bank Street in Manhattan, New York. Under the current congressional redistricting plan, he resides in Congressional District 8. He voted in the 2010 election and intends to vote in the 2012 election for the United States House of Representatives.

4. Intervenor Kim Thompson-Werekoh is a United States Citizen and registered voter in the State of New York. She resides at 130 Lefferts Place in Brooklyn, New York. Under the current congressional redistricting plan, she resides in Congressional District 10. She voted in the 2010 election and intends to vote in the 2012 election for the United States House of Representatives.

5. Intervenor Carlotta Bishop is a United States citizen and registered voter in the State of New York. She resides at 881 Washington Avenue in Brooklyn, New York. Under the current congressional redistricting plan, she resides in Congressional District 11. She voted in the 2010 election and intends to vote in the 2012 election for the United States House of Representatives.

6. Intervenor Carol Rinzler is a United States Citizen and registered voter in the State of New York. She resides at 160 E 48th Street in Manhattan, New York. Under the current congressional redistricting plan, she resides in Congressional District 14. She voted in the 2010 election and intends to vote in the 2012 election for the United States House of Representatives.

7. Intervenor George Stamatiades is a United States Citizen and registered voter in the State of New York. He resides at 38-21 31st Street in Long Island City, New York. Under the current congressional redistricting plan, he resides in Congressional District 14. He voted in the 2010 election and intends to vote in the 2012 election for the United States House of Representatives.

8. Intervenor Josephine Rodriguez is a United States Citizen and registered voter in the State of New York. She resides at 1182 Anderson Avenue in the Bronx, New York. Under the current congressional redistricting plan, she resides in Congressional District 16. She voted in the 2010 election and intends to vote in the 2012 election for the United States House of Representatives.

9. Intervenor Scott Auster is a United States Citizen and registered voter in the State of New York. He resides at 65 High View Drive in Carmel, New York. Under the current congressional redistricting plan, he resides in Congressional District 19. He voted in the 2010 election for the United States House of Representatives and intends to vote in the 2012 election for the United States House of Representatives.

10. Defendant Andrew M. Cuomo is the Governor of the State of New York. He is being sued in his official capacity.

11. Defendant Robery J. Duffy is the Lieutenant Governor and President of the Senate of the State of New York. He is being sued in his official capacity.

12. Defendant Dean G. Skelos is the Majority Leader and President *Pro Tempore* of the Senate of the State of New York. He is being sued in his official capacity.

13. Defendant Sheldon Silver is the Speaker of the Assembly of the State of New York. He is being sued in his official capacity.

14. Defendant John L. Sampson is the Minority Leader of the Senate of the State of New York. He is being sued in his official capacity.

15. Defendant Brian M. Kolb is the Minority Leader of the Assembly of the State of New York. He is being sued in his official capacity.

16. Defendant LATFOR is the New York State Legislative Task Force on Demographic Research and Reapportionment. LATFOR is charged by statute with researching the techniques and methodologies that the U.S. Census Bureau used in the decennial census and with providing a technical plan to meet the timeline for redistricting based on the census.

17. Defendants John J. McEneny, Robert Oaks, Roman Hedges, Michael F. Nozzolio, Martin Malavé Dilan, and Welquis R. Lopez are members of LATFOR. They are being sued in their official capacities.

JURISDICTION AND VENUE

18. This Court has jurisdiction to hear Intervenors' claims pursuant to 42 U.S.C. §§ 1983 and 1988, and 28 U.S.C. §§ 1331 and 1343(a)(3)-(4). This Court has jurisdiction to grant declaratory relief pursuant to 28 U.S.C. §§ 2201 and 2202.

19. A three-judge district court is required pursuant to 28 U.S.C. § 2284(a), as Intervenors' action "challeng[es] the constitutionality of the apportionment of congressional districts" in New York.

20. Venue is proper under 28 U.S.C. § 1391(b).

FACTUAL ALLEGATIONS

21. New York's current congressional districts were established by the New York State Assembly and Senate in 2002 based on the results of the 2000 Census. New York's current congressional districts are set forth in N.Y. State Law, Art. 7, § 111.

22. The results of the 2000 Census revealed that, as of April 1, 2000, the population of New York was 18,976,457. The 2002 redistricting legislation drew twenty-nine congressional districts with an overall range of deviation of zero percent (1 person) from the ideal population of 654,360 per congressional district.

23. Based on the results of the 2010 Census, the population of New York was 19,378,102 in 2010. Because New York's population increased by only 401,645 people, or 2.1 percent, between 2000 and 2010, New York lost two congressional districts. After the 2012 congressional elections, New York will only have twenty-seven congressional seats. The ideal population for each of the twenty-seven congressional districts is 717,707 (19,378,102 divided by twenty-seven).

24. The official 2010 Census figures for New York show that population shifts during the last decade have generated substantial inequality among New York's congressional districts, whose populations now range from a low of 611,838 in Congressional District 28 to a high of 713,512 in Congressional District 8. Thus, the total population deviation is now 101,674 persons.

25. The population decrease in New York has caused several New York congressional districts, including Congressional Districts 1, 6, 8, 10, 11, 14, 16, and 19, to become overpopulated relative to others. The existing malapportionment of congressional districts in New York dilutes the voting strength of Intervenors residing in overpopulated congressional districts, as the weight or value of Intervenors' votes is less than that of other voters residing in underpopulated congressional districts.

26. The New York State Assembly and Senate failed to enact a congressional redistricting plan in 2011.

27. Governor Cuomo has repeatedly threatened to veto any congressional reapportionment plan adopted by the New York Legislature. He has proposed legislation that would establish a commission independent of the Legislature to draw New York's electoral districts. The New York Legislature has not adopted any legislation that would create an independent redistricting commission.

28. The New York Legislature and the Governor are at an impasse, and on information and belief, will be unable to resolve this dispute and enact a new congressional redistricting plan before New York's statutory deadlines for registering congressional nominees and conducting congressional primary and general elections.

29. A designating petition to register a candidate for a congressional election must be filed "not earlier than the tenth Monday before, and not later than the ninth Thursday preceding the primary election." N.Y. Elec. Law § 6-158. Because the primary election for New York's congressional candidates will be held on June 26, 2012, candidates must be registered by April 26, 2012.

30. Bronx County, Kings County, and New York County are covered by Section 5 of the Voting Rights Act, 42 U.S.C. § 1973c *et al.* Consequently, any New York congressional reapportionment plan must be approved by the Department of Justice or the United States District Court for the District of Columbia. If approval is sought from the Department of Justice, the Department has sixty days to review and object to the reapportionment plan. Litigating a Section 5 preclearance suit before the United States District Court for the District of Columbia generally takes much longer. Thus, any reapportionment plan must be adopted by New York at least sixty days before the candidate registration deadline to ensure that the plan will be precleared before the deadline passes. To ensure timely submission to the Department of Justice

and provide additional time to make any changes requested by the Department, New York must adopt new congressional districts much earlier than sixty days before the candidate registration deadline.

31. New York must adopt new congressional districts no later than February 26, 2012, to avoid missing the candidate registration deadline and causing other delays to New York's 2012 election calendar.

32. On information and belief, New York will be unable to resolve the impasse and adopt a congressional reapportionment plan before February 26, 2012.

33. The failure to enact and implement a New York congressional redistricting plan based on the 2010 Census results has violated and is violating rights guaranteed to Intervenors and all other similarly situated individuals under the United States Constitution.

34. On information and belief, absent an injunction by this Court, Defendants intend to and will conduct primary and general elections for the United States House of Representatives on the basis of the congressional districts set forth in N.Y. State Law, Art. 7, § 111.

35. Intervenors intend to and will vote in the state primary and general elections to be held in 2012 and thereafter for candidates for the United States House of Representatives. If those elections are conducted by Defendants on the basis of the congressional districts set forth in N.Y. State Law, Art. 7, § 111, Intervenors and all other similarly situated individuals will be further deprived of rights guaranteed by the United States Constitution.

36. In order to ensure that congressional districts that comply with the United States Constitution are in place for the 2012 election, it is necessary for this Court to order into effect a congressional redistricting plan for New York.

CAUSE OF ACTION

37. Intervenors restate and incorporate by reference the allegations of paragraphs 1 through 36 above as though fully set forth herein.

38. Article I, Section 2 of the United States Constitution provides in relevant part:

The House of Representatives shall be composed of Members chosen every second Year by the People of the several States Representatives . . . shall be apportioned among the several States which may be included within this Union, according to their respective Numbers

39. The Fourteenth Amendment of Section 1 of the United States Constitution provides in relevant part:

No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

40. The Fifth Amendment of the United States Constitution provides in relevant part: “No person shall . . . be deprived of life, liberty, or property, without due process of law.”

41. The above provisions of the United States Constitution guarantee that New York voters will have a fair and equal opportunity to cast a meaningful ballot for the United States House of Representatives, regardless of the congressional districts in which they reside, and that voters in more highly populated congressional districts will not be subject to unlawful discrimination.

42. New York’s current congressional districts set forth in N.Y. State Law, Art. 7, § 111 are malapportioned on the basis of the 2010 Census results, unlawfully discriminating against Intervenors and other similarly situated individuals.

43. The congressional redistricting plan set forth in N.Y. State Law, Art. 7, § 111 deprives Intervenors and all similarly situated individuals of rights guaranteed to them under the United States Constitution.

PRAYER FOR RELIEF

Accordingly, Intervenors respectfully request that this Court:

1. Declare that the current New York congressional redistricting plan as set forth in N.Y. State Law, Art. 7, § 111 is invalid for failure to comply with the requirements of the United States Constitution;

2. Issue a permanent injunction and judgment barring Defendants from calling, holding, supervising, administering, or certifying any further elections under the current New York congressional redistricting plan, as Intervenors have no adequate remedy at law and will be irreparably harmed by the continued violation of their constitutional rights;

3. Hold hearings, consider briefing and evidence, and otherwise take actions necessary to determine and order into effect a new congressional redistricting plan for the State of New York;

4. Retain jurisdiction of this action to render any and all further orders that the Court may from time to time deem appropriate; and

5. Grant such other or further relief the Court deems to be appropriate, including but not limited to an award of Intervenors' attorneys' fees and reasonable costs.

DATED this 15th day of February, 2012.

Respectfully submitted,

By: /s/ Jeffrey D. Vanacore

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