

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

x

MARK A. FAVORS, et. al.

Plaintiffs,

v.

ANDREW M. CUOMO, as Governor of the
State of New York, et. al.,

Defendants.

CIVIL DOCKET

1:11-CV-05632

(DLI-RLM)

PLAINTIFFS-
INTERVENORS RAMOS
RESPONSE TO
CONGRESSIONAL
REDISTICTING PLANS

By: 

Juan Cartagena

Jackson Chin (JC3494)

Jose Perez

LATINOJUSTICE PRLDEF

Attorneys for Plaintiffs-

Intervenors Ramos, et.al.

99 Hudson Street, 14 Fl.

New York, NY 10013

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**Ramos Plaintiff-Intevernors' Objections and Comments On
Several Proposed Congressional District Plans**

In this memorandum, the Ramos Plaintiff-Intevernors apprise the Court of legal deficiencies and problems that certain proposed maps present, particularly as compared to the Ramos Congressional Proposal submitted previously to the Court and as compared to our reading of the Section 5 Voting Rights Act prohibition on retrogression. .

The proposed maps and available data provided from the submissions of the Assembly Minority, the Senate Majority, the Senate Minority ,Plaintiffs-Intervenors Rose, and, Common Cause form the basis of our comments and objections in this memorandum.

Plantiffs-Intervenors' Drayton and Plaintiff-Intervenors' Lee join the Plaintiff-Ramos Intervenors in submitting proposals founded on the Unity Plan which was released in December 2011 to the public and to LATFOR.

The Ramos Congressional Proposal (hereinafter, "Ramos-Unity Plan") made a few modifications from the original Unity Plan affaecting several Congressional Districts. As noted in the original Ramos Congressional Proposal submission, but for these changes, the Ramos proposal is identical to the Unity Plan.

Applying constitutional and statutory-based redistricting principles, and criteria of compactness, contiguity, and respect for communities of interest as stated in our Memorandum in support, dated February 29, 2012, we argue that the Ramos-Unity Plan is a superior plan for this court to adopt. The Ramos-Unity Plan meets the requirements of Section 5's non-retrogression standard by preserving the voting strength of Latino voters in the four congressional districts in which they enjoy a majority or an overwhelming plurality and creates additional majority Latino districts where population changes warrant, consistent with traditional redistricting criteria.

Indeed, the population shifts in New York have been major. New York City's population growth was attributed in large part to the growth of Latino communities. Hispanics now account for 28.6 percent of the city's population. In the city, overall, Latinos grew by 8.1 percent in the past decade, reaching 2,336,076 in 2010.

Latinos grew by 15% in the Bronx (from 644,705 to 741,413), and 1.7% in Brooklyn (from 487,878 to 496,285) by 10.3% in Queens (from 556,605 to 613,750) and, by 51.4% in

Richmond Count (from 53,550 to 81,051). Only in New York County, was there a slight 3.4% decline in total population, from 417,816 to 403,577.

Accordingly, given this population growth, the benchmark for retrogression analysis should be the voting strength that Latinos enjoy in the current Congressional district configuration.

As noted in the Ramos Intervenors submission in support of the Ramos-Unity Plan, Latinos are currently the majority or overwhelming plurality in four congressional districts – each of which lie wholly or partly within the Section 5 covered jurisdictions in New York City: District 16 (Rep. Jose Serrano) is approximately 66.5% Latino and needs to grow by over 23,000 persons to reach the 2010 ideal population; District 15 (Rep. Charles Rangel) is approximately 46% Latino and must add over 77,000 people to meet the equal population requirement; District 12 (Rep. Nydia Velazquez) is approximately 44.6% Latino and must grow by over 45,000 people; and District 7 (Rep. Crowley) which is approximately 44.4% Latino, and, in need of an additional 50,000 plus people to meet the ideal population figure.

Together with this benchmark and the population growth of Latinos in the City as noted, we find it justifiable as required under the Voting Rights Act to draw Congressional map that increases the number of majority Latino districts where warranted by the growth of the Latino community and where consistent with traditional redistricting criteria. It is exactly those principles that led to the RAMOS CONGRESSIONAL PROPOSAL plan that was submitted to this Court.

We respectfully submit that as the Court evaluates the competing redistricting proposals, those proposals that do not diminish Latinos' electoral strength and their ability to elect preferred candidates must be prioritized.

See Chart of Proposed Plans and Comparison of Data, Attached.

Comments on Common Cause Plan (CC)

Generally, the City of New York maps for the Common Cause proposed districts raise many concerns. While the CC proposed districts seem to excel at compactness, they may inadvertently come at the price of not meeting the needs of certain minority communities that are protected under the Voting Rights Act.

First, on information and belief, Defendant Assembly Majority Silver's Response avers that the CC plan pits Congressional House Reps. Velazquez and Towns, and, Serrano and Rangel, against each other in the same proposed districts, ECF Doc. 165, dated, March 2, 2012, pp. 5-6. This particular matter raises a serious concern for the Latino community in that it does harm to their ability to elect preferred candidates who have been elected and re-elected time and again.

The Common Cause Plan appears to create three Latino majority Voting Age Population (VAP) districts and one 40% Latino district, likely to be assigned to CD 12's representative. These appear to be four ability-to-elect districts for Latinos. However, as noted below, some of the districts severely lessen the proportion of Latino voters and put in jeopardy the community's ability to elect candidates of their choice, they also unnecessarily split Latino communities.

CC - CD 15 Rangel

Labeled CD 14 in the CC map, the district is made up of 54.5 % Latino and replaces a current benchmark district comprised of 65.5 % Latino (VAP)

This CC district is adverse to Latinos electoral strength because it lowers, by more than 10% points, the amount of Latinos within the district. This change proposed by CC, threatens whether Latinos will have an ability-to-elect a candidate of choice under Section 5 and would require a more in-depth analysis. It is arguable that given the citizenship rate, the turn out rate, and other factors, that this district could slip out of control for Latino voters.

Widespread populations between the Upper West Side and the North Bronx are thread together as one without regard to whether they constitute true communities of interest. CC's analysis seems to ignore the Upper West Side's large affluent white population and portrays the district as a heavily Hispanic working-class area.

Compared to the current CD's footprint, CC's district preserves only about 20 % of the old District 16. Because of a sharp reduction in Latino voters from the Bronx, it is not clear whether the new community, in fact, will elect the candidate of its choice.

CC - CD 7 Crowley

The current CD 7 is 42.1 % Latino, 22.9 % white, 16.43 % black, and 16 % Asian. The proposed CC district would have 50.1 % Latino, 19 % white, 14.7 % black, and 14 % Asian. These numbers are relatively unchanged, with the biggest difference coming in an increase in the number of Latino voters in the district. However, we note that the biggest difference comes from how this district now grabs people along the Bronx coast line-Whitestone, while taking in far less people from Woodside, Queens. On the Bronx side, Schuylerville has been split in half, as has Pelham Gardens, and the CC plan incorporates more North Corona residents.

CC - CD 12 Velasquez

The current CD 12 has VAP numbers of 41.4 % Latino, 30 % white, 10 % black, and 18 % Asian. Under the proposed CC district, it would become 40.1 % Latino, 29.7 % white, 8 % black, and 20 % Asian.

Our primary concern is this CC district is, in fact, a cross-over district, not a coalition district. Essentially, Latinos in this CD already hold the ability-to-elect. Any drop in their numbers would amount to a retrogression of their ability to elect because it would mean they would need to increase the amount of people who cross-over in each election to vote with them. While the number of voters needed to determine the CD's election is small, this change represents adding considerable pressure on the Latino community to win crossover votes.

CC district 12, while similar to current CD 12, adds far more Cobble Hill white residents than the current plan. It splits up the community defined south of the Williamsburg Bridge and north of the Brooklyn Navy Yard. It also tacks on a substantially higher income households from the Grand Street Lower East Side community.

Comments on Senate Majority Plan (Skelos Plan)

The first observation about this plan is that it retains a core of District 9 currently held by Rep. Robert Turner (formerly, the Weiner district).

The Skelos Plan proposes only two majority Latino districts at 60.4% and 54.6% VAP, respectively, plus one near-majority (46.2% VAP). However, the next highest Latino % is

26.9% VAP. In contrast the RAMOS CONGRESSIONAL PROPOSAL plan creates two majority districts (59.8% and 55.8% VAP, respectively) plus two over 40% districts (43.4% and 41.6% of VAP, respectively)

Skelos Plan CD 6

The Skelos Plan creates a district, called district 6, that overlaps a considerable portion of the current CD 7 (Crowley). The proposed new district is detrimental to Latino voting rights because it is only 28.5% Latino, whereas the current CD 7 is 44% Latino. It, therefore, removes a Latino influence district. This is effected by ousting a large number of the current CD 7's Bronx Latino residents into another South Bronx district (similar to the current CD 16Serrano), 2) splitting Latino communities in Jackson Heights/Corona, and 3) by absorbing a large number of Whites and Asians in northeast Queens as well as in Elmhurst.

The Senate R district 6 separates the Bronx Latino community of Westchester from surrounding Latino communities, as well as splits Latino Jackson Heights/Corona, as mentioned above.

Skelos Plan CD 11

This plan creates a district 11 that is similar to the current CD 12 (Velazquez). On its face, this district appears to have enhanced Latino voting rights as it creates a district with 46.2% Latino VAP as compared with 41.4% in the current district.

However, the Skelos CD 11 is detrimental to Latino voting rights in that unlike the current district 12, it detaches the heavily Latino community of Cypress Hills from adjacent Latino communities in Bushwick and Ridgewood. Skelos CD 11 also splits up Latino communities from Bushwick, Jackson Heights, and Corona, Queens. In addition, Corona is added to the core of the current district via a sparsely populated corridor in Queens. A far less-compact district than the current CD 12, it also combines disparate Latino communities that may not belong in a district together based on their shared interests.

As a coalition district of Latinos and Asians that have repeatedly elected a minority preferred candidate, the Skelos Plan CD 11 does more harm by detaching Manhattan's Chinatown from the current district 12. This undermines the Asian community's voting rights and proposes a Congressional district that no longer unites the Chinese-Asian communities located in lower Manhattan and in Sunset Park, Brooklyn. They have been defined by past redistricting litigation as having strong communities of interest nested in the current CD.

Skelos Plan CD 15

The Senate R plan creates a district, called district 15, that is similar to the current CD 16 (Serrano). The Senate R district is also similar to the Ramos Plan's district 16. In addition to having similar Latino %s (60.4% and 59.8% of VAP, respectively), both make a similar modification to the current CD 16 by having the district cross into Manhattan. The difference here is that the Ramos district keeps the Latino community of East Harlem intact, whereas the Senate R district splits the latter and takes only half of it (everything above 109th St).

Skelos Plan CD 14

This proposed district 14 overlaps a considerable portion of the current CD 15 (Rangel). It covers a smaller portion of Manhattan and a larger portion of the Bronx than the current CD 15. Skelos Plan CD 14 has 55.8% VAP. However, the Senate R district 14 is detrimental to Latino voting rights in that it splits Latino communities in Belmont and Morris Heights in the Bronx.

Comments on Assembly Minority CD Plan (Kolb Plan)

We believe that the Kolb Plan is retrogressive to Latino voting rights as a whole. It reduced the Latino VAP population in all but one of the current CDs covered under Section 5.

Kolb Plan District 8

Kolb Plan's CD 8 encompasses Harlem, East Harlem and the Upper West Side. Hispanics have been reduced from 46% to 42% VAP. Blacks are also reduced from 26% to 23% VAP.

Current CD 15 includes populations in Astoria, Queens and is not covered under Section 5. There is a sparse level of community of interest between the neighborhoods of Astoria and the neighborhoods of East Harlem or Washington Heights.

The proposed CD 8 splits Inwood /Upper Manhattan into two Congressional districts. This neighborhood has significant populations of Latinos, especially Dominicans. The growing

Dominican community has expressed a desire to stay together in the same congressional district as in Washington Heights.

Kolb Plan District 12

Kolb Plan's District 12 encompasses Chinatown, the Lower East Side, Chelsea and Clinton in Manhattan, with Cobble Hill, Red Hook in Brooklyn. However, the number of Hispanic VAP has been reduced from 46% to 35%. Black VAP has also been reduced from 8% to 6%.

The proposed CD 12 adds Manhattan's West Side Chelsea and Clinton neighborhoods, which are much higher income households share few common interests with the vastly working poor Asians and Latinos of Sunset Park, Brooklyn. This proposed district also annexes but fractures the existing communities of Long Island City and Astoria, that were never part of the benchmark CD.

Kolb Plan District 14

The Kolb Plan CD 14 takes in huge swaths of the Bronx, the number of Hispanics and Blacks and it splits up the populations of Inwood in Northern Manhattan.

Kolb Plan District 16

The Kolb Plan CD 16 stretches for almost 25 miles, meandering from the Town of Rye, Westchester County, through the Bronx, to Queens County into Woodside. VAP Latinos are reduced from 44% to 41% and Blacks from 16% to 12%. In benchmark CD 7, 57% of the residents of District 7 are located in the Bronx and covered under Section 5. Under the Kolb Plan, only 40% these residents remain in the Bronx, shifting 22% into Westchester County.

Comments on Rose Intervenors' CD Plan (Rose Plan)

Rose Plan District 5

In Rose Plan's proposed CD 5 large portions of the Bronx and Queens, including, Eastchester Bay, Pelham Gardens, Union Port, Whitestone, Murray Hill, Flushing, Bayside and Douglaston. The Latino population is reduced from 44.4% to 30.5%.

Current CD 7 currently consists of Whitestone, Bayside, Little Neck and Kew Gardens Hills. There exist no communities of interest between the Bronx neighborhoods and the eastern part of Queens in Bayside and Douglaston. Moreover, the Queens neighborhoods of Rego Park, Corona, Flushing and College Point have been split up between two Congressional districts.

Rose Plan District 15

The Rose Plan's CD 15 encompasses much of the Bronx and Westchester County. Hispanics were reduced from 66.5% in the current CD 16 to 63%. Blacks were reduced from 28% to 25%. The Rose district splits communities of Washington Heights, Morrisania, and Concourse Village.

Rose Plan District 5

The benchmark CD 7 contained 42.1% VAP Latinos but retrogressed to 28.4% in the Rose CD 5. This could have a serious impact on the ability of minorities in that district to effectively run crossover campaigns or combine with other groups to form ability-to-elect districts.

Proposed CD 5 captures new populations in Whitestone, Bayside, Little Neck and New Garden Hills. But, there is little in common between the neighborhoods of the Bronx and the eastern part of Queens in Bayside and Douglaston. Further, the neighborhoods of Rego Park Corona, Flushing and College Point have been split up between various congressional districts.

Rose Plan District 15

Rose's CD 15 encompasses the same area as the current CD-16. However, the VAP Latino population falls from 66 to 63 percent. The number of blacks has been reduced from 28 to 25%. The district also captures new communities in Olinville and Williamsbridge and splits communities of interest in Washington Heights, Morrisania, and Concourse Village.

One important note about this plan is that it reduces Hispanic majorities *without* corresponding increases in other districts to make up for the loss in minority voters. Thus, it makes an unnecessary reduction in the number of Hispanic voters in a county that has seen a 15 percent increase of Latinos.

Rose Plan District 14

Rose Plan CD 14 compares to the current CD-15 of Upper Manhattan represented by Rep. Rangel. The district as drawn in this plan, encompasses large portions of the Manhattan and the Bronx, meanders from parts of Washington Heights to the eastern portion of the Bronx. The district also goes into Queens. It splits communities with the Bronx River and reaches into Manhattan Valley in Manhattan's Upper West Side.

This district is highly retrogressive. Although the plan seems to be drawn in order to assist Latinos, it breaks up the current Latino-Black coalition that has effectively re-elected Rep. Rangel and controlled the district for well over a decade. Thus, it will be retrogressive to those minorities in benchmark CD 15 who had influence within the controlling coalition and who will no longer have the ability to elect a preferred candidate of their choice. Further, it seeks to add far-flung populations seemingly by race which may be a potential *Shaw* violation.

Rose Plan District 11

Rose Plan CD 11 draws its boundaries stretching from Woodhaven, Queens to Sunset Park, Brooklyn but also splits communities of interest in Woodhaven, Williamsburg, Greenpoint and Cobble Hill. These splits have the potential to lead to voting rights violations because the benchmark CD-12 is the Rep. Nydia Velazques cross-over Latino district. Through retrogressing the VAP Latino numbers, Latinos will have to convince new non-minority voters to cross over in order to elect the candidate of their choice. Latinos have been able to build cross-racial support among voters in CD-12 where cross-over votes consistently elected a preferred candidate for about two decades.

We object to this Rose Plan CD 11 as it results in likely retrogressive impact that undermines the gains of the Latino and Asian minority community.

Assembly Majority Plan (Silver Plan)

The Silver Plan provides only 2 majority-minority Latino Congressional districts. One would have a Latino majority of 57.4% VAP and the other district with a near majority of 48.4% VAP. It offers two additional districts with 42.1% and 41.7% VAP, respectively.

The Ramos-Unity plan creates 2 majority districts of 59.8% and 55.8% VAP, respectively, and two additional districts with 43.4% and 41.6% VAP, respectively.

Silver Plan CD 5/7/14/16

The Silver Plan's proposed new amalgam district does not preserve the core of the existing CD 7. Instead, it severely spins off most of the benchmark district into several new proposed districts. For example, the numerous residents of mostly minority residents in Co-op City are placed into an otherwise all-Westchester County district 16. Central Bronx neighborhoods of Van Nest, Pelham Gardens, Baychester, Allerton, Bronxdale, Pelham Parkway, and Morris Park are annexed to a new South Bronx CD district 14, while Queens-based Jackson Heights, Elmhurst, College Point, and Woodside are attached to a new Central Queens district 5.

The remaining neighborhoods that formed the original core of current CD 7, including, the East Bronx neighborhoods of Soundview, Unionport, and Throgs Neck, are mixed in with Hunts Point and Mott Haven in the Bronx, and a huge swath of northeast Queens to form CD 7.

The new CD 7 has 41.7% Latino VAP, compared to the current district's 42.1% and the Ramos plan's 43.4% VAP district (which is called district 7 and preserves the core of the current district). Silver Plan's CDs 5, 14, and 16 have Latino VAP percentages of 26.1%, 57.4%, and 21.2%, respectively. The populations of Co-op City, Jackson Heights, Woodside, and Elmhurst are removed from a Latino crossover district resulting in districts with less than 27% Latino VAP.

The plan is retrogressive because CD 7 is protected as either a Latino crossover district or a Latino/Asian coalition district. This Silver proposal weakens the existing coalition's ability to elect and/ or increases the burden on Latinos to attract new communities to vote with them in order to elect the preferred candidate of their choice.

In closing, we appreciate the Court's consideration of our objections, comments and issues raised. An attachment, in Excel spreadsheet, offers a comparison of certain proposed districts using Latino population and Latino VAP percentages, where available for each of the above plans, and, a benchmark CDs (2000) of the specific districts that impact the Latino population in the Section 5 covered jurisdictions.