

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

THE STATE OF NEW YORK,)
)
by Dean G. Skelos, in his official capacity as)
Temporary President of the New York State)
Senate,)
Legislative Office Building, Room 909)
Albany, NY 12247)
Plaintiff,)
) Civil Action No.:
vs.)
)
THE UNITED STATES OF AMERICA,)
U.S. Attorney For the District of Columbia)
Civil Division)
4th Floor)
501 Third Street, N.W.)
Washington, D.C. 20530)
)
ERIC H. HOLDER, JR., in his official)
capacity as Attorney General of the United)
States)
Office of General Counsel)
Justice Management Division)
Department of Justice)
145 N. Street, N.E.)
Washington, D.C. 20530)
Defendants.)

**COMPLAINT FOR DECLARATORY JUDGMENT
PURSUANT TO THE PROVISIONS OF SECTION 5 OF THE
VOTING RIGHTS ACT OF 1965, AS AMENDED, 42 U.S.C. § 1973c,
AND REQUEST FOR THREE-JUDGE COURT**

Plaintiff brings this action for declaratory judgment pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. § 1973c (hereinafter "Section 5"), and 28 U.S.C. § 2201, *et seq.* Plaintiff respectfully would show the Court the following:

1. This action is filed for the purpose of obtaining a declaratory judgment that the State Senate redistricting plan contained in S.6696-A.9525 (“Senate Plan”), an act passed by the New York Legislature on March 14, 2012 and signed by the Governor on March 15, 2012, satisfies Section 5 of the Voting Rights Act because it has neither the purpose nor the effect of denying or abridging the right to vote on account of race or color or membership in a language minority group, or of diminishing minority voters’ ability to elect their preferred candidates of choice, in the three New York counties covered by Section 5, and that the Senate Plan may be enforced by the State of New York. The Plan, which will take effect in the regularly scheduled 2012 primary and general elections, provides for the decennial redistricting of New York’s State Senate districts.

Parties

2. Plaintiff, the State of New York, is a State of the United States of America and brings this duly authorized action on behalf of itself and the citizens of the State of New York. The Temporary President of the New York State Senate is designated in the enacted redistricting legislation as the submitting authority for the Senate Plan.

3. The United States is a proper defendant in this action because “[a] State or political subdivision wishing to make use of a recent amendment to its voting law [that is covered by Section 5] . . . has a concrete and immediate ‘controversy’ with the Federal Government.” *South Carolina v. Katzenbach*, 383 U.S. 301, 335 (1966).

4. Eric H. Holder, Jr. is a proper defendant in his official capacity as the Attorney General of the United States and is principally responsible for enforcing the Voting Rights Act of 1965, including the defense of Section 5 litigation in the United States District Court for the District of Columbia. 42 U.S.C § 1973c(a).

Jurisdiction and Venue

5. This action is brought pursuant to 42 U.S.C. § 1973c and 28 U.S.C. § 2201, under which this Court is authorized to issue the declaratory judgment Plaintiff seeks. This Court has subject matter jurisdiction pursuant to 42 U.S.C. § 1973c and 28 U.S.C. § 1331.

6. Venue is proper in this Court pursuant to Section 5, 42 U.S.C. § 1973c, and 28 U.S.C. § 2284.

Three-Judge Panel Required and Requested

7. The State of New York is not itself a jurisdiction covered by and subject to the “preclearance” requirement of Section 5, but three counties in New York (Bronx, Kings, and New York Counties) are covered by and subject to Section 5. *See* 28 C.F.R. pt. 51, app. Thus, the Senate 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. Section 5 provides that no voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1964 that affects a covered jurisdiction may be enforced unless and until (a) this Court enters a declaratory judgment that the qualification, prerequisite, standard, or procedure has neither the purpose nor the effect of denying or abridging the right to vote on account of race or color, or in contravention of the guarantees set forth in 42 U.S.C. §1973b(2) (which similarly protect members of language minority groups); or (b) the qualification, prerequisite, standard, or procedure is submitted to the Attorney General for preclearance and an objection is not interposed within sixty days.

8. This action is properly determinable by a district court of three judges in accordance with 42 U.S.C. § 1973c and 28 U.S.C. § 2284.

Factual Allegations

9. The New York Legislature is composed of two bodies: the State Senate and the State Assembly. N.Y. Const. art. III, §§ 1 & 2.

10. Members of the Senate are elected to two-year terms. N.Y. Const. art. III, § 2.

11. The results of the 2010 Census revealed that the State's population had shifted substantially over the past decade. These population changes necessitated revisions to the State Senate district boundaries, to comply with federal and state constitutional one-person-one-vote requirements. *See Reynolds v. Sims*, 377 U.S. 533, 568 (1964); U.S. Const. amend. XIV, § 2; N.Y. Const. art. III, § 4.

12. The New York State Legislative Task Force on Demographic Research and Reapportionment ("LATFOR") is the technical arm of the Legislature in respect to the redistricting process. It consists of six members—four legislators and two non-legislators—and two co-executive directors.

13. LATFOR's primary function, as charged by law, is to compile and analyze data, conduct research, and to 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. As part of this function, LATFOR held a number of public hearings across the State, including in each of the three Section 5 covered counties. LATFOR also encouraged members of the public to create and submit their own plan proposals.

14. In light of this public input, LATFOR released a proposed Senate Plan on January 26, 2012. Following the release of this proposal, LATFOR held another series of public hearings across the State.

15. After considering this input, LATFOR amended its proposed Senate plan and recommended it to the Legislature, which enacted it as the Senate Plan embodied in S.6696-A.9525.

16. The Senate Plan does not have the purpose of denying or abridging the right to vote on account of race or color or membership in a language minority group.

17. Compared to the Benchmark Plan, the Senate Plan does not lead to retrogression in the position of racial or language-group minorities with respect to their effective exercise of the electoral franchise or diminish their ability to elect their preferred candidates of choice, and does not otherwise have the effect of denying or abridging the right to vote on account of race or color or membership in a language minority group, in any of the three covered counties.

18. Within the covered counties, the Senate Benchmark Plan contained eleven performing districts where minority populations had the ability to elect their preferred candidates of choice—Senate Benchmark Districts 17, 18, 19, 20, 21, 28, 30, 31, 32, 33, and 36. The Section 5 covered minority populations in these Benchmark Senate Districts will continue to possess the ability to elect their preferred candidates of choice in the corresponding districts under the enacted Senate Plan.

19. Benchmark Senate District 17, which contains population from Kings County, is currently represented by Senator Martin Dilan, an Hispanic Democrat. Under the 2010 Census, Benchmark Senate District 17 was composed of 46.6% Hispanic voting age population (“HVAP”). In the enacted Senate Plan, this district becomes Enacted Senate District 18. Enacted Senate District 18 remains a performing minority district with 51.1% HVAP.

20. Benchmark Senate District 18, which contains population from Kings County, is currently represented by Senator Velmanette Montgomery, an African-American Democrat.

Under the 2010 Census, Benchmark Senate District 18 was composed of 48.4% black voting age population (“BVAP”). In the enacted Senate Plan, this district becomes Enacted Senate District 25. Enacted Senate District 25 remains a performing minority district with 55.2% BVAP.

21. Benchmark Senate District 19, which contains population from Kings County, is currently represented by Senator John Sampson, an African-American Democrat. Under the 2010 Census, Benchmark Senate District 19 was composed of 74.3% BVAP. Enacted Senate District 19 remains a performing minority district with 56.6% BVAP.

22. Benchmark Senate District 20, which contains population from Kings County, is currently represented by Senator Eric Adams, an African-American Democrat. Under the 2010 Census, Benchmark Senate District 20 was composed of 50.4% BVAP. Enacted Senate District 20 remains a performing minority district with 54.9% BVAP.

23. Benchmark Senate District 21, which contains population from Kings County, is currently represented by Senator Kevin Parker, an African-American Democrat. Under the 2010 Census, Benchmark Senate District 21 was composed of 57.7% BVAP. Enacted Senate District 21 remains a performing minority district with 56.1% BVAP.

24. Benchmark Senate District 28, which contains population from New York and Bronx Counties, is currently represented by Senator Jose Serrano, an Hispanic Democrat. Under the 2010 Census, Benchmark Senate District 28 was composed of 55.5% HVAP. In the enacted Senate Plan, this district becomes Enacted Senate District 29. Enacted Senate District 29 remains a performing minority district with 49.9% HVAP.

25. Benchmark Senate District 30, which contains population from New York County, is currently represented by Senator Bill Perkins, an African-American Democrat. Under

the 2010 Census, Benchmark Senate District 30 was composed of 40.8% BVAP. Enacted Senate District 30 remains a performing minority district with 42.6% BVAP.

26. Benchmark Senate District 31, which contains population from New York and Bronx Counties, is currently represented by Senator Adriano Espaillat, an Hispanic Democrat. Under the 2010 Census, Benchmark Senate District 31 was composed of 51.4% HVAP. Enacted Senate District 31 remains a performing minority district with 53.7% HVAP.

27. Benchmark Senate District 32, which contains population from Bronx County, is currently represented by Senator Ruben Diaz, an Hispanic Democrat. Under the 2010 Census, Benchmark Senate District 32 was composed of 60.7% HVAP. Enacted Senate District 32 remains a performing minority district with 59.5% HVAP.

28. Benchmark Senate District 33, which contains population from Bronx County, is currently represented by Senator Gustavo Rivera, an Hispanic Democrat. Under the 2010 Census, Benchmark Senate District 33 was composed of 63.0% HVAP. Enacted Senate District 33 remains a performing minority district with 65.6% HVAP.

29. Benchmark Senate District 36, which contains population from Bronx and Westchester Counties, is currently represented by Senator Ruth Hassell-Thompson, an African-American Democrat. Under the 2010 Census, Benchmark Senate District 36 was composed of 61.2% BVAP. Enacted Senate District 36 remains a performing minority district with 57.9% BVAP.

30. The Senate Plan cannot be implemented in the covered counties until this Court enters a declaratory judgment as requested by Plaintiff, or until the Plan, as it applies to the covered counties, is administratively precleared by the United States Department of Justice.

31. A voting change is administratively precleared once a complete submission has been filed with the Attorney General and the Attorney General has interposed no objection within sixty days. 42 U.S.C. § 1973c(a); *Morris v. Gressette*, 432 U.S. 491, 502 (1977); *Georgia v. United States*, 411 U.S. 526, 539 (1973).

32. Plaintiff intends to file complete submissions for administrative preclearance with the Department of Justice for the Senate Plan on March 16, 2012.

Justiciability

33. The Senate Plan is ripe for a determination that it has neither the purpose nor the effect of denying or abridging the right to vote on account of race or color or membership in a language minority group, and does not lead to a retrogression in the position of racial or language-group minorities or diminish their ability to elect their preferred candidates of choice, in any of the covered counties.

34. It is important that the Court act upon Plaintiff's claims at the earliest practicable date. The next elections for the State Senate districts will occur on November 6, 2012. The primary elections for the State Senate will be held on September 11, 2012. The candidate qualifying period for the 2012 State Senate primary elections is June 5, 2012 through July 12, 2012. In order to preserve the existing election calendar, it is essential that this Court consider and decide this controversy prior to, or shortly after, the opening of the candidate qualifying period.

Count I

35. Each and every allegation contained in paragraphs one through thirty-four is reaffirmed and realleged as if fully incorporated herein.

36. The Senate Plan in S.6696-A.9525 does not have the purpose nor will it have the effect of denying or abridging the right to vote on account of race or color, or in contravention of the guarantees set forth in 42 U.S.C. § 1973b(f)(2), in the three New York counties covered by Section 5.

37. Plaintiff is entitled to a judgment that the Senate Plan in S.6696-A.9525 fully complies with Section 5 of the Voting Rights Act of 1965, as amended, and that the Senate Plan in S.6696-A.9525 may be implemented without further delay.

WHEREFORE, Plaintiff respectfully requests that this Court:

(a) Convene a three-judge district court to hear the matters raised in Plaintiff's Complaint;

(b) Issue such orders and convene such conferences as may be necessary on an expedited basis to ensure that what little discovery may be necessary in this action be taken and completed as expeditiously as possible;

(c) Enter such other and further orders as may be necessary during the pendency of this case to ensure that it is handled as expeditiously as possible;

(d) Enter a declaratory judgment that the Senate Plan contained in S.6696-A.9525 satisfies Section 5 of the Voting Rights Act because it has neither the purpose nor the effect of denying or abridging the right to vote on account of race or color or membership in a language minority group, or of diminishing minority voters' ability to elect their preferred candidates of choice, in the three New York counties covered by Section 5, and that the Senate Plan in S.6696-A.9525 may be enforced by the State of New York;

(e) Grant Plaintiff such other and further relief as may be appropriate, including the costs of this action.

JONES DAY

A handwritten signature in cursive script that reads "Michael Carvin". The signature is written in black ink and is positioned above a horizontal line.

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March 16, 2012