

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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MARK A FAVORS, et al.,

11-cv-5632 (DLI) (RLM)

Plaintiffs,

-against-

**ANSWER TO LEE
INTERVENORS**

ANDREW M. CUOMO, et al.,

Defendants.
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Defendant, Robert Oaks, named herein as a member of LAFTOR (“Oaks”) s/h/i/a Robert Oakes, by his attorneys, Sinnreich Kosakoff & Messina LLP, submits this Answer to the Complaint-in-Intervention of Intervenor-Plaintiffs Linda Lee, Shing Chor Chung, Jung Ho Hong and Julia Yang (the “Lee Complaint”):

1. The Defendant denies each and every allegation in the Complaint except that Defendant admits the allegations contained in paragraphs numbered “11”, “12”, “13”, “14”, “15”, “16”, “17”, “18”, and “19”.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

2. None of the Intervenor Plaintiffs have suffered an injury in fact.
3. By virtue of the foregoing, the Intervenor Plaintiffs lack standing to maintain this proceeding.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

4. Defendant LATFOR’s reapportionment plan is still being developed and is not yet finalized.

5. By virtue of the foregoing, there is no “case or controversy” for the Court to decide, and Intervenor Plaintiffs’ claims should therefore be dismissed for lack of subject matter jurisdiction under FRCP 12(b)(1).

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

6. Intervenor Plaintiffs’ Complaint herein fails to state a claim upon which relief can be granted.

7. By virtue of the foregoing, Intervenor Plaintiffs’ claims should therefore be dismissed under FRCP 12(b)(6).

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

8. To state a claim under the Equal Protection Clause, Intervenor Plaintiffs were required to sufficiently allege two essential elements: (1) they were treated differently than others similarly situated; and (2) this differential treatment was motivated by an intent to discriminate on the basis of impermissible considerations, such as race or religion, to punish or inhibit the exercise of constitutional rights, or by a malicious or bad faith intent to injure the person.

9. Intervenor Plaintiffs’ Complaint does not allege that LATFOR’s process is tainted with discriminatory intent, or that Intervenor Plaintiffs have been treated differently than any other voters in their respective communities. Moreover, as stated hereinabove, LATFOR has not completed its work, and there is no final reapportionment plan for New York.

10. By virtue of the foregoing, Intervenor Plaintiffs have failed to state a claim of a violation of the Equal Protection Clause, and such claim should therefore be dismissed under FRCP 12(b)(6).

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

11. LATFOR has fully complied with the Prisoner Reallocation Law.

12. By virtue of the foregoing, Intervenor Plaintiffs' claims for violation of same (Counts II, V, and VI of the Complaint) must be dismissed FRCP 12(b)(6).

WHEREFORE answering Defendant herein respectfully requests the entry of a judgment dismissing the Intervenor Plaintiffs' Complaint in its entirety.

Dated: Central Islip, New York
March 7, 2012.

SINNREICH KOSAKOFF & MESSINA LLP

By: _____/s/_____

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