

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, WEYMAN A. CAREY,  
Plaintiffs,

DONNA KAYE DRAYTONM EDWIN ELLIS, AIDA  
FORREST, GENE A. JOHNSON, JOY WOOLLEY,  
SHEILA WRIGHT, LINDA LEE, SHING CHOR CHUNG,  
JULIA YANG, JUNG HO HONG, JUAN RAMOS, NICK  
CHAVARRIA, GRACIELE HEYMAN. SANDRA  
MARTINEZ. EDWIN ROLDAN. MANOLIN TIRADO,  
LINDA ROSE, EVERET MILLS, ANTHONY HOFFMAN,  
KIM THOMPSON-WEREKOH, CARLOTTA BISHOP,  
CAROL RINZLER, GEORGE STAMATIADES,  
JOSEPHINE RODRIGUEZ, SCOTT AUSTER,  
MELVIN BOONE, GRISSELLE GONZALEZ  
DENNIS O. JONES, REGIS THOMPSON LAWRENCE,  
MELVIN BOONE, GRISSELLE GONZALEZ,  
DENNIS O. JONES, REGIS THOMPSON  
LAWRENCE, and AUBREY PHILLIPS,

11 Civ. 5632  
(RR) (GEL) DLI)  
(RLM)

Intervenor Plaintiffs,  
v.

ANDREW M. CUOMO, as Governor of the  
State of New York, ERIC T. SCHNEIDERMAN,  
as Attorney General of the State of New York  
ROBERT DUFFY, as President of the State  
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 LETFOR, 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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**PLAINTIFFS-INTERVENORS' FIRST AMENDED COMPLAINT  
FOR DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF  
PURSUANT TO THE FOURTEENTH AMENDMENT,  
THE VOTING RIGHTS ACT AND THE CONSTITUTION  
OF THE STATE OF NEW YORK**

Plaintiffs- Intervenors Donna Kaye Drayton, Edwin Ellis, Aida Forrest, Gene A. Johnson, Joy Woolley, Sheila Wright, Melvin Boone, Grisselle Gonzalez, Dennis O. Jones, Regis Thompson Lawrence, and Aubrey Phillips, by their undersigned attorneys, for their First Amended Complaint allege as follows:

**INTRODUCTION**

1. Plaintiffs- Intervenors Donna Kaye Drayton, Edwin Ellis, Aida Forrest, Gene A. Johnson, Joy Woolley, Sheila Wright, are Black and Hispanic voters who reside in various state legislative and congressional districts within the City of New York and the County of Nassau. Plaintiffs-Intervenors Drayton, Ellis, Forrest, Johnson, Woolley, and Wright ("Drayton Plaintiffs-Intervenors") originally intervened in this action to protect their rights as Black voters under Article I, Section 2 of the United States Constitution, the Equal Protection and Due Process clauses of the Fourteenth Amendment to United States Constitution, the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973 et seq. ("vVoting Rights Act"), Article II, Sections 4 and 5 of the New York State Constitution.

2. Plaintiffs-Intervenors Melvin Boone, Grisselle Gonzalez, Dennis O. Jones, Regis Thompson Lawrence and Aubrey Phillips ("Boone Plaintiffs-Intervenors") are added as additional plaintiffs in order to protect the rights of Black and Hispanic voters who reside in the

County of Nassau and whose rights under the aforementioned constitutional and statutory provisions are also violated by the existing and recently adopted districting plans for New York State's congressional and legislative districts.

3. By this amended complaint, Plaintiffs-Intervenors seek, *inter alia*, a Declaratory Judgment on behalf of themselves and all similarly situated persons that the State of New York's existing State legislative plan, the recently adopted State Senate redistricting plan, S. 6696, and the recently adopted State Assembly redistricting plan, A9525, violate the Fourteenth Amendment, the Voting Rights Act of 1965, as amended, 42 U.S.C. Section 1973, et seq. and the Constitution of the State of New York.

#### **JURISDICTION AND VENUE**

4. Plaintiffs-Intervenors' complaint arises under the United States Constitution and federal statutes.

5. This Court has jurisdiction over Plaintiffs-Intervenors' federal constitutional claims pursuant to 28 U.S.C. Section 1331, 28 U.S.C. Section 1343 and 42 U.S.C. Section 1983.

6. This Court has jurisdiction over Plaintiffs -Intervenors' Voting Rights Act claims pursuant to 42 U.S.C. Section 1973j(f).

7. This Court has jurisdiction over Plaintiffs-Intervenors declaratory judgment claim pursuant to 28 U.S.C. Section 2201.

8. This Court has supplemental jurisdiction over Plaintiffs- Intervenors' related state law claims pursuant to 28 U.S.C. Section 2201.

9. Venue is proper in this Court pursuant to 28 U.S.C. Section 1391(b).

10. A three-judge Court should be convened pursuant to 28 U.S.C. Section 2284 as this action concerns the apportionment of congressional and state legislative bodies.

## **PARTIES**

### **Plaintiffs- Intervenors:**

11. Plaintiff- Intervenor Donna Kaye Drayton is a registered Black voter in the County of the Bronx and regularly votes in primary and general elections. Ms. Drayton resides within current New York State Senate District 32 and current New York State Assembly District 85. As a result of the 2010 Census, Ms. Drayton's congressional and state legislative districts each had to be redrawn. Ms. Drayton has worked on political campaigns and plans to do so during the 2012 elections. Ms. Drayton works as the Senior Executive Assistant to New York State Senator Ruth Hasseall-Thompson.

12. Plaintiff- Intervenor Edwin Ellis is a registered Black voter in County of New York and regularly votes in primary and general elections. Mr. Ellis resides within current New York State Senate District 30 and current New York State Assembly District 71. As a result of the 2010 Census, Mr. Ellis's congressional and state legislative each had to redrawn. Mr. Ellis is the founder and president of the Center for NuLeadership on Urban Solutions (CNUS), an independent national public policy, research and advocacy organization that is concerned about the disproportionate representation of minorities in America's prisons and advocates for reform of the criminal justice and prison systems.

13. Plaintiff- Intervenor Aida Forrest is a registered Black Hispanic voter in the County of the Bronx and regularly votes in primary and general elections. Ms. Forrest resides with the current New York State Senate District 33 and the current New York Assembly District 78. As a result of the 2010 Census, Ms. Forrest's congressional and state legislative districts each had to be redrawn.

14. Plaintiff - Intervenor Gene A. Johnson is a registered Black voter in the County of Kings and regularly votes in primary and general elections. Mr. Johnson resides within current New York State Senate District 21 and current New York Assembly District 45. As a result of the 2010 Census, Mr. Johnson's congressional and state legislative districts each had to be redrawn. Mr. Johnson has worked on political campaigns and plans to do so during the 2012 elections. Mr. Johnson works as an Occupation Mediator/Conflict Resolution Consultant and is a member of, *inter alia*, Black New Yorkers for Fair Redistricting, a coalition of Black New York voters dedicated to protecting the rights of Black New York voters under the United States Constitution, the Voting Rights Act and the New York State Constitution.

15. Plaintiff- Intervenor Joy Woolley is a Black registered voter in the county of Queens and regularly votes in primary and general elections. Ms. Woolley resides in current New York State Senate District 13 and current New York Assembly District 34. As a result of the 2010 Census, Ms. Woolley's congressional and state legislative districts each had to be redrawn. Ms. Woolley is employed as the Office Manager for the School of Professional and Community Development of Medgar Evers College, City University of New York.

16. Plaintiff- Intervenor Sheila Wright is a registered Black voter in the county of Queens. Ms. Wright resides in current New York State Senate District 14 and current New York State Assembly District 29. As a result of the 2010 Census, Ms. Wright's congressional and state legislative districts each had to be redrawn.

17. Plaintiffs-Intervenors Melvin Boone, Dennis O. Jones, Regis Thompson Lawrence are Black citizens, residents and registered voters in the Town of Hempstead, Nassau County, New York. They reside within the current State Assembly District 18 and current State Senate District 6. Each would reside in one of the proposed alternatives to the current Senate and

Assembly plans, These proposed alterative Senate and Assembly plans would that would afford them an equal opportunity to nominate and elect a candidates of their choice.

18. Plaintiff-Intervenor Griselle Gonzalez is a Hispanic citizen, resident and registered voter in the Town of Hempstead, Nassau County, New York. Plaintiff-Intervenor Aubrey Phillips is a Black citizen, resident and registered voter in the Town of Hempstead, Nassau County, New York. They reside within the current State Assembly District 18 and the current State Senate District 06. They both would reside in one of the alternatives to the current Senate and Assembly plans that would afford them an equal opportunity to nominate and elect candidates of their choice.

**Defendants:**

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

20. Defendant Eric T. Schneiderman is the Attorney General of the State of New York. He is being sued in his official capacity.

21. Defendant Robert J. Duffy is the Licutenant Governor and President of the Senate of the State of New York. He is being sued in his official capacity.

23. 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.

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

25. 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.

26. 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.

27. Defendant the New York State Legislative Task Force on Demographic Research and Reapportionment (“LATFOR”) is charged by statute with researching the technique and methodologies that the U.S. Census Bureau used in the decennial census with conducting demographics and electoral research and with providing a technical plan to meet the timeline for redistricting based on such census. LATFOR is further charged with developing a database in which all incarcerated persons are allocated for redistricting purposes at their addresses prior to incarceration if such prior address can be determined, with excluding from the database any prisoners whose prior addresses are unidentifiable or out-of-state, with releasing this database to the public, and with providing this database to New York’s local governments.

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

## **FACTUAL ALLEGATIONS**

### **I. General Allegations**

29. The U. S. Department of Commerce Bureau of the Census conducted the decennial census of the United States in 2010.

30. Article III, Sections 4 and 5 of the New York State Constitution provide that after each decennial census, the New York State Senate and Assembly districts shall be adjusted or altered so that each district contains, to the extent possible, an equal number of inhabitants.

31. On December 21, 2010, pursuant to statute, the Census Bureau announced and certified the population of New York to be 19, 378,102.

32. The 2010 Census revealed significant population disparities among New York State Senate and Assembly districts requiring that they be redrawn.

33. The ideal populations for the New York State Senate and Assembly following the 2000 Census was as follows:

State Senate: 306,072  
State Assembly: 126,510

34. As a result of the 2010 Census, the ideal populations for New York State's Senate and Assembly Census are as follow:

State Senate: 312, 550  
State Assembly: 128,000

35. In New York, redistricting is the responsibility of the state legislature.

36. New York State is scheduled to hold elections for the New York State Senate and the New York State Assembly in 2012.

37. The current scheduled dates for the 2012 state legislative primaries and the general election in New York are as follows:

Primary elections will be held on **September 11, 2012**. N.Y. Election Law Section 8- 100(1)(a)

General elections will be held on **November 6, 2012**. N.Y. Elect. Law Section 8-100(1) (c)

38. To this end, State Senate and State Assembly candidates may begin gathering petition signatures on **June 5, 2012**, N.Y. Elec. Law Section 6-134(4) and, thereafter, must file notices of their candidacies and sufficient petition signatures no later than **July 12, 2012**.

39. In advance of the nominating and petitioning period, prospective candidates must determine whether they will run for office. In order to make these decisions such individuals need to know in which district they reside and the contours of that district.

40. Section 5 of the Voting Rights Act prohibits retrogression of existing minority strength in jurisdictions covered under Section 5. Section 5 of the Voting Rights Act requires covered jurisdiction to submit changes in “any voting qualification or prerequisite in voting, or standard, practice or procedure with respect to voting” to either the United States Department of Justice or the United States District Court for the District of Columbia for preclearance before such changes can be implemented. 42 U.S.C. Section 1973(c).

41. As three counties in New York ( Bronx, Kings and New York) are covered jurisdictions under Section 5 of the Voting Rights Act, New York State’s new State Senate and Assembly districts must be precleared by the United States Department of Justice or the United States District Court for the District of Columbia before they can be implemented.

42. The Voting Rights Act gives the Department of Justice 60 days from the application for preclearance to render a decision. Upon information and belief, the Department of Justice generally takes the full 60 days to make these determinations.

43. On or about March 14, 2012, the New York State Legislature enacted new State Senate and State Assembly redistricting plans, S.6696 and A.9525. Said legislation was signed into law by the Governor of New York on March 15, 2012.

44. On or about March 16, 2012, the New York State Senate announced that it had submitted its 2012 Senate redistricting plan to the United States Department of Justice for preclearance. Thereafter, on or about March 21, 2012, the New York State Senate also filed an action for a declaratory judgment in the United States District Court for the District of Columbia.

45. However, at a status conference held herein on March 21, 2012, one of the attorneys for defendant Sheldon Silver announced that because of errors in the previously passed state redistricting legislation, S. 6696 and A.9525, corrections had to be made to the maps for both the state Senate and Assembly. As a result, upon information and belief, the Senate will have to modify their submission to the Department of Justice and in so doing will restart the clock for their application for preclearance.

46. At the time of this filing, March 27, 2012 at approximately 12:30 pm, the New York State Assembly, upon information and belief, have not submitted the new State Assembly plan, A. 9525, to the Justice Department for preclearance, or, alternatively filed an action for that purpose in the United States District Court for the District of Columbia.

47. Meanwhile, an action challenging the increase in the number of State Senate seats from 62 to 63 has been filed in the Supreme Court of the State of New York, County of New York, Cohen v. Cuomo, No. 12-102185 (N.Y. Sup. Ct. filed on March 15, 2012). Oral arguments on the parties therein summary judgment motions has been scheduled for April 9, 2012. Upon information and belief, the party that loses plans to appeal.

48. In light of the defendants need to obtain preclearance of the new state legislative lines from the United States Department of Justice, or alternatively, the United States District Court for the District of Columbia, given the pending challenge to the increase in the size of the State Senate it is highly unlikely that new state and assembly lines will be effective or able to be implemented by June 5, 2012, the date when circulation of nominating petitions for state legislative offices is scheduled to begin.

## **II. NASSAU COUNTY**

49. In 2010, the Black population in Nassau County was 145,174 or 10.84% of the total

population. In 2010, the Hispanic population in Nassau County was 195,355 or 14.58% of the total population.

50. Within Nassau County, Blacks and Hispanics are largely concentrated in the Town of Hempstead and the Town of North Hempstead. Within the Town of Hempstead, Blacks and Hispanics are concentrated within Hempstead, Uniondale, Roosevelt, Freeport, Lakeview, Baldwin, Elmont, Valley Stream, North Valley Stream, and South Floral Park. In the Town of North Hempstead, Black and Hispanics are concentrated within Westbury and New Cassel.

51. In 2010, Blacks made up the most numerous racial group of the respective populations of Hempstead Village, Uniondale, Roosevelt, Lakeview, South Floral Park, North Valley Stream and Elmont.

52. The Black and Hispanic communities Nassau County are growing rapidly. The 2010 census shows that, in the last decade, the Black and Hispanic populations of Nassau County increased, while the non-Hispanic white population decreased.

53. Black and Hispanic residents the same neighborhoods, and intermingle at local churches and schools. Black and Hispanic residents share similar socio-economic backgrounds resulting in common social disabilities and exclusion. Black and Hispanic residents both suffer discriminatory treatment at the hands of the majority White population of the County. Both Blacks and Hispanics are underrepresented in government and elected office.

54. In light of the common socio-economic, educational, and demographic characteristics, Blacks and Hispanics, who reside in the same or adjacent communities, are a politically cohesive and coalitional community of interests. Additionally, Black and Hispanic coalitional activities are found in the support of minority elected officials of both groups in pursuit of the issues and concerns of the minority community, regardless of race or ethnicity.

Numerous community based organizations, civic associations and political clubs have members of both groups and support the efforts of both Blacks and Hispanics to combat discrimination in its myriad forms.

55. No Hispanic has ever been elected to the State Senate or Assembly from Nassau County.

56. No Black has ever been elected to the State Senate from Nassau County and only two Black Assembly member have ever been elected from Nassau County. Both Black Assembly members were elected consecutively from the 18<sup>th</sup> Assembly District.

57. Under the existing and recently adopted plans for the Senate, no majority Black or Hispanic district was created.

58. With respect to the Senate, one majority-minority coalition district could be established.

59.. With respect to the Assembly plan, only one majority Black district was created. However, as a result of segregative housing patterns in Nassau County, two compact and contiguous majority Black districts could be created.

59. Alternatively, one majority Black and one majority-minority coalition (Black/Latino) Assembly district could be established.

61.. The adopted Assembly plan concentrates Blacks in Nassau County into one district (District 18). That district has a composition of 60.85 percent non-Hispanic Black citizens of voting age and 79.74 percent of citizens of voting age when Hispanics and Blacks combined.

62. The recently adopted Assembly plan splits portions of the Hispanic and Black communities of interest into five districts: 13, 15, 18, 21 and 22. This serves to dilute the voting strength of the Black voters and Hispanics and Black citizens when they the vote in coalition.

63. If these communities of interest were not cracked, two majority minority Assembly districts could be established. Such districts would reunite these communities of interest with each of the two districts having a majority of Black citizens (50.8 and 50.9 percent). Additionally, these two districts would also have a substantial majority of Hispanic and Black citizens (69.9 and 66.3 percent).

64. A similar cracking or splitting of the Hispanic and Black communities is found in the adopted Senate plan. No district has a majority of Non-Hispanic Black and Hispanic citizens of voting age. In the proposed Senate plan, the Hispanic and Black communities are split into four districts: 6, 7, 8, and 9. This serves to dilute the voting strength of the Black citizens and the Hispanics and Black citizens when the vote together in coalition. Upon information and belief, a district could have been drawn with a 55.6% majority of Hispanic and Black citizens.

65. Racially polarized voting patterns have existed and continue to exist in Nassau County. Generally, white voters have consistently voted to defeat minority-supported candidates for national, state, and local offices. Similarly, Black voters and Hispanic voters who reside in the same or adjacent communities have consistently supported the same candidates, but have been unable to elect their candidates of choice due to the persistent presence of white bloc voting. In instances in Nassau County where Blacks and Hispanics form a majority or substantial plurality of the voting age population in local county legislative districts, these communities voting in coalition and in support of the same candidates, have been able to elect candidates of choice.

66. New York State and Nassau County have a long history of official discrimination against Blacks and Hispanics relating to voting, employment, education, and health. There is a

long history of segregation and inequality in Nassau County that continues to impact the lives of the Black and Hispanic communities.

67. With respect to voting discrimination, the Boone Plaintiffs-Intervenors filed suit in 2011 in this Court seeking to enjoin the implementation of a redistricting plan for the County of Nassau that had been adopted by the County Legislature. Boone, et al. Nassau County Legislature, CV-11-2712 (E. D. N.Y.) (JS) (ARL). In their complaint, they alleged, *inter alia*, that the Legislature had impermissibly adopted a redistricting plan without following proper procedures and that the adopted plan violated their voting rights by failing to create two majority minority, compact and cohesive districts. As a result of a state court proceeding, the Legislature's redistricting plan was enjoined.

67. During the recent election in November 2011 for the Nassau County Legislature, aides and supporters of a White incumbent who was being challenged by a minority candidate threatened, intimidated, and demeaned the sister of the minority candidate, Carrie A. Solages. The election was held in the Third County Legislative District that included Elmont and North valley Stream. Both of these communities are majority-minority (Blacks/Hispanics).

68. In October 2011, a campaign worker, Vincent Prisco, for the White incumbent, John Ciotti, appeared outside the campaign headquarters of Mr. Solages and attempted to place Ciotti campaign signs on private property adjacent to Mr. Solages' campaign headquarters. When members of Mr. Solages campaign, including his sister, complained to Prisco, he verbally assaulted, threatened, demeaned and sought to intimidate the Solages' campaign workers. These actions were captured on video and broadcast on local media outlets.

69. The incident was reported to the Nassau County police, which maintains its Fifth Precinct directly across the street from the Solages' headquarters. No action was taken by the police to address Prisco's efforts to harass and intimidate the Solages' campaign or its supporters.

70. Despite these efforts, on information and belief, Black and Hispanic voters worked together in the Solages campaign, and he was ultimately successful in appealing to both groups, garnering sufficient support from them to win the election against a White incumbent.

71. Of all suburban areas in the United States, Long Island is the third most segregated suburban area in the United States on a measure of Black-White segregation and the thirteenth most segregated on a measure of Hispanic-White segregation. Local governments in Long Island and Nassau have failed to enforce fair housing laws in any meaningful way so as to combat housing segregation.

72. There are persistent socioeconomic disparities among Hispanics, Blacks and Non-Hispanic Whites. The poverty level for Blacks is 12.5 percent, while the poverty level for Hispanics is 11.2 percent. The poverty level for non-Hispanic Whites is 3.2 percent.

73. With respect to education, while 5.6 percent of Blacks and 18.5 percent of male Hispanics and 14.8 percent of female Hispanics have not completed high school among those 25 years or older, 3.1 percent of non-Hispanic Whites have not completed high school. With respect to college graduation rates, the figures are 20.6 percent for non-Hispanic White males, and 21.7 percent for non-Hispanic White females. For Blacks, the numbers are 10.2 percent for males and 18.9 percent for females. For Hispanics the figures are 8.7 percent for males and 8.2 percent for females.

74. Moreover, while 87.3 percent of non-Hispanic White households own their own homes, the figure for Blacks is 62.1 percent and for Hispanics it is 59.3 percent. In short, according to a series of social and economic indicators highly relevant to voting behavior, Blacks and Hispanics in Nassau County are well behind non-Hispanic Whites.

75.4. In addition to residential segregation, the schools of Nassau County are also extremely racially segregated. On Long Island, poverty, race, income, family structure, and school quality are so closely linked that race or ethnicity is taken to be a proxy for school district quality. Districts with the highest graduation rates have the lowest poverty rates and minority populations; those with high poverty rates and minority populations have low graduation rates. See, SETH FORMAN, RACIAL COMPOSITION OF LONG ISLAND PUBLIC SCHOOL DISTRICTS 1991-2001: CHANGE AND STAGNATION (2005).

76. With regard to education and school districts “[t] here are 10 high need Districts on Long Island - Hempstead, Roosevelt, Freeport, Westbury, Amityville, Wyandanch, William Floyd, Brentwood, Central Islip, and Copiague. See, STONY BROOK UNIVERSITY CENTER FOR SURVEY RESEARCH, EDUCATIONAL INEQUALITY ON LONG ISLAND: PUBLIC AWARENESS AND SUPPORT FOR SOLUTIONS (2008).

77. Only 14% of all Long Island students attend high-need districts. 76% of the students attending school in high need districts are Black and Hispanic. In wealthier schools districts there are fewer students (an average of 600 compared to 800 in poorer districts), more money is spent per student (\$26,000 versus \$18,000), more favorable teacher to student ratios (13:1 versus 15:1, on average), and more qualified staff (97% having masters degrees versus 82%, with some schools having as low as 50%). See, Long Island Index Study of Educational Disparities (2009).

78. Educational concerns are not the only ones that plague the Black and Hispanic communities in Nassau County. The top three communities in Nassau County with the highest rates of foreclosure and at-risk housing are Hempstead with 475 homes in foreclosure and 18% of Nassau's Black homeowners; Freeport with 417 homes in foreclosure and 12% of Nassau's Black homeowners; and Elmont, with 399 homes in foreclosure and 12% of Nassau's Black homeowners. See, ERASE RACISM, THE RACIAL EQUITY REPORTCARD: FAIR HOUSING ON LONG ISLAND 37 (2008).

79. The political and governmental structures of Long Island are extremely fragmented, with over 1000 separate governmental units in 1199 square miles. Highly fragmented regions perpetuate structural racism, i.e. laws and policies that are facially neutral but produce racial and economic inequalities. For example: fragmentation of zoning authority allows communities to effectively exclude affordable housing; fragmentation of property taxing authority allows businesses used by the entire region to be taxed by a few communities; fragmentation of school districts isolates children in racially segregated, high-poverty schools. See, INSTITUTE ON RACE AND POVERTY, RACISM AND THE OPPORTUNITY DIVIDE ON LONG ISLAND 8 (2002).

80. As a result of the foregoing, the political processes leading to nomination and election to the state senate and assembly within Nassau County are not equally open to participation by Blacks and Hispanics. In short, Blacks and Hispanics, separately and in coalition, have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice.

## **CAUSES OF ACTION**

### **Count 1**

#### **(Violation of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution)**

81.. Plaintiffs- Intervenors incorporate by reference the allegations in paragraphs 1 through 80 as if set forth herein.

81. New York State's state legislative districts are now out of date and cannot be used in the upcoming 2012 election cycle.

82. New York State Senate and Assembly districts lack population equality, in violation of the "one person one vote" requirements of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

83. Certain of Plaintiffs- Intervenors reside in overpopulated state legislative districts, in violation of the Equal Protection Clause.

84. The current situation makes it unlikely that new state legislative districts will be drawn in time for the 2012 elections.

85. To remedy these Equal Protection violations, the Court should take control of the redistricting process for state legislative districts and oversee the process of redrawing district lines pursuant to fair and legal criteria.

86 The Court should appoint a Special Master to prepare a redistricting plan in light of the legislative delay. Upon presentation of the redistricting plan, the Court, following a public hearing, should adopt a plan and order elections to proceed in 2012 using those districts.

### **Count II**

#### **(Violation of the Due Process Clause of the Fourteenth Amendment to the United States Constitution)**

87. Plaintiffs Intervenor incorporate by reference the allegations in paragraphs 1 through 86 as if set forth herein.

88. As a result of New York's failure to timely adjust its state legislative districts, certain of the Plaintiffs-Intervenor reside in state legislative districts that are overpopulated; therefore, their voting is diluted.

89. The diminishment of Plaintiffs- Intervenor's vote and voting power constitutes a deprivation of Plaintiffs- Intervenor's right to due process of law under the Fourteenth Amendment.

90. To remedy these Due Process violations, the Court should take control of the redistricting process and oversee the process of redrawing district lines pursuant to fair and legal criteria.

91. The Court should appoint a Special Master to prepare a redistricting plan in light of the legislative delay. Upon presentation of the redistricting plan, the Court, following a public hearing, should adopt a plan and order elections to proceed in 2012 using those districts.

### **Count III (Violation of the New York Constitution)**

92. Plaintiffs- Intervenor incorporate by reference the allegations in paragraphs 1 through 91 as if set forth herein.

93. New York needs new State Senate and Assembly districts before the next election for those bodies scheduled to take place in 2012.

94. New York's existing state legislative districts lack population equality in violation of Article III, sections 4 and 5 and the New York State Constitution.

95. Certain Plaintiffs- Intervenors reside in overpopulated districts; therefore, their votes are diluted in violation of the New York State Constitution.

96. To remedy these constitutional violations, the Court should take control of the redistricting process and oversee the process of redrawing district lines pursuant to fair and legal criteria.

97. The Court should appoint a Special Master to prepare a state legislative redistricting plan in light of the legislative stalemate. Upon presentation of the redistricting plan, the Court, following a public hearing, should adopt the plan and order elections to proceed in 2012 using those districts.

#### **COUNT IV (Violation of Fourteenth Amendment)**

98. Plaintiffs- Intervenors incorporate by reference the allegations in paragraphs 1 through 97 as if set forth herein.

99. In 2000, according to the Census, the populations of New York State and New York City respectively were 18,976, 457 and 8, 008, 278. The populations of New York State and New York City, in 2010, according to the 2010 Census, respectively, was 19, 378,102 and 8, 175, 133.

100. The majority of New York's residents live downstate. The population of New York City and the surrounding areas, according to the 2010 Census was 11, 957,128 ; the population of upstate New York was 7,420,972 .

101. The majority of Blacks and other minority residents reside downstate within New York City and the surrounding areas.

102. According to the 2010 Census, Black people comprise 14.4% percent of the population of the State of New York. The majority of Blacks in New York State live in the City

of New York. According to the 2010 Census, 416,695 Black people live in the Bronx; 799,066 in Kings County; 205,340 in New York County, 395,881 in Queens, 44,313 on Staten Island.

102. Of the 1,861,295 Black people residing in the City of New York, 1,421,101 live in the three counties (the Bronx, Kings, New York) covered by Section 5 of the Voting Rights Act in downstate section of the State of New York.

103. According to the 2010 Census, Hispanic people comprise 17.6 percent of the population of the State of New York. The majority of Hispanic people in New York State live in the City of New York. According to the 2010 Census, 741,413 Hispanic people live in the Bronx; 496,285 in Kings County; 403,577 in New York County, 613,750 in Queens, 81,051 on Staten Island.

104. Of the 2,236,076 Hispanic people residing in the City of New York, 1,641,275 live in the three counties (the Bronx, Kings, New York) covered by Section 5 of the Voting Rights Act in downstate section of the State of New York.

105. The 2012 Senate Map increases the size of the Senate from 62 to 62 Senate seats. Notwithstanding the substantial difference between the populations of downstate and upstate New York, the new Senate district, Senate District 63, is located in upstate New York.

106. Moreover, while the deviations in downstate Senate district range from +0.03% to 3.83 %, the deviations of upstate senate districts range from 4.9% to 0.19% .

107. For example, while the ideal population for new State Senate districts is 301,072, twenty six upstate Senate districts in new senate plan have mean populations of 294,669 or a deviation of 4.1%.

108. In the new 63<sup>rd</sup> Senate district, Non Hispanic Whites make up 61.24 % of the population, Black people constitute 30.8% of the population: Hispanics constitute 5.30% of the population; Asians 2.62 %.

109. The State Senate redistricting plan, specifically, Senate District 63, violates the Equal Protection Clause of the Fourteenth Amendment to the United States because it intentionally discriminates against Black and Hispanic persons by denying Plaintiffs-Intervenors and minority voters an equal opportunity to participate in the political process, to elect candidates of their choice to the New York State Senate, and to have any meaningful or significant influence in elections for members of the New York State Senate.

110. Upon information and belief, an alternative plan or plans for the New York State Senate can be redrawn with the new Senate downstate. Such a new redistrict would strengthen the vote and voting power of Black and other minority voters residing in the downstate area in compliance with the Fourteenth Amendment, the Voting Rights Act.//

**COUNT V**  
**(Violation of Section 2 of the Voting Rights Act)**

111. Plaintiffs- Intervenors incorporate by reference the allegations in paragraphs 1 through 110 as if set forth herein.

112. In locating the new 63<sup>rd</sup> Senate seat upstate rather downstate, defendants also violated Section 2 the Voting Rights Act, as amended, 42 U.S.C. Section 1973.

113. Section 2 of the Voting Rights Act prohibits the abridgement of the right to vote on account of race, color or language minority. 42 U.S.C. C Section 1972(a). Diluting minority-voting strength and participation constitutes an abridgement of the right to vote for the purpose of Section 2.

114. The new Senate plan denies or abridges Plaintiffs-Intervenors' rights to vote on account of race or color.

115. The plan does not afford Plaintiffs-Intervenors an equal opportunity to participate in the political process and to elect representatives of their choice and denies Plaintiff-Intervenors the right to vote in elections without discrimination on account of race in violation of Section 2.

116. Proportionally Black people and Hispanic people continue to be underrepresented in the New York State Senate.

117. Throughout the State of New York, including within the City of New York, Black people generally vote as a group and are politically cohesive.

118. Throughout the State of New York, including within the City of New York, Elections in New York continue to be racially polarized.

119. Throughout the State of New York including within the City of New York, Blacks and Hispanics have suffered from and continue to suffer from the effects of invidious discrimination and treatment in education, employment, economics, housing, public services and the administration of justice.

120. There has been a history of official discrimination in the State of New York and City of New York against Blacks and Hispanics that has involved and concerned, *inter alia*, the exercise of the franchise.

121. As a result of the malapportionment of the State senate, the political processes leading to nomination and election in the State and City of New York are not equally open to participation by Blacks and Hispanics, in that these groups, separately and in coalition, have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice.

**COUNT VI**  
**(Violation of Section 2 of the Voting Rights Act)**

122. Plaintiffs- Intervenors incorporate by reference the allegations in paragraphs 1 through 120 as if set forth herein.

123. The deviations between upstate and downstate in the new Senate redistricting improperly dilutes the votes and voting strength of Black, Hispanic and other minority voters residing downstate in violation of Section 2 of the Voting Rights Act.

**COUNT VI**  
**(Violation of Section 2 of the Voting Rights Act)**

124. Plaintiffs-Intervenors incorporate by reference the allegations in paragraphs 1 through 123 as if set forth herein.

125. The failure of the Legislature to create two Black majority-minority districts in Nassau County for the State Assembly violates Section 2 of the Voting Rights Act.

126. Alternatively, the failure of the Legislature to create two majority- minority (Black/Latino) Assembly districts in Nassau County violates Section 2 of the Voting Rights Act.

**COUNT VII**  
**(Violation of Section 2 of the Voting Rights Act)**

127. Plaintiffs-Intervenors incorporate by reference the allegations in paragraphs 1 through 126 as if set forth herein.

128. The failure of the Legislature to create a majority-minority (Black/Latino) district for the State Senate in Nassau County violates Section 2 of the Voting Rights Act.

**Count VIII**  
**(Declaratory Judgment Pursuant to 28 U.S.C. Section 2201)**

129. Plaintiffs- Intervenors incorporate by reference the allegations in paragraphs 1 through 128 as if set forth herein.

130. Defendants, by their delayed action on redistricting state legislative lines, have deprived Plaintiffs- Intervenors of their constitutional right to vote by denying them equal protection and due process of law in violation of the United States Constitution.

130. The Drayton Plaintiffs- Intervenors are entitled to a declaratory judgment by the Court determining that their constitutional rights and their rights under Section 2 of the Voting Rights Act have been violated so that they may obtain such further relief as may be necessary to vindicate their rights.

131. The Boone Plaintiff-Intervenors are entitled to a declaratory judgment by the Court determining that their rights under Section 2 of the Voting Rights Act have been violated so that they may obtain such further relief as may be necessary to vindicate their rights.

**WHEREFORE,** Plaintiffs- Intervenors respectfully request the following relief:

A. An order or judgment declaring New York's existing State Senate and Assembly districts to be invalid for failing to comply with the United States Constitution, the New York State Constitution, and state and federal law;

B. An order or judgment declaring that Plaintiffs-Intervenors' constitutional and statutory rights and have been violated by Defendants' delayed action in the redistricting process;

C. An order appointing an independent Special Master to propose new State Senate and Assembly district lines in conformity with the 2010 census the United States Constitution, the Voting Rights Act and the New York State Constitution;

D. An order requiring LATFOR and its members and staff to cooperate with the Special Master for all purposes, specifically including providing the Special Master with an amended prisoner population data to ensure compliance with the prisoner reallocation law;

E. An order of judgment redrawing state legislative district lines in conformity with the Special Master's Proposal, assuming the Special Master's satisfactory completion of a fair and legal redistricting proposal;

F. An Order retaining jurisdiction over this matter until all defendants have complied with all orders and mandates of this Court;

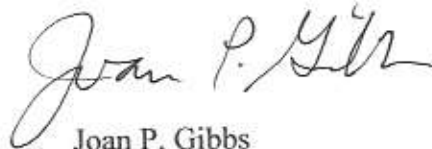
G. An Order allowing Plaintiffs-Intervenors to file to a Third amended complaint;

H. An order requiring Defendants to pay to Plaintiffs- Intervenors their reasonable attorney's fees and expenses, expert fees, costs and other expenses incurred in prosecuting this action, pursuant to 42 U.S.C. Section 1973 (e) and 42 U.S.C. Section 1988; and

I. An order granting such other relief as the Court may deem just and proper.

Dated: Brooklyn, New York  
March 27, 2012

Respectfully submitted,



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**CERTIFICATE OF SERVICE**

I, JOAN P.GIBBS, hereby certify that on this 27<sup>TH</sup> day of March 2012 a true and correct copy of Plaintiffs-Intervenors First Amended Complaint was delivered to the Plaintiffs, Plaintiffs-Intervenors and Defendants via the United States District Court for the Eastern District Of New York, ECF system.

/s/ Joan Gibbs