UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----------X

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

Plaintiffs,

DONNA KAYE DRAYTON, 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 HEYMANN, 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, AUBREY PHILLIPS, and YITZCHOR ULLMAN,

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 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 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

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

FIRST AMENDED COMPLAINT-IN-INTERVENTION BY THE LEE INTERVENORS

F. NOZZOLIO, as Member of LATFOR,
MARTIN MALAVE DILAN, as Member of
LATFOR, and WELQUIS R. LOPEZ, as
Member of LATFOR,

Defendants.

----------X

Plaintiff-Intervenors, by their undersigned attorneys, Kaye Scholer LLP and the Asian American Legal Defense and Education Fund, as and for the Amended Complaint-In-Intervention, allege as follows:

I. INTRODUCTION

1. Plaintiff-Intervenors are four Asian American registered voters in New York State who reside in neighborhoods with large Asian American populations in Queens and Brooklyn, in the City of New York. Plaintiff-Intervenors continue to seek the appointment of a Special Master to effectuate fair redistricting based on the 2010 census, that does not violate the "one person, one vote" principle under Article I, Section 2 of the Constitution of the United States, the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States, Article III, Sections 4 and 5 of the Constitution of the State of New York, and the federal Voting Rights Act of 1965.

2. Plaintiff-Intervenors seek generally to place their interests before the Special Master and this Court as it considers the new contours of New York's congressional and state legislative districts.

II. JURISDICTION AND VENUE

3. This action arises under the Fourteenth Amendment to the United States Constitution and 42 U.S.C. Section 1983.

4. Jurisdiction is conferred on the Court pursuant to 28 U.S.C. Section 1331, 28 U.S.C. Section 1343, 28 U.S.C. Section 2201, 28 U.S.C. Section 1367 and 42 U.S.C. Section 1983.

5. Venue in this district is proper pursuant to 28 U.S.C. Section 1391.

III. PARTIES

PLAINTIFF-INTERVENORS

6. Plaintiff-Intervenors are four Asian American registered voters who reside in neighborhoods with the largest Asian American concentrations in Queens County and Brooklyn (Kings County), within the City of New York. Plaintiff-Intervenors represent the interests of Asian Americans, as well as their own interests as voters.

7. Plaintiff-Intervenor Linda Lee is an Asian American registered voter who resides in Oakland Gardens, Queens. She is Korean American. Ms. Lee resides in the 24th Assembly District, 16th Senatorial District and the 5th Congressional District. Ms. Lee also works in Flushing, Queens as the Associate Executive Director for Korean Community Services of Metropolitan New York, Inc. Ms. Lee is a United States citizen and a registered voter.

8. Plaintiff-Intervenor Shing Chor Chung, a/k/a Steve Chung, is an Asian American registered voter who resides in Marine Park, Brooklyn. He is Chinese American. Mr. Chung resides in the 59th Assembly District, 22nd Senatorial District and the 9th Congressional District. Mr. Chung also works in Bensonhurst, Brooklyn as President of the United Chinese Association of Brooklyn. Mr. Chung is a United States citizen and a registered voter.

9. Plaintiff-Intervenor Jung Ho Hong, a/k/a James Hong, is an Asian American registered voter who resides in Woodside, Queens. He is Korean American. Mr. Hong resides in the 30th Assembly District, 12th Senatorial District and the 7th Congressional District. Mr.

Hong also works in Flushing, Queens as the Civic Participation Coordinator for the MinKwon Center for Community Action. Mr. Hong is a United States citizen and a registered voter.

10. Plaintiff-Intervenor Julia Yang is an Asian American registered voter who resides in Flushing, Queens. She is Chinese American. Ms. Yang resides in the 22nd Assembly District, 11th Senatorial District and the 5th Congressional District. Ms. Yang is a United States citizen and a registered voter.

THE DEFENDANTS

11. The Defendants are state elected officials and authorities who are legally, constitutionally, and otherwise responsible for redistricting and reapportionment in New York State. In particular, pursuant to Article 3, Section 4 of the Constitution of the State of New York, the New York State Senate and the New York State Assembly are required to act as co-equal participants in altering and adjusting congressional and state legislative district lines by enacting redistricting laws after each federal decennial census. The State Constitution also mandates that all laws be signed by the Governor.

12. Defendant Andrew Cuomo is the Governor of the State of New York and is the Chief Executive of the State of New York. Defendant Cuomo is a participant with the New York State Legislature in redrawing congressional and state legislative district lines after each decennial census as required by the Constitutions of the United States and State of New York and the laws of the State of New York.

13. Defendant Robert J. Duffy is the President of the Senate of the State of New York.

14. Defendant Dean G. Skelos is the President Pro Tempore and Majority Leader of the Senate of the State of New York which, together with the Assembly of the State New York and the Governor, is responsible for redrawing congressional and state legislative district lines after

each decennial census as required by the Constitutions of the United States and State of New York and the laws of the State of New York.

15. Sheldon Silver is the Speaker of the Assembly of the State of New York which, together with the Senate of the State New York and the Governor, is responsible for redrawing congressional and state legislative district lines after each decennial census as required by the Constitutions of the United States and State of New York and the laws of the State of New York.

16. Defendant Brian M. Kolb is the Minority Leader of the Assembly of the State of New York.

17. Defendant John L. Sampson is the Minority Leader of the Senate of the State of New York.

18. Defendants the New York State Legislative Task Force on Demographic Research and Reapportionment (LATFOR), LATFOR members John J. McEneny, Robert Oaks, Roman Hedges, Michael F. Nozzolio, Martin M. Dilan and Welquis R. Lopez assist the legislature to reapportion and redraw congressional, state senate, and state assembly districts, pursuant to Chapter 45 of the New York State Laws of 1978.

IV. FACTUAL BACKGROUND

19. Pursuant to the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States, every ten years following the decennial census, the boundaries of state legislative districts are redrawn to make the districts equal in population.

20. Article III, Section 4 of the Constitution of the State of New York also requires that state senate districts be equal in population.

21. Article III, Section 5 of the Constitution of the State of New York also requires that state assembly districts be equal in population.

22. In 1965, the Voting Rights Act was enacted to ensure that the protections afforded by the Fourteenth and Fifteenth Amendments were available in the states and political subdivisions therein, and to prohibit discrimination against racial, ethnic and language minority voters.

23. Under Section 5 of the Voting Rights Act, certain states or counties with a history of discrimination against racial and language minorities must have their redistricting plans, after they are passed by the legislature and signed by the Governor, precleared.[1] In preclearance, the state must prove that the new redistricting plan does not have a racially-discriminatory purpose or effect. Redistricting plans that have not been precleared may not go into effect. New York (Manhattan), Kings (Brooklyn), and Bronx Counties are covered under Section 5 of the Voting Rights Act, and therefore New York State's redistricting plan must be precleared before it can take effect.

ASIAN AMERICAN POPULATION IN NEW YORK

24. Asian Americans nationwide have grown rapidly in every decade since the repeal of discriminatory immigration quotas in 1965, and Census 2010 revealed a tremendous surge in the numbers of Asian New Yorkers.

25. According to Census 2010, New York State's population is 19,378,102. Asian Americans comprise 1,406,194 or 7.3% of the state's total population.

26. In New York City, the Asian American population has increased 32% over the past decade. Asian Americans are now 13% of the City's population, numbering 1,028,119.

27. Seven out of ten Asian Americans in New York reside in three boroughs. In Queens there are 508,334 Asian Americans, in Manhattan 177,624, and in Brooklyn 260,129.

---

[1] Preclearance may be achieved by filing a declaratory judgment action in the United States District Court for the District of Columbia or by submitting the change to the United States Attorney General. 28 C.F.R. § 51.38(b).

28. The growth rates of Asian Americans have far outpaced the overall growth rates of the boroughs in which they reside. In Queens, Asian Americans have grown three hundred (300) times faster than the overall rate of the borough, and in Manhattan and Brooklyn, 7 and 25 times faster, respectively. In Queens, Asian to total growth was 30.6% to 0.1%, in Manhattan 24.0% to 3.2%, and in Brooklyn 41.2% to 1.6%.

29. With this population growth, Asian Americans are increasingly participating in the electoral franchise.

30. There are over one million Asian Americans in New York City, with over 500,000 in Queens County alone. Despite these large numbers, Asian Americans are underrepresented and redistricting plans have diluted their voting strength.

31. There is currently one Asian American representative in the entire New York State Legislature.

32. Despite rapid Asian American population growth over the past decade, Asian American political representation has not increased at an equivalent pace. Asian Americans have the highest naturalization rates of all immigrant groups, and they are registering to vote in greater numbers every year.

33. Currently, Senate Districts 11 and 16 divide Flushing, Queens in half, diluting Asian American voting strength. There are numerous other examples in Queens and Brooklyn where Asian American communities with common concerns and socioeconomic characteristics have been splintered among several legislative districts, including the South Asian/Indo-Caribbean community of Richmond Hill/South Ozone Park divided among six (6) assembly districts and Elmhurst, Queens divided among five (5) assembly districts.

34. Asian Americans are a protected racial minority group under the federal Voting Rights Act.

35. The Plaintiff-Intervenors are residents in the Asian American communities of interest that are encompassed in proposed Asian American majority districts.

36. The United States Supreme Court has held that in redistricting, districts should encompass "communities of interest," League of Latin American Citizens v. Perry, 548 U.S. 399, 433 (2006), i.e., groupings of people with actual shared interests and concerns. Communities of interest also exist when residents share common histories, socio-economic, and political similarities.

ASIAN AMERICAN PARTICIPATION IN REDISTRICTING

37. In New York State, Asian Americans, and other protected classes under the Voting Rights Act, have participated in past redistricting public hearings or litigation or submitted comments to the United States Attorney General to protect their rights under the Voting Rights Act and Fourteenth Amendment to the Constitution of the United States.

38. The Asian American Legal Defense and Education Fund (AALDEF), on behalf of the Asian American community, has participated in every redistricting cycle since 1982, including challenging previous redistricting plans that diluted minority voting strength and submitting redistricting plans. In 1982, AALDEF filed objections with the Justice Department under section 5 of the Voting Rights Act because Manhattan's Chinatown had been divided between two state assembly districts.

39. In 1996, AALDEF, on behalf of the Asian American community, represented defendant-intervenors in Diaz v. Silver, 978 F. Supp. 96 (E.D.N.Y.) (per curiam), aff'd, 522 U.S. 801 (1997), arguing that Asian Americans in Manhattan's Chinatown and Brooklyn's Sunset

Park were a community of interest that should be kept together within the 12th Congressional District, and the Court accepted this contention.

40. AALDEF, on behalf of the Asian American community, submitted proposed redistricting plans in 2001 for State Assembly, State Senate and Congressional districts.

41. AALDEF, on behalf of the Asian American community, advocated for current State Assembly District 22, the only Asian American majority Assembly district, whose residents elected the first Asian American state assembly representative and continue to currently elect the only Asian American in the state legislature.

42. AALDEF, on behalf of the Asian American community, commented on the last three rounds of New York state redistricting plans, regarding their impacts on the Asian American community.

43. In 2011, AALDEF surveyed Asian American community groups and residents throughout New York City, in neighborhoods experiencing the fastest Asian American population growth, to determine the Asian American communities of interest in New York City.

44. The survey conducted by AALDEF summarizes the socioeconomic, language, and cultural characteristics of Asian American neighborhoods in New York City and describes the services and common issues shared by local residents.

45. AALDEF's Asian American Communities of Interest Survey in New York City was submitted to LATFOR on September 21, 2011.

46. AALDEF, along with Latino Justice/PRLDEF, National Institute for Latino Policy and the Center for Law and Social Justice at Medgar Evers College, jointly submitted proposed district lines for State Assembly and Senate for New York City, called the Unity Map, on October 4, 2011.

47. The Plaintiff-Intervenors all provided input to the Asian American Communities of Interest Survey in New York City and support the Unity Map proposals.

48. Ms. Lee, Mr. Chung and Mr. Hong all submitted testimony at the LATFOR public hearings in New York City.

49. The Unity Map proposes four (4) Asian American majority assembly districts and one (1) Asian American senate district. These proposed districts comply with all legal requirements, adhering to the United States Constitution and the Voting Rights Act.

50. Asian American "communities of interest" exist in the neighborhoods where Plaintiff-Intervenors reside. Asian American residents in those neighborhoods share many common interests and concerns in education, housing, employment, and the delivery of social services; common histories as immigrants; socio-economic characteristics such as ethnicity, income, language spoken, English proficiency; and political characteristics in their voting behavior and preferences. These communities of interest transcend ethnic and county lines.

STATE ASSEMBLY AND SENATE REDISTRICTING

51. The Constitutions of the United States and State of New York require that state legislative districts must also be equal in population, and so state assembly and senate districts must also be redrawn following the census.

52. The ideal population for New York state assembly and senate districts is 129,187 and 312,550, respectively.

53. Under New York State Election Law, for a candidate to gain access to the ballot in a party primary election for a position as a member of the State Assembly or State Senate, s/he must circulate designating petitions and then must file the petitions with the Board of Elections.

54. 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**.

55. 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. Unlike candidates for congress, state legislative candidates must reside in the districts that they seek office in.

56. Section 5 of the Voting Rights Act requires covered jurisdictions 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).

57. As three counties in New York (the 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.

58. The Voting Rights Act gives the Department of Justice 60 days from the application for preclearance to reach a decision.

59. On March 15, 2011, Governor Cuomo signed into law the Legislature's bills creating new state legislative districts for New York. These plans have not yet been precleared under Section 5 of the Voting Rights Act. Moreover, the Legislature's plan for a new 63rd State Senate district currently faces a legal challenge in the case of *Cohen v. Cuomo*, N.Y. Supreme

Court Index No. 12-102185 (N.Y. Sup. Ct. filed on March 15, 2012). Upon information and belief, the party that loses plans to appeal.

60. Upon information and belief, the Legislature implemented a different methodology to compute the number of senate districts for New York State and was therefore required to seek preclearance for this change in procedure with respect to voting. The 60 day period for preclearing the senate plan would start once the Department of Justice receives the submission.

61. Upon information and belief, the Legislature implemented a change to the procedure to submit the senate plan for preclearance, and was required to seek preclearance for this change in procedure with respect to voting. The 60 day period for preclearing the senate plan would start once the Department of Justice receives the submission.

62. If the districts are denied preclearance, or the *Cohen* suit results in the invalidation of the State Senate map, a strong likelihood exists that the redistricting plans will not be enacted or effective in a timely manner by June 5, 2012, the scheduled date for petitioning to begin. in accordance with the laws of the State of New York and consistent with the requirements of the Constitution of the United States.

63. In that event, Plaintiff-Intervenors would have no adequate remedy at law, would suffer irreparable harm and injury, and would require this Court to make appropriate equitable relief.

64. This Court cannot afford to wait for clarity from the state courts and the Department of Justice regarding the lawfulness of the Legislature's plan, and should therefore begin the process of developing a plan now, as the court did in *Branch v. Smith*, 538 U.S. 254 (2003).

65. This Court has allowed the Legislature and state court adequate opportunity to develop a redistricting plan and the Legislature was unable to do so in a timely manner.

V. CAUSES OF ACTION

COUNT I

(Violation of the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution; Pursuant to 42 U.S.C. § 1983)

66. Plaintiff-Intervenors incorporate all the paragraphs above as if fully set forth within.

67. As previously stated, the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution requires that New York state assembly and senate districts must be equal in population.

68. Plaintiff-Intervenor Linda Lee resides in the 24th Assembly District and the 16th Senatorial District which, according to Census 2010, has a population of 124,351 and 322,463 people respectively.

69. Plaintiff-Intervenor Shing Chor Chung resides in the 59th Assembly District and the 22nd Senatorial District which, according to Census 2010, has a population of 123,974 and 321,754 people respectively.

70. Plaintiff-Intervenor Jung Ho Hong resides in the 30th Assembly District and the 12th Senatorial District which, according to Census 2010, has a population of 122,060 and 302,224 people respectively.

71. Plaintiff-Intervenor Julia Yang resides in the 22nd Assembly District and the 11th Senatorial District which, according to Census 2010, has a population of 127,045 and 320,102 people respectively.

72. Plaintiff-Intervenors Lee, Chung, Hong and Yang's vote are each weighted unequally under the existing State Assembly and Senate districts in violation of the "one person, one vote" principle under the United States Constitution.

73. As previously mentioned, no plan for redistricting of the New York State Assembly and Senate districts has yet been precleared under Section 5 of the Voting Rights Act or approved by the New York state courts.

74. The existing State Assembly and State Senate districts violate the "one person, one vote" requirement of the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States, and 42 U.S.C. Section 1983.

75. To remedy these Equal Protection violations in a timely manner, the Court should take control of the redistricting process and oversee the process of re-drawing district lines pursuant to fair and legal criteria, similar to the court in *Branch*.

76. The Court should appoint a Special Master to prepare a redistricting plan in light of the current situation and time constraints.

77. In the interest of justice, the Court should order the Special Master to prioritize redistricting criteria including population equality, compliance with the Voting Rights Act of 1965, and preservation of communities of interest.

78. Upon presentation of an appropriate independent redistricting plan by the Special Master, the Court should adopt that plan and order elections to proceed in 2012 using those districts.

COUNT II

(Violation of the Due Process Clauses of the Fifth and Fourteenth Amendments to the United States Constitution, Pursuant to 42 U.S.C. § 1983)

79. Plaintiff-Intervenors incorporate all the paragraphs above as if fully set forth within.

80. As a result of New York's failure to adjust its state legislative districts pursuant to the 2010 Census, certain Plaintiff-Intervenors live in overpopulated districts, resulting in a dilution of their voting power.

81. The diminishment of Plaintiff-Intervenors' voting power constitutes a deprivation of Plaintiffs' rights without due process of law. The State of New York has deprived these Plaintiff-Intervenors of their full rights to vote in state legislative races by allowing malapportionment of those districts and improperly denying Plaintiff-Intervenors a fair and full weight in their votes for State Senate and Assembly.

82. To remedy these Due Process violations in a timely manner, the Court should take control of the redistricting process and oversee the process of re-drawing district lines pursuant to fair and legal criteria.

83. The Court should appoint a Special Master to prepare a redistricting plan in light of the current situation and time constraints.

84. In the interest of justice, the Court should order the Special Master to prioritize redistricting criteria including population equality, compliance with the Voting Rights Act of 1965, and preservation of communities of interest.

85. Upon presentation of an appropriate independent redistricting plan by the Special Master, the Court should adopt that plan and order elections to proceed in 2012 using those districts.

COUNT III

(Violation of the New York Constitution)

86. Plaintiff-Intervenors incorporate all the paragraphs above as if fully set forth within.

87. New York's current State Senate and Assembly districts lack population equality, in violation of the population equality requirements of Article III, sections 4 and 5 of the New York Constitution.

88. Certain Plaintiff-Intervenors live in overpopulated districts, resulting in a dilution of their voting power.

89. New York needs new effective State Senate and Assembly districts by June 5, 2012, the date candidates may begin gathering petition signatures.

90. To remedy these violations of the New York Constitution in a timely manner, the Court should take control of the redistricting process and oversee the process of re-drawing 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 current situation and time constraints.

92. In the interest of justice, the Court should order the Special Master to prioritize redistricting criteria including population equality, compliance with the Voting Rights Act of 1965, and preservation of communities of interest.

93. Upon presentation of an appropriate independent redistricting plan by the Special Master, the Court should adopt that plan and order elections to proceed in 2012 using those districts.

COUNT IV

(Violation of Fourteenth Amendment)

94. Plaintiff-Intervenors incorporate all the paragraphs above as if fully set forth within.

95. 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.

96. While the population of downstate, particularly in New York City and the surrounding areas, increased from 11,685,650 to11,957,128 (2.3% or 271,478 people); the population of upstate New York only increased from 7,290,807 to 7,420,972 (1.8% or 130,165 people).

97. According to the 2010 Census, Asian Americans comprise 7.3% of the population of the State of New York. Seven out of ten Asian Americans in New York reside in three boroughs of New York City. In Queens there are 508,334 Asian Americans; in Manhattan 177,624; and in Brooklyn 260,129.

98. Of the 1,028,119 Asian Americans residing in the City of New York, 437,753 live in counties (Kings and New York) covered by Section 5 of the Voting Rights Act in the downstate section of the State of New York.

99. Black people comprise 14.4% of the population of the State of New York. The majority of the Black people 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; and 44,313 on Staten Island.

100. 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 the downstate section of the State of New York.

101. 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; and 81,051

on Staten Island.

102. 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 the downstate section of the State of New York.

103. The 2012 Senate Map increases the size of the Senate from 62 to 63 Senate seats. Notwithstanding the larger growth and population in New York City than in the population in upstate New York, the new Senate district, Senate District 63, is located in upstate New York.

104. Moreover, while the deviations in Senate districts in New York City range from +3.47% to +3.83% the deviations in Senate districts in upstate New York range from -0.19% to -4.97%.

105. In the new 63rd Senate district, Non Hispanic Whites make up 61.24% of the population, Asians constitute 2.6% of the population; Black people constitute 30.8% of the population; and Hispanics constitute 5.30% of the population.

106. All of the New York City Senate districts have populations that are 3.47% or 3.83% above the mean population.

107. Of the 26 upstate senate districts, 23 districts have populations more than 4% below the mean; 22 districts have deviations more than 4.6% below the mean, and another district is more than 3% below the mean.

108. The total deviation, the range between the most and least populous districts, for the Senate plan is 27,034 people, or 8.80% of the ideal district population.

109. There are no legitimate, consistently applied state policies which justify these population deviations.

110. The Legislature's plan arbitrarily and discriminatorily dilutes and debases the weight

of certain citizens' votes by intentionally and systematically under-populating districts in upstate New York, and correspondingly overpopulating the districts in New York City.

111. The 26 overpopulated New York City Senate Districts (Senate Districts 10-34 and 36) contain 72.86% of the non-Hispanic Asian citizen voting-age population (CVAP) of New York State, 71.28% of the Hispanic CVAP, 67.29% of the non-Hispanic Black CVAP, but only 23.91% of the non-Hispanic White CVAP.

112. In contrast, the 26 under-populated upstate Senate Districts (Senate Districts 38-63) contain 13.04% of the non-Hispanic Asian CVAP, 14.08% of the Hispanic CVAP of New York State, 21.21% of the non-Hispanic Black CVAP, but 55.92% of the non-Hispanic White CVAP.

113. The 18 Senate Districts wholly or partly within the covered counties (Senate Districts 17-23, 25-34, and 36) contain 36.27% of the non-Hispanic Asian CVAP of New York State, 53.28% of the Hispanic CVAP, 52.61% of the non-Hispanic Black CVAP, but only 16.09% of the non-Hispanic White CVAP.

114. The State's 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 Asian, 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.

115. Upon information and belief, an alternative plan or plans for the New York State Senate can be redrawn with the new senate district downstate. Such a new district would equalize the vote and voting power of Asian American and other minority voters residing in the downstate area in compliance with the Fourteenth Amendment.

VI. PRAYER FOR RELIEF

WHEREFORE, Plaintiff-Intervenors respectfully request the following relief:

A. An order or judgment declaring New York's current State Senate and Assembly districts, last adjusted in 2002, to be invalid for failing to comply with the United States Constitution, the New York Constitution, and state and federal law;

B. An order or judgment declaring that Plaintiff-Intervenors' constitutional rights have been violated by Defendants' inaction 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, and applicable state and federal law, including the Voting Rights Act of 1965.

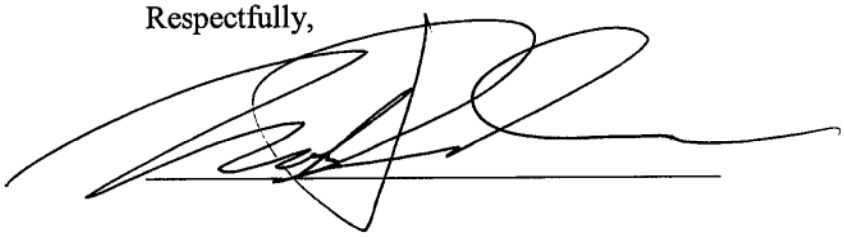
D. An order or judgment redrawing district lines in conformity with the Special Master's proposal, assuming the Special Master's satisfactory completion of an independent redistricting proposal;

E. An order awarding Plaintiff-Intervenors the costs of this action together with their reasonable attorneys' fees, pursuant to 42 U.S.C. Section 1988; and

F. Any further relief which may, in the discretion of the Court, be necessary and proper to ensure that timely and lawful procedures are used in the State Assembly, State Senate and congressional elections in New York.

Dated: March 27, 2012

Respectfully,



Noah Peters
James D. Herschlein
C. Kawezya Burris
Grace Yang
KAYE SCHOLER LLP
425 Park Avenue
New York, New York 10022
Attorneys for Plaintiff-Intervenors

Jerry G. Vattamala
Glenn D. Magpantay
Kenneth Kimerling
ASIAN AMERICAN LEGAL DEFENSE
AND EDUCATION FUND
99 Hudson Street, 12th floor
New York, New York 10013-2815
212-966-5932
Attorneys for Plaintiff-Intervenors