

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,

1:11-cv-05632
(RR) (GEL) DLI)

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,
SANTIAGO DIAZ, EDWIN FIGUEROA, LINDA ROSE,
EVERET MILLS, ANTHONY HOFF-MAN, KIM
THOMPSON-WEREKOH, CARLOTTA BISHOP,
CAROL RINZLER, GEORGE STAMATIADES,
JOSEPHINE RODRIGUEZ, SCOTT AUSTER, MELVIN
BOONE, GRISELLE GONZALEZ, DENNIS O. JONES,
REGIS THOMPSON LAWRENCE, AUBREY PHILLIPS,
AND YITZCHOK ULLMAN;

RAMOS-INTERVENORS'
FIRST AMENDED
COMPLAINT

Intervenor Plaintiffs,

v.

ANDREW M. CUOMO, as Governor 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 F. NOZZOLIO, as Member
of LATFOR, MARTIN MALAVE DILAN, as Member of
LATFOR, and WELQUIS R. LOPEZ, as Member of LATFOR,

Defendants.

-----X

PRELIMINARY STATEMENT

Plaintiff-Intervenors Juan Ramos, Nick Chavarria, Graciela Heymann, Sandra Martinez, Edwin Roldan, Manolin Tirado, Santiago DIAZ, and Edwin FIGUEROA, by and through their attorneys, LatinoJustice PRLDEF, hereby allege in their First Amended Complaint, as follows:

1. Plaintiff-Intervenors are Hispanic Latino voters who reside in various counties, legislative and congressional districts within the City of New York and the State of New York. Plaintiff-Intervenors (“Ramos Intervenors”), originally intervened in this action to protect their rights as Hispanic 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 (“Voting Rights Act” or “VRA”), as amended, 42 U.S.C. 1973 et seq.
2. Plaintiff-Intervenors Santiago Diaz and Edwin Figueroa, are Hispanic voters being added as new plaintiffs in order to protect the rights of Hispanic voters who reside in Bronx counties and whose rights are violated by the existing and recently adopted redistricting plans for New York’s legislative districts.
3. Plaintiff-Intervenors are seeking a Declaratory Judgment on behalf of themselves and all similarly-situated persons who are affected under the existing New York State plan and the recently adopted State Senate Plan, in violation of the U.S. Constitution and Voting Rights Act of 1965.

JURISDICTION AND VENUE

Plaintiff-Intervenors’ Amended Complaint arises under the United States Constitution, and federal statutes.

4. This Court has jurisdiction over Plaintiff-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 and their Voting Rights Act claims pursuant to 42 U.S.C. Section 1973j(t). This Court has jurisdiction over Plaintiff-Intervenors' declaratory judgment claim pursuant to 28 U.S.C. Section 2201.

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

PARTIES

6. Plaintiff-Intervenor Juan Ramos is a registered voter in the County of Kings and votes in primary and general elections. He resides within New York State Senate District 17 and New York Assembly District 53. As a result of the 2010 Census, his state legislative districts will have to be redrawn.

7. Plaintiff-Intervenor Nicholas Chavarria is a registered voter in the County of the Bronx and votes in primary and general elections. He resides within New York State Senate District 33 and New York State Assembly District 80. As a result of the 2010 Census, his state legislative districts will have to be redrawn.

8. Plaintiff-Intervenor Graciela Heymann is a registered voter in the County of Westchester and votes in primary and general elections. She resides within New York State Senate District 40 and New York State Assembly District 90. As a result of the 2010 Census, her state legislative districts will have to be redrawn.

9. Plaintiff-Intervenor Sandra Martinez is a registered voter in the County of Kings and votes in primary and general elections. She resides within New York State Senate District 21 and New York Assembly District 41. As a result of the 2010 Census, her state legislative districts will have to be redrawn.

10. Plaintiff-Intervenor Edwin Roldan is a registered voter in the County of Suffolk and votes in primary and general elections. He resides within New York State Senate District 2 and New York Assembly District 5. As a result of the 2010 Census, his state legislative districts will have to be redrawn.

11. Plaintiff-Intervenor Manolin Tirado is a registered voter in the County of Orange and votes in primary and general elections. He resides within New York State Senate District 38 and New York State Assembly District 97. As a result of the 2010 Census, his state legislative districts will have to be redrawn.

12. Plaintiff-Intervenor Santiago Diaz is a registered voter in Bronx County and votes in primary and general elections. He resides within State Senate District 32 and New York Assembly District 85. As a result of the 2010 Census, his state legislative districts will have to be redrawn.

13. Plaintiff-Intervenor Edwin Figueroa is a registered voter in Bronx County and votes in primary and general elections. He resides within New York State Senate District 28 and New York State Assembly District 45. As a result of the 2010 Census, his state legislative districts will have to be redrawn.

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

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

16. 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.

17. Defendant Sheldon Silver is the Speaker of the Assembly of the State of New York. He is being sued in his official capacity.
18. 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.
19. 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.
20. Defendant, the New York State Legislative Task Force on Demographic Research and Reapportionment (“LATFOR”), is required by state law to conduct research into the techniques and methodologies that the U.S. Census Bureau used in the decennial census, to use demographic and electoral research for facilitating redistricting , and with providing a technical plan to meet the timeline for redistricting based on such census data.
21. Defendants John J. McEneny, Robert Oaks, 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

22. On December 21, 2010, pursuant to statute, the U.S. Census Bureau announced and certified the population of New York State to be 19,378,102.
23. Based on the 2010 Census, significant population disparities are found among New York State Senate districts which require that these districts be redrawn.
24. Following the 2010 Census data release, the New York Senate initially apportioned 62 seats in the Senate and released a draft plan for public comment.

25. On January 26, 2012, LATFOR announced a 63-seat Senate plan to the public. For months preceding this announcement, LATFOR held hearings throughout the state on a proposed 62-seat Senate plan. The public submitted testimony and offered comments based on the proposed 62-seat plan. LATFOR scheduled a few public hearings after the release of the 63-seat plan.

26. The New York State Assembly and State Senate passed redistricting plans in a package of legislation for their respective chambers' vote on March 14, 2012. The Senate Plan was adopted in S. 6696, a revised 63-seat plan The Assembly Plan was adopted in A. 9525. Both plans were passed and signed into law by Governor Andrew Cuomo on the following day.

27. On or about March 21, 2012, the State Legislature voted and passed a technical bill to correct errors and omissions in the redistricting legislation.

28. In 1974, the counties of Kings, New York, and the Bronx were ordered by a federal court to be subject to the preclearance requirements of Section 5 of the Voting Rights Act.

29. Voting Rights Act Section 5 covered jurisdictions in any proposed redistricting plan developed for congressional and legislative districts in New York must be pre-cleared by the U.S. Department of Justice ("DOJ") or by the U.S. District Court for the District of Columbia.

30. On March 16, 2012, the Senate Plan was submitted to the U.S. DOJ for Section 5 VRA preclearance review. As of today, the New York State Assembly Plan has not yet been submitted for preclearance.

31. Under the federal Voting Rights Act, the U.S. DOJ's Voting Section has 60 days to reach a decision from a proper submission of an application for preclearance. In some situations, this timeframe can be extended should the Justice Department request the submission of additional information from the State.

32. On information and belief, the Senate Leader's submission of the Senate Plan was incomplete, defective and therefore not a proper submission. The Assembly Plan was not tendered in combination with the submission as represented by the filing authority.

33. Moreover, the Senate Majority's proposed change in the number of 2010 Senate seats, from 62 to 63 districts, itself was subject to Section 5 preclearance. This controversial Senate plan change was neither pre-cleared before its implementation nor presented for timely preclearance.

34. Based on these circumstances, there will likely be a substantial delay in the administrative preclearance process since the clock would require resetting, thus, further delaying the Justice Department's actual date to start its 60 day preclearance review and determination.

35. Contemporaneously, an action challenging the increased number of Senate seats from 62 to 63 is before the New York County Supreme Court in Cohen v. Cuomo, et. al., No. 12-102185 (filed on March 15, 2012). A state judge's disposition is expected subsequent to the filing of summary judgment motions and a hearing set for April 9, 2012.

36. New York State is scheduled to have September 11, 2012 primary elections and November 6, 2012 general elections for the New York State Senate and the New York State Assembly races.

37. New York's political calendar for State Assembly and Senate candidates begins on June 5, 2012 for the gathering of petition signatures to be placed on the primary ballot. The petitioning period ends on or before July 12, 2012.

MALAPPORTIONMENT

38. Under the 63-seat Senate Plan, the ideal population per district is 307,356. (The 62-seat Senate plan's ideal population would have been 312, 550.)

39. The Assembly Plan has 150 seats. The ideal population per district is 128,000.

40. The Senate Plan does not satisfy the equal population mandate of "one person, one vote" as required by the Equal Protection Clause of the U.S. Constitution.

41. Defendants' 2012 Senate Plan states its district deviation range is 8.8%, with a mean deviation of 3.67%, a standard deviation of 3.85%, a minimum deviation at -4.97% (district under-population) and a maximum deviation of 3.83% (district over-population) among its Senate districts. Exhibit A "Chapter 16 – 2012 Senate District Demographics."

42. The Senate Plan's design is permeated with malapportioned districts favoring one region and disfavoring another. For Senate Districts 1 through 36, all located in the counties of Nassau and Suffolk, and, the five counties of New York City, every Senate district is over-populated from 2.54% to 3.83% deviation. (It is noted that Westchester County's districts 35 and 37, which border the northern edge of New York City, each have only .03% deviation.)

43. Based on the total population of Senate Districts 1 to 36 (1,079,464), the Senate Plan has over-populated the downstate region by 344,536 people (31.256%) which constitutes at

least one whole Senate district. Exhibit A, “Chapter 16 – 2012 Senate District Demographics”.

44. The 2010 Census describes the state’s population losses as predominantly hailing from the districts and regions north and westward from New York City. Population growth rate has, in fact, increased mostly in the lower New York region in the past decade.

45. The sustained growth rate of the Latino population in the past 10 years is found in the New York City and Long Island area. According to the 2010 Census, Hispanics comprise 17.6% of the population of the State of New York.

46. The majority of Hispanics 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.

47. A total of 2,236,076 Hispanics reside in the City of New York, 1,641,275 live within the three counties (the Bronx, Kings, and New York) covered by Section 5 of the Voting Rights Act in the downstate region of the State of New York. The creation of one additional majority-minority Latino district would be properly placed in New York City.

48. Despite the significant population losses in the upstate regions far from New York City, the Senate Plan has created the new 63rd Senate District in Erie County in the western part of New York State. It splits a part of the City of Buffalo. This Senate District consists of 56.24% White Pop., 60.87% White Voting Age Population (“VAP”), 6.51% Hispanic Pop., 5.31% Hispanic VAP, 33.37% Black Pop., 30.18% Black VAP, and, 2.58% Asian Pop., 2.47% Asian VAP.

49. The Senate Plan that was drawn and enacted by the Senate Majority presents serious violations under the U.S. Constitution and Voting Rights Act. The deviations at issue are

sufficiently large to make out a prima facie case of discrimination; moreover, population deviations are employed to the disadvantage of Latino and other minority voters in the downstate region.

50. The Senate Plan's malapportionment scheme and population deviations of its districts, the expansion from a 62-seat plan into a 63-seat plan, and, the creation of a new 63rd district placed upstate result in voter dilution of Latino voting strength and operates as a discriminatory denial of equal opportunity in electoral participation in this state.

51. The Senate Plan's malapportionment scheme has not been justified by a good faith effort, legitimate state interests or neutral redistricting rationale. Its malapportioned districts by region are irrational and arbitrary, and, at worst, purposefully dilute voters' rights in a discriminatory manner.

BRONX AND NEW YORK COUNTIES

52. The Senate Plan's districts result in the infringement of minority rights protected by the Voting Rights Act. The Plan denies the Latino community of additional compact and contiguous districts that can be drawn by avoiding packing and cracking of existent minority communities, using less deviation. The Senate Plan's arbitrary and discriminatory process create bizarrely shaped districts which split long standing communities while joining communities with no or few communities of interest.

53. The Senate Plan creates less effective majority-minority districts in the Bronx and Manhattan. It creates a total of two majority Latino districts in the Bronx (Senate District ("SD") 32, 33). Exhibit B, Official Senate Plan, Maps of Senate Districts 29 through 34.

54. Senate Plan District 34 is bizarrely shaped and is one of the least compact districts throughout the entire state. This Bronx district is fashioned to collect disparate communities

from Riverdale and Fieldston at its western point, cracking Latino neighborhoods, including Soundview and Castle Hill, as it meanders through eastern Bronx, to collect non-Hispanic communities in lower Westchester County (Pelham Bay, Pelham Manor, Eastchester), Throgs Neck-Locust Point and City Island. This district has 37.94% Hispanic Pop., 35.12% Hispanic VAP, 40.03% White Pop., 43.04% White VAP, 13.8% Black Pop., 13.93% Black VAP, and, 6.52% Asian Pop., 6.3% Asian VAP.

55. Senate District 32, also not a compact district, is an overly packed Latino district. It has 60.71% Hispanic Pop., 59.49% Hispanic VAP, 1.91% White Pop., 2.21% White VAP, 32.76% Black Pop., 33.61% Black VAP, and, 2.85% Asian Pop., 2.96% Asian VAP.

56. Senate District 33 is another over-concentrated Latino district. It has 66.98% Hispanic Pop., 65.57% Hispanic VAP, 3.94% White Pop., 5.59% White VAP, 24.84% Black Pop., 25.3% Black VAP, and, 2.77% Asian Pop., 3.07% Asian VAP.

57. Senate Districts 32, 33, and 34 in combination effectively dilute the Latino communities of the Bronx their electoral strength and equal opportunity to elect their own preferred candidates. The Senate Plan's scheme needlessly used cracking and packing in Latino communities which has resulted in voter dilution and the failure to create an additional compact Latino majority district.

58. Senate District 29 is a bizarrely shaped and not a compact district which similarly splits up Latino communities. It extends from the South Bronx, splitting East Harlem (SD 30) by snaking along a corridor of about 24 blocks in East Harlem down the East River Drive, enters and traverses Central Park at East 96 Street, and annexes a small set of Upper West Side streets, from West 70th Street up through West 88th Street. Almost half of this district is Latino at 52.79% Hispanic Pop., 49.92% Hispanic VAP, 20.14% White Pop.,

29.19% White VAP, 21.63% Black Pop., 21.01% Black VAP, and, 4.31% Asian Pop., 4.76% Asian VAP.

59. Absent malapportioned gerrymanders and the deliberate over-concentration of Latinos in the Senate Plan, one additional majority Latino Senate district could be created.

60. Before the Senate Majority decided to change over to a 63-seat Senate scheme which was released in January 2012, the Senate and LATFOR members were well aware that a Senate map could be drawn to create compact contiguous Latino majority-minority districts, with far less deviation rates.

61. Publicly submitted map proposals, including the Unity Plan jointly submitted in late October 2011 by LatinoJustice and a cohort of civil rights organizations, and, the Common Cause New York plan, demonstrated this capability. More minority districts could be drawn in the Bronx and Upper Manhattan based on the natural increase in minority populations in these existing districts.

62. The Latino population of Bronx County is sufficiently large and geographically compact to comprise the majority of voting age persons in several Senate districts.

63. One additional Senate district can be created within Bronx and New York counties to afford Latino voters the opportunity to elect their candidates of choice.

64. Latinos in the Bronx and Upper Manhattan area can constitute a Latino-majority Senate district that is politically cohesive.

65. Non-Latinos vote sufficiently as a bloc to enable them – in the absence of special circumstances – usually to defeat the Latino voters' preferred candidates in Upper Manhattan, including the area in which a Latino-majority Senate district can be created.

66. The New York Senate plan interacts with social and historical conditions to cause inequality in the opportunity of Latino voters to elect State Senators of their choice as compared to non-Latino voters.

67. The current Senate redistricting plan operates to dilute the voting strength of Latino voters in the Bronx and New York counties.

COUNT ONE

Violation of the Equal Protection Clause of the 14th Amendment of the U.S. Constitution; 42 U.S.C. §1983

68. Plaintiff-Intervenors hereby re-allege and incorporate by reference the above allegations as if fully set forth herein.

69. The Senate Plan violates the “one person, one vote” requirement of the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution by failing to redraw districts using a consistent, non-arbitrary and non-discriminatory manner and by favoring one part of New York State at the expense of another region. Such legislative districts that are malapportioned without legal justification cannot be used in the upcoming 2012 election cycle.

70. To remedy violations and to avoid prejudice to the plaintiffs in the event the New York legislative districts are not timely pre-cleared or legally operational, the Court should maintain jurisdiction and manage the timely preparation of alternative and contingent redistricting plans using fair and legal criteria. Magistrate Judge Roanne L. Mann and the court’s expert Dr. Nathaniel Persily should be reappointed to prepare redistricting plans after holding public hearings, in light of any delays to the completion of state redistricting under law.

COUNT TWO

Violation of the Due Process clause of the 14th Amendment of the U.S. Constitution, 42 U.S.C. §1983

71. Plaintiff-Intervenors hereby re-allege and incorporate by reference the above allegations as if fully set forth herein.

72. The Senate Plan consists of many malapportioned districts in violation of the “one person, one vote” requirement of the Fourteenth Amendment of the U.S. Constitution. Plaintiff-Intervenors reside within New York State’s legislative districts which are malapportioned under the current lines and under the as-yet pre-cleared plan and cannot be used in the upcoming 2012 election cycle.

73. The diminishment of Plaintiff-Intervenors’ voting rights is a deprivation of rights without due process of law.

74. To remedy violations and to avoid prejudice to the Plaintiffs-Intervenors in the event the New York legislative districts are not timely pre-cleared nor legally operational, the Court should maintain jurisdiction and manage the timely preparation of alternative and contingent redistricting plans using fair and legal criteria. Magistrate Roanne L. Mann and the court’s expert Dr. Nathaniel Persily should be reappointed to prepare redistricting plans after holding public hearings, in light of any delays to the completion of state redistricting under law.

COUNT THREE

Violation of Section 2 of the Voting Rights Act

75. Plaintiff-Intervenors hereby re-allege and incorporate by reference the above allegations as if fully set forth herein.

76. Section 2 of the Voting Rights Act prohibits the abridgement of the right to vote on account of one's race, color or language minority status. The dilution of minority voting strength and the abridgement of a protected minority group's equal opportunity to vote for preferred candidates are Section 2 violations.

77. The Senate Plan consists of districts that dilute Latino voting strength and adversely impact Latinos voters.

78. New York State's legislative redistricting process must not result in districts that dilute the vote of a protected class of minority voters nor can they deny the ability of protected minorities to elect the candidate of their choice.

79. The New York Legislature's failure to create an additional majority Latino VAP Senate district in the Bronx is a violation of the Voting Rights Act.

80. The New York Legislature's failure to create two majority Latino VAP Assembly districts in Washington Heights, New York County is a violation of the Voting Rights Act.

COUNT FOUR

Declaratory Judgment under 28 U.S.C. §2201

81. Plaintiff-Intervenors hereby re-allege and incorporate the above allegations by reference as if fully set forth herein.

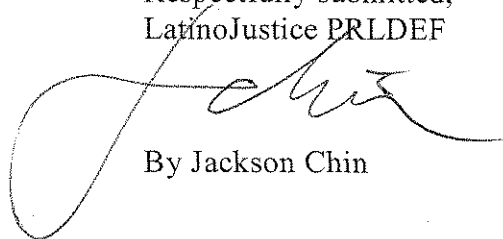
82. Plaintiff-Intervenors' constitutional rights under the Equal Protection and the Due Process Clauses of the U.S. Constitution and the federal Voting Rights Act are entitled to a declaratory judgment based on the Defendants' acts and omissions and the delayed implementation of non-malapportioned and non-dilutive legislative plans in order to not deprive them of their fundamental rights.

WHEREFORE, Plaintiff-Intervenors' request the following relief:

1. An order or judgment declaring New York's State Senate Plan and Assembly Plan to be invalid for failing to comply with the U.S. Constitution and federal law;
2. An order or judgment declaring that Plaintiff-Intervenors' rights under the U.S. Constitution and Voting Rights Act have been violated by Defendants' Senate Plan and Assembly Plan in its redistricting process;
3. An order to appoint a Special Master to draw new State Senate and Assembly Plans, in the absence of Justice Department Section 5 preclearance of the State's legislative plans by and before a date certain that this Court shall set, or, in the event that the Justice Department's decision on preclearance is denied or stalled, which will conform with the 2010 Census and applicable state and federal laws;
4. An order requiring LATFOR and its members and staff to cooperate with the appointed Special Master for all purposes;
5. An order requiring Defendants to pay Plaintiff-Intervenors their reasonable attorney's fees and expenses, expert fees, costs and other expenses incurred in prosecuting this action, pursuant to 42 USC §1973(e) and 42 USC §1988, and,
6. Granting such other relief as the Court may deem just and proper.

Dated: New York, New York
March 27, 2012

Respectfully submitted,
LatinoJustice PRLDEF



By Jackson Chin

Juan Cartagena
Jose Perez
Jackson Chin

LatinoJustice PRLDEF
99 Hudson Street, 14th Floor
New York, NY 10013
(212)219-3360 ext. 7572
jcartagena@latinojustice.org
jperez@latinojustice.org
jchin@latinojustice.org

Attorneys for Plaintiff-Intervenors Ramos, *et. al.*

cc: Copies to All Parties via ECF