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, and WEYMAN A. CAREY,

Plaintiffs,

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

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, SANTIAGO DIAZ, EDWIN FIGUEROA, 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 YITZCHOK ULLMAN;

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 NY 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.

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PLAINTIFF-INTERVENORS' MOTION FOR PRELIMINARY INJUNCTION

Plaintiff-Intervenors Juan Ramos, Nick Chavarria, Graciela Heymann, Sandra Martinez, Edwin Roldan, Manolin Tirado, Santiago Diaz and Edwin Figueroa (herein, "Ramos Intervenors") move through their attorneys, pursuant to Rule 65, Federal Rules of Civil Procedure, for a preliminary injunction enjoining the Defendants from implementing the statewide 2012 redistricting Senate Plan, pending a final determination by this Court that this Plan is lawful; and, 2) issuing an order to provide for expedited discovery for disclosure of information in the possession and custody of Defendants and their agents regarding the genesis, design and reasoning for creating a significantly malapportioned Senate Plan.

The Ramos Plaintiff-Intervenors filed a First Amended Complaint ("FAC") to this Court on March 27, 2012 (ECF Doc 257) and Opposition to Defendants' Motion to Dismiss (ECF Doc 286) on April 9, 2012 against the same set of Defendants in the caption. The original Complaint and the First Amended Complaint seek only declaratory and injunctive relief. The allegations, counts and prayer for relief contained therein are incorporated by reference as if fully set forth herein. All supporting exhibits and declarations attached to the Complaint and also incorporated in this motion.

This case involves a carefully constructed effort by the State of New York and State Senate Majority officials to impose a grossly malapportioned, discriminatory 63-seat plan by using extraordinary deception and unusual procedures for Senate redistricting in New York. This new plan was enacted by the State Defendants but cannot be implemented until it has been reviewed and approved by the U.S. Department of Justice pursuant to Section 5 of the Votings Rights Act.

If implemented, the Senate Plan will have the purpose and effect of discriminating against minority voters in the downstate New York area, particularly in SD 29, 32, 33 and

34, and in other senate districts, and will effectively dilute the value of their votes and those of their elected senators.[1]

The Ramos Intervenor-Plaintiffs are eight Latino registered New York voters who brought this action, *inter alia*, to enforce their voting rights under the Equal Protection and Due Process clauses of the U.S. Constitution under the one-person, one-vote equal population principle and the Voting Rights Act. Plaintiff-Intervenors submit this Motion for Preliminary Injunction, a supporting memorandum, and Exhibit A attached hereto, requesting that this Court issue an order enjoining Defendants from implementing this legally defective Senate Plan and directing the Magistrate/ Special Master to draw up interim maps that comply with the U.S. Constitution and the Voting Rights Act, 42 U.S.C. Sec. 1973, as amended, as a contingency safeguard.

Factual Background

On December 21, 2010, the U.S. Census Bureau announced and certified the population of New York to be 19.378,102. The 2010 U.S. Census revealed significant population disparities among New York State Senate and Assembly districts requiring that they be redrawn. The per district ideal population size of the New York State Senate is 312,550 (62-seat plan), 307,356 (63-seat plan), and, 128,000 for the State Assembly.

New York State is scheduled to hold elections for the New York State Senate and the New York State Assembly in 2012. Primary elections for the State Senate and State Assembly will take place on September 11, 2012, with the general election taking place on November 6, 2012. State Senate and State Assembly candidates may begin gathering petition signatures on June 5, 2012 and must file notices of their candidacies and sufficient petition signatures no later than July 12, 2012**.** In advance of the nominating and

[1] A vote's "value" or "meaningfulness" counts on whether it can be fairly aggregated with like votes to effectuate the voter's intentions." THE LAW OF DEMOCRACY: LEGAL STUCTURE OF THE POLITICALPROCESS 112 (Samuel Issacharoff, Pamela S. Karlan & Richard H. Pildes, eds., 3rd ed. 2007)

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.

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. Sec. 1973(c). As three counties in New York City (Bronx. Kings and New York) are “covered jurisdictions” under Section 5 of the Voting Rights Act, New York’s entire state plans for 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.

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, and, they were signed into law by the Governor of New York on March 15, 2012. 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. However, because of material errors in the previously passed state redistricting legislation, S. 6696 and A.9525, corrections were made to the redistricting laws for both the state Senate and Assembly. On March 21, 2012, Chapter 20 of New York was voted by the Legislature and signed into law on March 27, 2012 the bill made technical changes to correct the errors and omissions in the state legislative plan. This law and the new State Assembly plan, A. 9525 was submitted to the U.S. Justice

Department for preclearance review and Defendants filed a similar action seeking preclearance in the United States District Court for the District of Columbia.

An action challenging the increase in the number of State Senate seats from 62 to 63 had been also 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 summary judgment motions were held on April 9, 2012. The parties are expected back in the court for further proceedings on or about April 24, 2012.

Pending a decision in that state court challenge regarding the constitutionality of the increase in the size of the State Senate Plan and the Justice Department's VRA's Section 5 preclearance process, Plaintiff-Intervenors and parties are aware of the uncertainty in timing, as well as the yet to be made determinations over the finality and legal status of the state's legislative plans.

At the present time, it is highly questionably that new State and Assembly district lines will become effective or able to be implemented by June 5, 2012, the date when the circulation of nominating petitions for state legislative offices is scheduled to begin.

ARGUMENT

I. THE STANDARD GOVERNING A MOTION FOR A PRELIMINARY INJUNCTION

In the Second Circuit, the legal standard for preliminary injunctive relief calls for a showing of (1) irreparable harm and (2) either (a) likelihood of success on the merits or (b) sufficiently serious questions going to the merits to make them a fair ground for litigation and a balance of hardships tipping decidedly toward the party requesting the preliminary relief. *Jackson Dairy, Inc. v. H.P. Hood & Sons, Inc*., 596 F.2d 70, 73 (2d Cir. 1979); *International Brotherhood of Teamsters v. Local 810,* 19 F.3d 786, 789 (2d Cir. 1994); *Reuters Ltd. v. United Press Int'l, Inc.*, 903 F.2d 904, 908 (2d Cir. 1990) (preliminary

injunction was granted to prevent irreparable injury and to maintain status quo); *LP v. Cell Therapeutics, Inc.*,591 F. Supp. 2d 666, 670 (S.D.N.Y. 2008).

"A plaintiff seeking a preliminary injunction must establish that… the balance of equities tips in his favor, and that an injunction is in the public interest." *Winter v. NRDC, 555 U.S. 7, 129 S. Ct. 365, 172 L. Ed. 2d 249, 261–262 (2008); Long Island R.R. v. International Ass'n of Machinists, 874 F.2d 901, 910 (2d Cir. 1989) (court may consider harm to parties and to public in making determination of irreparable harm); Id, Winter v. NRDC at 263 (2008)* ("In exercising their sound discretion, courts of equity should pay particular regard for the public consequences in employing the extraordinary remedy of injunction." (*quoting Weinberger v. Romero-Barcelo, 456 U.S. 305, 312, 102 S. Ct. 1798, 72 L. Ed. 2d 91 (1982)).*

"We have recognized that, as a court of equity, we 'may go much further both to give or to withhold relief in furtherance of the public interest than where only private interests are involved.'' *Standard & Poor's Corp. v. Commodity Exch., Inc., 683 F.2d 704, 711 (2d Cir. 1982).* This Circuit favors a preliminary injunction standard that permits the entry of an injunction in cases where a factual dispute renders a fully reliable assessment of the merits impossible. *Citigroup Global Mkts., Inc. v. VCG Special Opportunities Master Fund Ltd., 598 F.3d 30, 36–37 (2d Cir. 2010)*

In connection with a motion for a preliminary injunction seeking to enforce "the public interest," this Court observed in *Christie-Spencer Corp.,* 118 F. Supp. 2d 408 at 418:

> Although [the standard for a preliminary injunction] does not explicitly mention the public interest . . . [the Second Circuit] ha[s] recognized that, as a court of equity, [it] "may go much further both to give or to withhold relief in furtherance of the public interest than where only private interests are involved." . . .

If, as here, "the moving party seeks a preliminary injunction that will affect government action taken in the public interest pursuant to a statutory or regulatory scheme,

the injunction will be granted only if the moving party meets the more rigorous likelihood-of-success standard." *No Spray Coalition, Inc. v. City of New York*, 252 F.3d 148, 150 (2d Cir. 2001) (per curiam) (internal quotation marks omitted); see, e.g., *Rockefeller v. Powers*, 74 F.3d 1367, 1367-77 (2d Cir. 1996) (applying this standard of preliminary relief in the context of candidate ballot access in a primary election).

This Court should grant the Plaintiff-Intervenors' Motion for Preliminary Injunction.

II. Defendant Senate Majority Failed To Make An Honest Effort To Create Districts As Nearly Equal In Population As Practicable

"[T]he Equal Protection Clause guarantees the opportunity for equal participation by all voters in the election of state legislators." *Reynolds v. Sims*, 377 U.S. 533, 566 (1964). The leading decision on the Fourteenth Amendment's one-person, one-vote requirement is *Larios v. Cox*, 542 U.S. 947 (2004). ("[T[he equal-population principle remains the only clear limitation on improper districting practices, and we must be careful not to dilute its strength." (542 U.S. 947, 949-50 Stephens, J., *concurring*).

The "Constitution of the United States requires that . . . state legislative seats be apportioned equally so as to ensure that the constitutionally guaranteed right of suffrage is not denied by debasement or dilution of the weight of a citizen's vote." Larios v. Cox, 300 F. Supp. 2d 1320 (N.D. Ga.)(three-judge panel), summarily aff'd, 542 U.S. 947 (2004) at 1337 (*citing Reynolds v. Sims*, 377 U.S. at 555, 568; *Wesberry v. Sanders*, 376 U.S. 1, 7-8 (1964)). The Larios court explained that "[e]ach state…is required to 'make an honest and good faith effort to construct districts, in both houses of its legislature, as nearly of equal population as is practicable." Id at 1339. The *Larios* court also held that the Constitution provides that, in state legislative reapportionment, "the invariable objective . . . remains 'equal representation for equal numbers of people.'" *Id.* at 1337 (*quoting Wesberry v. Sanders*, 376 U.S at 18).

Despite the clarity of the *Larios* court's articulation of the foregoing principles, the Defendant State Senate Majority leaders Duffy and Skelos failed to abide by them. The Senate Majority leaders were aware of several options – their first proposed 62 seat Senate Plan, the various redistricting plans submitted by the public,[2] as well as S. 6696, the legislation that was passed by the Legislature setting forth the redistricting of the entire State Senate. Defendant disregarded its legal obligation and the disregarded the viable legal options at hand by deliberately designing a plan permeated with over-populated and under-populated malapportioned Senate districts throughout the entire state. Such a decision is not an honest attempt to create districts "as nearly equal in population as practicable."

Defendants created a new 63-seat Senate plan towards the end stages of the state redistricting process, and the general public and civil rights community was kept in the dark. As reflected in multiple pleadings and exhibits already submitted to this Court, the redistricting that was performed by S. 6696 increased the absolute deviation of New York City and decreased the deviation percentages for the counties northward and upstate.

Ramos Intervenors have alleged the legal deficiencies of the State's plan:

- "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."

- "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."

- "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

[2] These proposed plans had far less deviation and were designed to comply with the one-person one-vote mandate, Voting Rights Act, and traditional redistricting principles: The Unity Plan (submitted jointly by Asian American Legal Defense & Education Fund, LatinoJustice PRLDEF, Center for Law & Social Justice, and the National Institute for Latino Policy), Common Cause New York, and the Breitbart Alternative Plan, among other submissions, and versions)

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.) "

- "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".

Ramos Interven. FAC ¶¶ 40-42.

The purpose and motive for Defendants failing to timely reveal their decision to advance a 63-seat plan is an important question. The scrutiny revolves around this issue. Defendants were fully aware of their legal obligations to seek Sec. 5 preclearance from the U.S. Justice Department in a timely manner. It did not. It is settled practice that when a state increases the size of a legislative body, this is a mandatory covered change subject to preclearance. *See Presley v. Etowah County Comm'n*, 502 U.S. 491, 503 (1992) (Section 5 applies to any "increase" in "the number of officials for whom the electorate may vote").

During many months of public hearings and deliberations, the public relied on the 62 seat template for submitting their comments, map plans, and testimony. Nine months elapsed in the process did Defendants stealthily in January 2012 release their proposed 63-seat Senate Plan. So, before the state legislation's passage, serious plans and supportive demographic data were provided to Defendants and legislators along with copies of proposed maps.

Ramos Plaintiff-Intervenors' Motion also relies on the public records made available to this court, and, we also rely upon the credible and specific allegations in the verified pleadings submitted by the Senate Minority's counsel in the Cohen v. Cuomo state litigation. The expert Todd Breitbart, a former staff analyst (1980 to 2005) with LATFOR, has provided exacting facts, insights and clearly possesses intimidate

knowledge of the state's complex redistricting processes, history and internal policy deliberations. See ECF Doc. 289-2 and exhibits. "Reply Affidavit of Todd Breitbart", dated April 4, 2012, (herein "Breitbart Reply Affid.")

As this Court and the *Larios* court recognized, the current state of technology and mapping software available to the Defendant and New York LATFOR would allow the Legislature to draw redistricting plans "with a deviation of 0 to 1 persons," to make[ ] "perfect equality" among districts "certainly attainable." *Larios* at 1320, 1341. It would have been impossible for the Senate Majority and LATFOR not to have created a map with smaller deviations, yet the Legislature simply decided not to do so.

Defendant Senate Majority and LATFOR had ample opportunity to adopt a plan to satisfy the purported (or pretextual) goals of S. 6696 and to create a plan with districts that were more nearly equal in population than those created by S. 6696.[3]

Despite the fact that these alternative plans would have provided an additional Senate district in the counties of New York City to reflect the growth of the largely racial and ethnic minorities, the Senate majority decided to create one new Senate district for the upstate region despite its steady decline in population during the past decade. The fact that the State Senate and LATFOR chose the least equal (or most discriminatory) of all the options at hand, is convincing evidence that they were not attempting to create districts "as nearly equal as practicable in population" as required by *Reynolds v. Sims* and *Larios v Cox.*

Defendant Senate Majority and LATFOR who drafted S. 6696 relies upon the same misconception as the drafters of the Georgia Democratic Party's plans that were

[3] Under the Unity Plan the "absolute overall range" would have been 1,715 people instead of 2,381 under S. 6696, and the total percentage deviation from the ideal would have been reduced from 1.63% to 1.17%. Similarly, maps submitted to LATFOR and the State Senate Majority by Common Cause New York, Todd Breitbart (Alternative Senate Plan), and other plans with far lower deviations in their Senate Maps.

struck down in *Larios* that a presumptive "safe harbor" of ten percent deviation can anchor their deceitful design. Discussions between the State Senate and its senior analyst evidently elevate this as a primary districting rule operating for partisan self-advantage. Keeping below the 10% deviation guideline emboldened Defendants to manipulate lines, add a new district, and malapportion by region, race and demography in order to disenfranchise the predominantly minority populations in the New York City downstate region. See, Brietbart Reply Decl.

In adopting S. 6696, the Republican Majority Leaders mimicked the unconstitutional conduct described in *Larios*. There, as here, the plan's drafters used a percentage guideline as a safe harbor (albeit with a much larger deviation), rather than trying to create districts as equal in population as possible. This safe harbor pretext is tantamount to "conceding the absence of an 'honest and good faith effort' to construct equal districts." *Larios* at 1352.

Even worse, a decade later with more advance tools available, "the [New York State] creators of the plans had the technical capability to create maps with substantially smaller population deviations than the plans that were eventually passed, [and LATFOR and] legislators were actually presented with a number of proposed maps with smaller deviations and systematically rejected them." *Id.*

Here, the stark similarities of this case to those facts in *Larios* simply show "[it was] readily apparent that alternative plans could have been easily constructed that did not stretch the limits of the one person, one vote principle… all the while achieving the state's legitimate interests." *Id.* Thus, as in *Larios*, "the plaintiffs have shown that the state legislative reapportionment plans enacted by the [State] do not represent an honest and good faith effort to construct districts as nearly of equal population as is practicable." *Id.* (quoting *Reynolds*, 377 U.S. at 577).

III. The Population Deviations In S. 6696 Are Not Supported By Neutral And Consistent Application Of Any Traditional Redistricting Principles.

As the *Reynolds* Court stated, a reapportionment plan may only contain "divergences from a strict population standard [that] are based on legitimate considerations incident to the effectuation of a rational state policy." *Reynolds*, 377 U.S. at 577. Any reapportionment plan that contains population deviations that "are not supported by legitimate interests, but rather, are tainted by arbitrariness or discrimination cannot withstand constitutional scrutiny." *Larios,* at 1338 (*citing Roman v. Sincock*, 377 U.S. 695, 710 (1964)).

In this case, the New York Senate Plan's population deviations fail to abide by such criteria because they are not supported by any legitimate interests and are tainted by discrimination. S. 6696, therefore, cannot withstand constitutional scrutiny. First, the S.6696 legislation and the information submitted to the U.S. Department of Justice for preclearance do not adequately explain or set forth the state's interests inherent in replacing a 62-seat plan with a 63-seat plan nor the "siting" choices for the sweeping array of malapportioned districts and their reasoning. Without a doubt, S. 6696 must be scrutinized more closely to identify the state's so-called interests inherent in designing and enacting an unconstitutional scheme of malapportioned districts to discriminate between voters by region, with undisputed discriminatory impact upon minority communities and districts.

Second, the differences in the populations of the districts created by S. 6696 were not necessary to achieve any of the legitimate state interests that were identified in *Larios*, "such as making districts compact and contiguous, respecting political subdivisions, maintaining the cores of prior districts, and avoiding incumbent pairings." 300 F. Supp. 2d at 1337 (*citing Karcher v. Daggett,* 462 U.S. 725, 740-41 (1983)).

The *Larios* court found that Georgia, in particular, had a "strong historical preference ... for not splitting counties outside the Atlanta Area, and not splitting precincts, maintenance of core districts, and recognition of communities of interest." 300 F. Supp. 2d at 1349 (*quoting Abrams v. Johnson*, 521 U.S. 74, 99- 100 (1997)). The New York Constitution also has a similar redistricting principle that requires minimizing the splitting of counties and preserving county-integrity unless higher constitutional principles prevail. Brietbart Reply Decl. at ¶¶ 12-14.

Simply put, the population deviations created by S. 6696 were not intended to and do not remedy any of the legitimate interests identified by *Larios* or any other court dealing with legislative reapportionment.

There can be no claim that the population deviations in S. 6696, the Senate Plan, were necessary to remedy any lack of compactness, or lack of contiguity in Senate Districts. In addition, S. 6696 was not intended to and does not seem to remedy any "pairing of incumbents." S. 6696 does not further, but violates, the legitimate state interest in "preserving the cores of prior districts." S. 6696 splits the senate districts in Rockland and Albany Counties, and downstate counties, where population centers can be encompassed within a single Senate District. See Breitbart Reply Decl. ¶¶ 13-14 In addition, S. 6696 does not further, but violates, this State's preference for not splitting counties, as stated before. S. 6696 by splitting additional 16 minor counties. Breitbart Reply Decl. ¶ 14

IV. Even The Purported Justifications Offered By The Bill's Supporters Fail Constitutional Scrutiny.

The population deviations in S. 6696 are not supported by any plausible justifications yet to be offered by the bill's sponsors or supporters. *See, e.g. Larios*, 300 F. Supp. 2d at 1340 ("In considering legitimate justifications, courts must consider 'the

consistency of application and the neutrality of effect of the non-population criteria'") (*quoting Brown v. Thomson*, 462 U.S. 835, 845-46 (1983)). Yet S. 6696 splits Clarke County, applying the principle of "preserving county integrity" in an arbitrary and inconsistent way.

The *Larios* court rejected that state's plan noting the unconstitutionality of regional favoritism, and stating that "[d]iscrimination against certain voters based on the fortuity of where in the state they live cannot be reconciled" with the Constitution), and that the Supreme Court has long held does not justify population deviations. *Larios* at 1342-47; *See, e.g., Brown v. Thomson*, 462 U.S. 835, 845-46 (1983) (non-population criteria must be neutrally and consistently applied).

The population deviations in S. 6696 plan prove that the Defendants cannot withstand constitutional scrutiny if the reapportionment plan "contain[s] any built-in bias tending to favor particular political interests or geographic areas." *Larios*, at 1346 (*quoting Abate v. Mundt*, 403 U.S. 182, 187 (1971) and *citing Brown*, 462 U.S. at 844).); *see also Cox*, 542 U.S. at 949 (Stevens, J. concurring) ("the drafters' desire to give an electoral advantage to certain regions of the State …did not justify the conceded deviations from the principle of one person one vote").

V. The Real Purpose Behind The Redistricting Contained In S. 6696 Does Not Justify The Deviation From One Person, One Vote That It Imposes.

The Defendant Senate Majority leaders in the State Legislature created a discriminatory reapportionment scheme to both dilute the aggregate voting strength of the New York City counties in the State Senate body as well as inflict harms in the equal opportunity of minority voters electing their preferred candidate. This goal of partisan political gain for the Republican Majority cannot justify the inequality of the Senate Districts created by S. 6696 because, as the *Larios* court stated, "the Supreme Court has

never sanctioned partisan advantage as a legitimate justification for population deviations." *Larios,* at 1351.

By failing to make "an honest and good faith effort" to construct districts as nearly equal as practicable and by failing to "contain only those divergences from a strict population standard that are based on legitimate considerations incident to rational state policy." *Larios,* 300 F. Supp. 2d at 1353 (quoting *Reynolds,* 377 U.S. at 577.) S. 6696 thus violates the Equal Protection clause of the United States.

VI. Plaintiff-Intervenors Can Show Substantial Irreparable Harm and Likelihood of Success on the Merits of Their Claim

The U.S. Supreme Court has recognized that the right to vote is a fundamental "core constitutional liberty." "No right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as good citizens, we must live. Other rights, even the most basic, are illusory if the right to vote is undermined". *Wesbury v. Sanders*, 376 U.S. 1, 17 (1964).

Significant vote dilution as shown by population disparity in the total population in election districts is actionable as a violation of equal protection. "[A]n individual's right to vote for state legislators is unconstitutionally impaired when its weight is in a substantial fashion diluted when compared with votes of citizens living in other parts of the State." *Reynolds v Sims*, 377 U.S. 533, 568 (1964).

In the context of the Defendants' malapportioned 2012 Senate Plan, the Ramos Intervenors, registered voters in downstate New York, "stand in the same relation regardless of where they live. Any suggested criteria for the differentiation of citizens living in other parts of the State. Any suggested criteria for the differentiation of citizens are insufficient to justify any discrimination, as to the weight of their votes, unless relevant to the permissible purposes of legislative reapportionment…***Diluting the weight of voters because of place of residence impairs basic***

constitutional rights under the Fourteenth amendment just as much as invidious discrimination based upon factors such as race or economic status." Id.at 565-66 (emphasis provided)

The New York Senate Plan and its regional malapportioned districts as described above, if implemented without review and revision, will impair the voting rights and meaningfulness of votes for the Ramos Intervenors as protected by the Equal Protection clause. If the Senate Plan is not enjoined in the coming election period, the Ramos Intervenors will suffer from the violation of their constitutional rights which constitutes *per se* irreparable harm. *Elrod v. Burns*, 427 U.S. 347 (1976), *Mitchell v. Cuomo*, 748 F.2d 804, 806 (2d Cir. 2003).

In adopting S 6696, the Republican-dominated New York State Senate made no effort to create districts as nearly equal in population as were practicable and disregarded viable plans before them and overrode alternative options in drawing a plan which could have been subordinated to constitutional principles.

IV. Balance of Hardships In Issuing An Injunction**.**

As discussed above, Defendants would suffer no substantial harm if this court were to provide an interim plan drawn by the Magistrate-Special Master as a contingency measure. This remedy is the type of court intervention that has been accepted for similar dire circumstances where legislative maps have been challenged. The hardships to Plaintiffs are to their fundamental voting rights which would be harmed irreparably if unconstitution-ally malapportioned redistricting plan were left standing for the next election or longer. The constitution does not permit the devaluing of the Plaintiff-Intervenors' votes, their political voices in the State Senate, and the power of their own elected represeantatives.

V. Issuing A Preliminary Injunction Is In The Public Interest.

The public interest is best served by having districts for elected officials drawn in a constitutional manner. The "vindication of constitutional violations is always in the public's interest." *ACLU of Tenn., Inc. v. Rutherford County*, 209 F. Supp. 2d 799, 813 (M.D. Tenn. 2002); *Larios v. Cox*, 305 F. Supp. 2d at 1344 (public interest disserved if election occurs under unconstitutional plan); *Indiana Civil Liberties Union v. O'Bannon*, 110 F. Supp. 2d 842, 858-59 (S.D. Ind. 2000), *aff'd by* 259 F.3d 766 (7th Cir. 2001); *ACLU v. Pulaski County*, 96 F. Supp. 2d 691, 701- 02 (E.D. Ky. 2000), *aff'd,* 354 F.3d 438 (6th Cir. 2003).

For the reasons set forth above, it is in the public interest to enjoin the unconstitutional redistricting of Senate districts and the resulting discrimination caused by S 6696.

CONCLUSION

For the foregoing reasons stated, the Ramos Intervenors' motion for preliminary relief should be approved.

Respectfully Submitted,

Jackson Chin /s

LatinoJustice PRLDEF
Juan Cartagena
Jose L. Perez
Jackson Chin

Attorneys for Plaintiff-Intervenors *Juan Ramos, Nick Chavarria, Graciela Heymann, Sandra Martinez, Edwin Roldan, Manolin Tirado, Santiago Diaz and Edwin Figueroa*