UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

MARK A. FAVORS, *et al.*,	:	
Plaintiffs,	:	
- against -	:	1:11-cv-05632-DLI-RLM
ANDREW M. CUOMO, *et al.*,	:	
Defendants.	:	

MEMORANDUM IN OPPOSITION TO PLAINTIFFS-INTERVENORS' APPLICATION FOR PRELIMINARY INJUNCTION AND EXPEDITED DISCOVERY

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April 17, 2012

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This Memorandum of Law is submitted on behalf of Defendants BRIAN M. KOLB, Minority Leader of the New York State Assembly ("Defendant Kolb") and ROBERT OAKS ("Defendant Oaks") in opposition to the application for a preliminary injunction and expedited discovery filed by the Drayton Plaintiffs-Intervenors ("Drayton") dated April 12, 2012, in opposition to the motion for preliminary injunction filed by the Ramos Plaintiffs-Intervenors ("Ramos") (collectively, Drayton and Ramos are referred to herein as "Plaintiffs-Intervenors") and in response to Court's Order to Show Cause dated April 13, 2012 directing the parties to show cause why the defendants herein should not be directed to produce the documents requested by Drayton pursuant to its request for expedited discovery.

PRELIMINARY STATEMENT

Plaintiffs-Intervenors have moved for equitable relief pursuant to the Court's Written Scheduling Order of April 3, 2012, as amended by the Clarifying Order dated April 4, 2012. Plaintiffs-Intervenors seek to enjoin the defendants from implementing the enacted New York State 2012 redistricting plans and to require submission of revised redistricting plans (see Drayton Motion for Preliminary Injunction dated April 12, 2012; Ramos Motion for Preliminary Injunction dated April 12, 2012).

This Court has, in its Orders, articulated two potential grounds for equitable relief, namely "that one or more of the issues presented in the complaints that have been filed in this case has sufficient legal and factual merit to meet the standards set out above, such that the Court should not defer to one or more aspects of the legislative plan in the absence of preclearance" or that "the Senate and/or Assembly plan stands a reasonable possibility of failing to gain section 5

preclearance, such that the Court should not defer to one or more aspects of the plan in the absence of preclearance." As more fully explained in Point I, infra, Plaintiffs-Intervenors have failed to make the requisite showing necessary for the grant of such equitable relief.

The request for expedited discovery should also be denied. Although they claim that discovery is needed to support their motion for injunctive relief, Plaintiffs-Intervenors do not identify any specific document they are looking for. Rather, it appears the discovery request is a pretext for obtaining permission to rifle through the Defendants' emails and other files – all in hopes that the Plaintiffs-Intervenors will find *something* to support their position. This is made even more apparent by the overbroad and indiscriminate nature of the demands.

It is respectfully submitted that the Court should not order discovery until a concrete basis for doing so has been established. Notably, the Department of Justice is in the process of reviewing the State Redistricting Plan, and has indicated that it intends to render a decision by April 27, 2012. This Court should not usurp that process by ordering discovery in a case that may well be rendered moot at the end of the month. *See* Commonwealth Prop. Advocates, LLC v. Saxon Mortgage Servs., Inc. et al., 2011 U.S. Dist. LEXIS 23693, at *4 (D. Colo. March 8, 2011) (holding that "it is sensible to determine the threshold issues of subject matter jurisdiction and abstention before putting the parties through the process and expense of discovery.")

ARGUMENT

POINT I

PLAINTIFFS-INTERVENORS ARE NOT ENTITLED TO A PRELIMINARY INJUNCTION

"A preliminary injunction is an extraordinary remedy never awarded as of right." Winter v. Natural Res. Def. Council, Inc., 555 U.S. 7, 24(2008). The purpose of a preliminary injunction is to prevent legal harm and preserve the *status quo* until final determination of the action. Coastal Distrib., LLC v. Town of Babylon, 2005 U.S. Dist. LEXIS 40795 (E.D.N.Y. July 15, 2005). A district court may grant a preliminary injunction where the moving party establishes: "(a) irreparable harm and (b) either (1) likelihood of success on the merits, or (2) 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." Forest City Daly Housing, Inc. v. Town of North Hempstead, 175 F.3d 144, 149 (2d Cir. 1999); Jackson Dairy Inc. v. H.P. Hood & Sons, Inc., 596 F.2d 70, 72 (2d Cir.1979).

Where, as here, an injunction is sought against government action taken in the public interests pursuant to a statutory or regulatory scheme, the focus is on whether the movant has established a likelihood of success on the merits. *See* Forest City Daly Housing, 175 F.3d at 149 (holding that "the less-demanding 'fair ground for litigation' standard is inapplicable, and therefore a 'likelihood of success' must be shown") *citing* Int'l Dairy Foods Ass'n v. Amestoy, 92 F.3d 67, 70 (2d Cir. 1996); s*ee also* No-Spray Coalition, Inc. v. City of New York, 252 F.3d 148, 150 (2d Cir. 2001). Moreover, where the injunction "'will alter rather than maintain the status quo,' the movant must show 'clear' or 'substantial' likelihood of success." No-Spray Coalition, 252 F.3d at 150 *citing* Rodriguez v. DeBuono, 175 F.3d 227, 233 (2d Cir. 1999).

Drayton's request for preliminary injunction must be denied because, as they admit, they fail to "fully present the evidence necessary to succeed on either their Fourteenth Amendment or their claims under Section 2 of the Voting Rights Act" and cannot demonstrate the clear or substantial likelihood of success on the merits necessary to defeat an enacted state statute. (Drayton Pls.-Int. Mem. in Support dated April 12, 2012 at p. 3, n.1). Rather than come forward with evidence upon which this Court could grant its request for an injunction, Drayton asks for expedited discovery in the *hopes* that they find *something* to support their application.

Ramos alleges that the Legislature failed to seek preclearance of the change from 62 to 63 Senate districts. *See* Ramos Pl.-Int. First Am. Compl. ¶ 33 ("This controversial Senate plan change was neither pre-cleared before its implementation nor presented for timely preclearance."); Pls.' First Am. Compl. ¶ 72-73 (alleging that "the Legislature used a different methodology to calculate the number of districts for the Enacted Plan" and that "[t]he Legislature has not yet sought pre-clearance for the change in methodology . . . . Its failure to do so may and likely will be subject to challenge as a violation of the Voting Rights Act"). This contention is not accurate. The fact is that the Legislature added an extra Senate seat as part of the same legislation that enacted the 2012 Senate plan. The legislation was signed into law on March 15, 2012, and expeditiously submitted for preclearance with the Department of Justice ("DOJ") the next day. It must be noted that as a part of every redistricting cycle, the Legislature must apply the formula from Article III, section 4 of the New York State Constitution.

Ramos has alleged the legal deficiencies of the State's plan as follows:

> o "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."
>
> o "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."
>
> o "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.) "
>
> o "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. Ramos' allegations of violation of the one-person, one-vote rule are incorrect. "The Supreme Court has held that such [state legislative] apportionment plans generally satisfy the one-person, one-vote rule if they have a maximum population deviation among districts of less than 10%." Goosby v. Town of Hempstead, 981 F. Supp. 751, 758 (E.D.N.Y. 1997) (citations omitted). Ramos does not allege deviations in excess of 10% for the state legislative districts and has therefore not stated a violation of the one-man, one-vote rule.

It must also be stressed that the Plaintiffs-Intervenors' underlying claims involve challenges to a State statute that enjoys a *presumption* of constitutionality. "It is the settled law of this state that statutes are presumed to be constitutional, and the standard of beyond a reasonable doubt is the one to be applied." Cohen v. Cuomo, No. 102185/2012 (Sup. Ct. New York County April 13, 2012) (*citing* Matter of Fay, 291 N.Y. 198, 206-207 (1943)) (Dkt. 31, Ex. 1). In Matter of Wolpoff v. Cuomo, 80 N.Y.2d 70, 78 (1992), the New York Court of Appeals opined that:

> A strong presumption of constitutionality attaches to the redistricting plan and we will upset the balance struck by the Legislature and declare the plan unconstitutional only when it can be shown beyond reasonable doubt that it conflicts with the fundamental law, and that until every reasonable mode of reconciliation of the statute with the Constitution has been restored to, and reconciliation has been found impossible.

citing Matter of Fay, 291 N.Y. 198, 207 (1943) (internal quotation marks omitted).

The rule in Wolpoff was cited and followed by the Southern District of New York in another redistricting challenge entitled Wright v. Schoenberger, 262 F. Supp. 2d 156, 159 (S.D.N.Y. 2003) (noting that legislative redistricting plans "whether in respect to compactness or any other aspect of a redistricting plan, will be overturned 'only when it can be shown beyond reasonable doubt that [the plan] conflicts with the fundamental law.') In this case, an injunction against the State Restricting Plan should not be granted because no party has established a likelihood that the challenged the plan is illegal beyond a reasonable doubt.

Furthermore, "a court should not declare a law to be unconstitutional unless it is clear that the statute is such, and the court should resolve all doubts in favor of the law's being constitutional." Cohen v. Cuomo, supra (*citing* Johnson v. City of New York, 274 N.Y. 411, 430 [1937]). No party has made such a showing, much less demonstrated that it is likely to overcome the presumption of constitutionality.

Although certain parties (including Drayton and Ramos) may be unhappy with the State Redistricting Plan, there is no 14th Amendment violation because the challenged plan complies with New York's traditional redistricting principles. The recent decision Cohen v. Cuomo, *supra* makes that clear. Id. (adjudging and declaring that "the formula prescribed in article III, §4 of the New York Constitution does not forbid New York from increasing the size of the New York State Senate to 63 seats in 2012") (Dkt. 31, Ex. 1).

This finding is important for two reasons. First, "state courts are the ultimate expositors of state law." Carvajal v. Artus, 633 F.3d 95, 107 (2d Cir. N.Y. 2011) *citing* Mannix v. Phillips, 619 F.3d 187, 199 (2d Cir. 2010) (internal quotation marks and citation omitted); *see also* Tunick v. Safir, 209 F.3d 67, 76 (2d Cir. 2000) (holding that the question of how far a state court can go when interpreting its own laws is "paradigmatically one of state law") (internal quotation marks omitted). Second, if a redistricting plan has a rational explanation, and has not subordinated traditional 'legitimate districting principles' in order to serve the goal of racial gerrymandering, then such a plan will survive so long as it meets rational basis review and is rationally related to a legitimate government interest. Bush v. Vera, 517 U.S. 952, 1010 (Kennedy, J., concurring). Cohen validates the compliance of the challenged plan with traditional New York redistricting principles and, given this decision, neither Drayton nor Ramos can demonstrate, particularly in the absence of any evidence, that traditional redistricting principals were abandoned to serve the goal of racial gerrymandering.

While the enacted Senate and Assembly Redistricting Plans are awaiting preclearance by the DOJ and/or the United States District Court for the District of Columbia (New York v. United States, 12-413 [RBW-JWR-RJL] [D.D.C.]), and cannot be implemented unless and until preclearance has been secured, the status of that process is well underway and a number of defendants to this action have elected to intervene in the D.D.C. action. See Dkt. 309 (4/13/2012). According to the U.S. Attorney General's Answer in the D.D.C. action, "[t]he Attorney General has undertaken an expedited review of the [preclearance] submission and has worked cooperatively with counsel for the New York Senate in obtaining necessary information and arranging necessary interviews. Barring any unforeseen circumstance, the Attorney General anticipates making a determination on the New York Senate Plan by April 27, 2012." (Notice of Attorney General's Answer and Status Rpt., Att. 1 [Dkt. 311]). Evaluation of the Plan in conjunction with Section 5 of

the Voter Registration Act is the primary goal of the preclearance process. According to this schedule, the U.S. Attorney General's determination will be forthcoming in advance of the return date for this motion, which, for Drayton, was slated for May 3, 2012.

In Perry v. Perez, __ U.S. __, 132 S. Ct. 934 (2012) it was clear that the legislatively enacted plan would not be precleared in time for the upcoming election, and the three-judge Perry Court ordered into effect an "interim plan" that affirmatively displaced the legislatively enacted plan. Under the circumstances at hand, preclearance has not been denied, has not been delayed, and in all probability will be completed in short order. The equitable relief demanded by Ramos and Drayton should not be granted.

POINT II

PLAINTIFFS-INTERVENORS' MOTION FOR EXPEDITED DISCOVERY SHOULD NOT BE GRANTED

Plaintiffs-Intervenors claim they "seek limited discover [sic]."[1] However, their discovery request is anything but limited. In each of the five requests, Plaintiffs-Intervenors seek "all electronic and hardcopy documents, including all drafts, prepared by, edited by or reviewed by" LATFOR and most of the named defendants[2] that pertain to the Senate and Assembly redistricting effort.[3] At the outset, this demand will likely invoke legislative privilege, and other relevant privileges. The full extent of those privileges cannot be reviewed until the documents and materials are reviewed. As explained in more detail below, these requests are unduly

[1] Plaintiffs-Intervenors' Donna Kaye Drayton et al Motion for Expedited Discovery, dated April 12, 2012 ("Discovery Motion"), pg. 1.

[2] Inexplicably, the production request excludes Defendants Cuomo and Oaks.

[3] Plaintiffs-Intervenors' First Request for Production of Documents, dated April 12, 2012, pp. 8-9.

burdensome and unreasonable, and should be denied on that basis. Moreover, the requests are irrelevant.

Further, Plaintiffs-Intervenors assert that they need the requested documents because "on the record herein it is impossible to fully ascertain Defendants[']… reason(s) for the creation of the enacted New York State Senate and Assembly plans and the location of the new 63rd Senate seat."[4] It is for that very reason that their motion for a preliminary injunction should be denied (*see* Point I above). Plaintiffs-Intervenors essentially *admit* that there is not enough evidence to support their motion, and seek expedited discovery in hopes that they will find something to cure the obvious infirmities.[5] Notably, the Plaintiffs-Intervenors do not point to a specific item or document that they believe will provide them with a basis for its challenge to the State Redistricting Plan. Rather, they cast a wide net of broad demands (which would need to be produced in a very short time) in hopes that they will discover some infirmity to pursue this matter further.

The Drayton Plaintiffs-Intervenors seek to investigate the motivations of the Legislature. But motivations are irrelevant to the issues before this Court. The only matter arguably remaining before this Court is whether the State of New York has complied with the applicable requirements of the United States Constitution.[6] There is no dispute that the State Redistricting

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[4] Discovery Motion, pp. 2-3; *see also* Declaration of Joan P. Gibbs, dated April 12, 2012 ("Gibbs Declaration"), at ¶¶ 4-5; Plaintiffs-Intervenors' Memorandum In Support of Their Motions ("Plaintiffs-Intervenors' Memorandum"), dated April 12, 2012, p. p. 19.

[5] Id. (arguing that expedited discovery will "better enable the Court to assess the parties' respective interests at the preliminary injunction hearing in this matter."

[6] Defendants Kolb and Oaks assert that until the Court decides the pending motions to dismiss, no discovery matters are properly before the Court. Accordingly, the Court should refrain from rendering any decisions on Plaintiffs-Intervenors' motions until after it decides the motions to dismiss. Moreover, given the limited scope of the Court's jurisdiction in this matter, the State's compliance with the Voting Rights Act and the ew York Constitution are not properly before it.

Plan was enacted pursuant to a legitimate legislative process. Due process of law was followed, and therefore, the Plan is accorded a presumption of constitutionality.

Moreover, the information requested is not necessary to enable the Court to assess the parties' interests, nor will it assist the Court in doing so. Indeed, the pleadings submitted to date should amply make clear that Plaintiffs-Intervenors object to certain, but clearly not all, of the Assembly districts, and to the manner in which the new Senate districts were established. On the other hand, the pleadings make clear that none of the Defendants, except the Senate Minority Defendants, believe that Plaintiffs-Intervenors' claims have merit, that their constitution rights have been violated, that the State has acted contrary to the requirements of the Voting Rights Act, or that the Court should, or has the ability to, ignore the State's duly enacted Assembly and Senate districts and create its own districts. Knowing the contents of emails between and among legislators is not going to provide any useful information to the Court as it evaluates the merits of this case (in the event it reaches the merits).

Turning to the scope of the requests, the Court must not lose sight of the fact that the only Assembly districts specifically disputed by Plaintiffs-Intervenors are the Nassau County districts. Plaintiffs-Intervenors' allege only that the Assembly's Nassau County districts violate Section 2 of the Voting Rights Act.[7] As to the rest of the Assembly districts, they allege only generally and vaguely that their equal protection and due process rights have been violated, and that the districts fail to comply with the requirements of Article II, Section 5 of the New York Constitution.[8] Notably, their specific claims regarding violation of their equal protection rights

[7] *See* Plaintiffs-Intervenors' First Amended Complaint, dated March 27, 2012, Dkt. No. 254, Count VI, ¶¶ 124-126; and Plaintiffs-Intervenors' Memorandum, pp. 13-16.

[8] Id. at Counts I, II, and III, respectively.

is limited to the Senate districts; Count IV of their Amended Complaint contains no specific allegations regarding any Assembly districts.

Notwithstanding the very limited challenge to the new Assembly districts, Plaintiffs-Intervenors request every email, every memo, every note, every draft, every, spreadsheet, and every other scrap of paper (and their electronic equivalents) pertaining to the Assembly redistricting plan. They then have the chutzpah to argue to the Court that their discovery request is "narrowly tailored."[9]

In both their Discovery Motion and Memorandum of Law, Plaintiffs-Intervenors argue that the Court has discretion to permit expedited discovery. Defendants Kolb and Oaks do not dispute that the Court has such discretion. The issue, however, is not whether the Court has discretion, but whether the Court should exercise that discretion. On that point, Plaintiffs-Intervenors offer virtually no justification for their position. The pretext for their expansive and burdensome discovery requests to the Assembly is that it will assist the Court in understanding the parties' interests, as discussed above. This Court should not allow Plaintiffs-Intervenors to go on an expedited fishing expedition in the hope that they may uncover some document that would establish legitimacy to their claims. Moreover, the Court should not accept Plaintiffs-Intervenors' mere invocation of words from a prior decision as proper support for their request,[10] particularly when, as here, there is not a scintilla of a rationale offered in support of the request.

Plaintiffs-Intervenors cite to Semitool, Inc. v. Tokyo Electron Am., Inc., 208 F.R.D. 273, 276 (N.D. Cal. 2002) in support of their erroneous and flawed assertions regarding the prejudice to Defendants associated with their unsupported discovery requests. If anything, that decision

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[9] Plaintiffs-Intervenors' Memorandum, p. 19; Discovery Motion, second page.

[10] Plaintiffs-Intervenors' Memorandum, p. 19, *citing* Edudata Corp. v. Scientific Computers, Inc., 599 F.Supp 1084, 1088 (D. Minn. 1984).

supports Defendants Kolb's and Oaks' position that Plaintiffs-Intervenors' motion should be denied. First, the Court there noted that "[t]he relevance of the requested discovery is not at issue here." Id. In contrast, the relevance of the discovery materials in this case is very much in dispute. As discussed above, the motivations of individual legislators is not relevant to issue of whether Chapter 16 of the Laws of 2012, as amended by Chapter 20 of the Laws of 2012, is legally infirm. Second, the requests in that case were narrow and specific, whereas the requests in this matter are exceedingly broad with no attempt made to limit them to the issues actually being disputed (in the case of the Assembly, the Nassau County districts only). Thus, while the materials at issue in Semitool were found to be core documents that would have been produced in due course, the same cannot be said for the blunderbuss discovery requests submitted in this matter for which no demonstration has been made that such materials would be discoverable in the ordinary course of this action.

POINT III

EVEN IF THE COURT ALLOWS EXPEDITED DISCOVERY, DEFENDANTS WILL NEED MORE THAN TWO DAYS TO SEARCH, FOR, COMPILE, AND PROVIDE THE DOCUMENTS

In its April 13, 2012 Order to Show Cause, the Court directed the Defendants to show cause why they should not be required to produce the requests documents by April 19, 2012. Defendants Kolb and Oaks offer two reasons in response to this directive.

First, as noted above, the Court has not yet ruled on the pending motions to dismiss. The Court should not address any discovery issues until it determines that there is a valid controversy before it. *See* Longway v. Jefferson County Bd. of Supervisors, 24 F.3d 397 (2d Cir.1994). If the Court grants those motions, Defendants would not have any obligation to respond to

Plaintiffs-Intervenors' discovery requests. This matter is very different from the issues associated with congressional redistricting, where there was no legislative action. The Court now sits solely in review of the duly enacted State redistricting plans, which have the presumption of constitutionality. Moreover, the constitutionality of the enactment of 63 Senate districts is a matter of state law being addressed elsewhere and not within the jurisdiction of this Court, and the State's compliance with Section 5 of the Voting Rights Act is also being addressed elsewhere and is not properly before this Court. Accordingly, before the Court considers granting any relief to Plaintiffs-Intervenors, it must determine the threshold issues raised in the motions to dismiss. To proceed in any other way would be unfair and unjust to Defendants, as well as a derogation of their rights under FRCP 12. *See* Commonwealth Prop. Advocates, LLC v. Saxon Mortgage Servs., Inc. et al., 2011 U.S. Dist. LEXIS 23693, at *4 (D. Colo. March 8, 2011) (holding that "it is sensible to determine the threshold issues of subject matter jurisdiction and abstention before putting the parties through the process and expense of discovery.")

Second, the discovery requests posed by Plaintiffs-Intervenors are exceedingly broad. It will require significant effort to locate and compile all electronic and hard copy documents prepared, edited, and reviewed by Defendants Kolb and Oaks. As a member of LATFOR, Defendant Oaks reviewed hundreds, if not, thousands of documents. As the Leader of the Assembly Minority Conference, Defendant Kolb received many thousands of documents related to redistricting. Not only will the Defendants need to locate all of these documents, they will then need to review them to determine if any are privileged, and they may need to redact personal information from them. It is not reasonable or possible for them to engage in, and complete, this exercise in two days. Moreover, because there is no imminent deadline for action,

as was the case for congressional redistricting, there is no need for such an abbreviated response period.

Further, we note that while Plaintiffs-Intervenors claim that they need all of this information to support their arguments, none of the experts whose declarations were attached to Plaintiffs-Intervenors' motion papers made any reference to the need for these materials. Indeed, it appears that their experts have been able to conduct their analysis based on the data already available from LATFOR. While Plaintiffs-Intervenors claim that the submissions are incomplete, they attribute that status to "time constraints," not the absence of the requested materials.[11] They further stated that their "expert reports will be completed shortly and will be submitted to the Court as soon as they are done."[12]

Given these inconsistent assertions, before imposing extreme burdens on Defendants, the Court should require Plaintiffs-Intervenors to demonstrate the purpose and need for the requested documents. The Court should first ensure that Plaintiffs-Intervenors are not simply engaged in an improper fishing expedition, and it should then require Plaintiffs-Intervenors to tailor their discovery requests to information that is related to the claims they have raised. *See* Marka D. Penalbert-Rosa et al. v. Luis G. Fortunoburset et al., 2011 U.S. App. LEXIS 1780, at **9 (1st Cir. Jan. 28, 2011) (stating that, "[s]pecific information, even if not in the form of admissible evidence, would likely be enough [to survive a motion to dismiss]; pure speculation is not. This may seem hard on a plaintiff who merely suspects wrongdoing, but even discovery requires a minimum showing and 'fishing expeditions' are not permitted"). Only after they have done so should the Court entertain a request for expedited discovery. If such a request is granted,

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[11] Gibbs Declaration, ¶ 8.

[12] Id. at ¶ 11.

Defendants should be given a reasonable amount of time to gather and produce those documents.

CONCLUSION

For the foregoing reasons, Plaintiffs-Intervenors' applications for equitable relief and expedited discovery should be dismissed in their entirety.

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Dated: April 17, 2012
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CERTIFICATE OF SERVICE

I hereby certify that, on this 17th day of April, 2012, a true and correct copy of the foregoing was served on the following counsel of record through the Court's CM/ECF system:

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