

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

-----x
MARK A. FAVORS, et al.,

Plaintiffs,

v.

ANDREW M. CUOMO, et al.,

Defendants.
-----x

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

DECLARATION OF JOAN P. GIBBS

Joan P. Gibbs, declares pursuant to 28 U.S.C. Section 1746:

1. I am the General Counsel for the Center for Law and Social Justice at Medgar Evers College of the City University of New York, which represents Plaintiffs-Intervenors Donna Kaye Drayton, Edwin Ellis, Aida Forrest, Gene A. Johnson, Joy Woolley, Sheila Wright, Melvin Boone, Grisselle Gonzalez, Dennis O. Jones, Regis Thompson Lawrence, Aubrey Phillips, in the above-captioned action.

2. I submit this Declaration, along with the attached Exhibits,¹ in compliance with the Court's Order of April 20, 2012 directing Plaintiffs –Intervenors “to produce their submissions as to evidence they have to date to support claims as to 10% variance” by Friday, April 27, 2012.

I. BACKGROUND

3. The United States Department of Commerce Bureau of the Census conducted the decennial census of the United States in 2010. On December 21, 2010, pursuant to statute, the Census Bureau announced and certified the population of New York as 19, 378,102.

¹ Unless otherwise noted, all of the Exhibits attached hereto were obtained from the LATFOR website.

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

5. Pursuant to Section 5-a of the New York Constitution, the appropriate population for the apportionment of the state legislative seats is the total population of the state. Section 5-a provides that:

For the purpose of apportioning senate and assembly districts pursuant to the foregoing provisions of this article, the term “inhabitants, excluding aliens” shall mean the whole number of persons.²

6. The 2010 Census revealed significant population disparities among New York State Senate districts. In particular, on April 1, 2000, the population of New York State, according to the 2000 Census, was 18,976, 457. Thus, the ideal population for the then 62 New York Senate seats was 306, 072. Following the 2010 Census, the population of New York State was reportedly 19,376,102. Hence, the ideal population for the now 63 New York State districts is 305, 556.

7. On March 14, 2012, the New York State Legislature enacted S. 6696-A. 9525, an act providing for the decennial redistricting of New York State’s Senate and Assembly districts. The following day, March 15, 2012, the Governor of the New York, signed S.6696-A. 9525 into law as Chapter 16 of the Laws of 2012 (“Chapter 16”).

8. Six days later, on March 21, 2012, the Senate and Assembly enacted S. 6755-A. 9584, amending Chapter 16, to make technical amendments and corrections to the provisions set forth in S. 6696-A.9525. On March 26, 2012, the Governor of New York signed S.6755-A. 9584 into

² Section 5-a was added by vote of the people of the New York on November 4, 1969.

as Chapter 20 of the Laws of 2012 (“Chapter 20”). In enacting Chapter 16, the Legislature increased the size of the Senate from 62 to 63 seats. See Exhibit 1, attached hereto.

9. In acknowledgment Section 5-a’s mandate that the appropriate population for apportioning the New York State Senate and Assembly districts is total population of the state, Chapter 16 states in pertinent part:

Section 123. Number of Senators. The senate bill shall consist of sixty-three members chosen from the described within and apportioned among the counties on the basis of the number of inhabitants of the state based on the federal Census of two thousand ten, as adjusted pursuant to the provisions of part xx of chapter fifty-seven of the laws of two thousand ten.

See Exhibit 2, attached hereto. (emphasis supplied).

10. The rate of population growth in New York and New York City in the years between 2000 and 2010 was not as great as elsewhere in the United States. In particular, following the 2000 Census, the population of New York and New York City was, respectively, 18,976,457 and 8,000,278. Following the 2012 Census the populations of New York and New York City was, respectively, 19,378,102 and 8,175,133. In short, of the reportedly 403,395 of the new inhabitants of New York State since the 2000 Census, 174,855, or, nearly half, live in New York City.

11. The majority of New York State’s Black and other racial and language minorities live within New York City, and specifically within the three counties covered by Section 5 of the Voting Rights Act. In particular, according to the 2010 Census, 1,861,295 Black people live in New York City: 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. Of the 1,861,295 Black people residing in New York City, the overwhelming majority, 1,421,101 persons, live in the three counties covered by Section 5 (the Bronx, Kings, and New York).

12. Likewise, the majority of the Hispanics in New York State also live in New York City. According to the 2010 Census, 2,236,073 Hispanics reside in New York City. Of the 2,236,073 Hispanics who live in New York City, 1,641,375 live within the three counties covered by Section 5 of the Voting Rights Act. In particular, 741,413, Hispanics live in the Bronx, 496,285 in Kings County, 403,577 in New York County. 613,750 Hispanics live in Queens County and 81,051 on Staten Island.

13. Similarly, the majority of Asians in New York State reside in New York City. Indeed, seven out of ten Asians in New York State reside in three boroughs of New York City: Queens, Brooklyn and Manhattan. According to the 2010 Census, of the 1,028,119 Asian who live in New York City, 508,334 live in Queens, 177,524 live in Manhattan, and 260,129 live in Brooklyn. In short, of the 1,028,119 Asians who live in New York City, 437,753 live in two of the counties (Kings and New York) covered by Section 5 of the Voting Rights Act.

**II. THE REGIONAL MALAPPORTIONMENT IN THE
2012 SENATE PLAN ARE UNNECESSARY AND
UNJUSTIFIED BY TRADITIONAL REDISTRICTING PRINCIPLES**

14. As previously mentioned the 2012 Senate maps contains 63 seats. Senate Districts 1 - 9 are on Long Island. See Exhibit 1. Senate Districts 10 to 33 are within New York City. Senate Districts 34 and 36 are Bronx /Westchester districts, with, respectively, 94.4% and 80.% of their populations within New York City. Id. Senate Districts 35 and 37 are wholly within Westchester County. Id. The remaining districts, Senate Districts, Senate Districts, 38 to 63 are to the north of New York City. Id.

15. The deviation statistics for the enacted Senate Plan, S. 6696, are as follows:

Total deviation (range): 27,034 persons
Total deviation %: 8.80%
Mean deviation %: 3.67
Standard deviation %: 3.85%

See Declaration of Todd Breitbart, dated, April 26, 2012, [hereinafter “Breitbart Declaration “], at p. 6, paragraph 12; Declaration of Andrew A. Beveridge, [hereinafter “Beveridge Declaration”] dated, April 26, 2012, at p. 6. paragraph 17.

A. The Adjusted Total Populations, Deviations And Demographics In The 2012 Senate Plan

16. While the aforementioned deviation statistics for S. 6696 may appear *de minimis*, they are not. Rather, as demonstrated below, the deviations in the S.6696 evidence a systematic and intentional effort on the part of the Legislature, specifically the Senate Majority, to avoid creating a new Senate seat in New York City and to instead create a new White District upstate.

17. This is so because, as shown below, while all of the Senate districts downstate, including the nine Senate districts on Long Island are over-populated, all of the Senate Districts upstate, Senate Districts 33-63, are under-populated.

18. The adjusted total populations,³ deviations and demographics of Senate Districts 1-9 on **Long Island** are follows:

Senate District 1

Total Adjusted Population: 315,163
Deviation: 7,807
Deviation %: 2.54
Demographics:
 Total NH White: 242,981
 % of Population: 77.10
 Total Black: 16,825
 % of Population: 5.34
 Total Hispanic: 42,957
 % of Population: 13.63

³ Throughout this discussion, the adjusted total population figures are based on the redistricting dataset created by LATFOR pursuant to Chap. 57 of the Laws of 2010, subtracting inmates of state and federal prisons from the places of incarceration and reallocating them, insofar as possible, to their prior home addresses.

Total Asian: 6,348
% of Population: 2.01

See Exhibit 3 at p. 1

Senate District 2

Total Adjusted Population: 315,164
Deviation: 7,808
Deviation %: 2.54
Demographics:
Total NH White: 259,587
% of Population: 82.37
Total Black: 9,251
% of Population: 2.94
Total Hispanic: 24,689
% of Population: 7.83
Total Asian: 17,231
% of Population: 5.47

See Exhibit 3 at p. 2

Senate District 3

Total Adjusted Population: 315,163
Deviation: 7,807
Deviation %: 2.54
Demographics:
Total NH White: 192,690
% of Population: 61.14
Total Black: 25,394
% of Population: 8.06
Total Hispanic: 82,635
% of Population: 26.22
Total Asian: 8,671
% of Population: 2.75

See Exhibit 3 at p. 3

Senate District 4

Total Adjusted Population: 315,163
Deviation: 7,807
Deviation %: 2.54
Demographics:
 Total NH White: 212,233
 % of Population: 67.34
 Total Black: 29,483
 % of Population: 9.35
 Total Hispanic: 58,256
 % of Population: 18.48
 Total Asian: 9,581
 % of Population: 3.04

See Exhibit 3 at p. 4

Senate District 5

Total Adjusted Population: 315,163
Deviation: 7,807
Deviation %: 2.54
Demographics:
 Total NH White: 241,938
 % of Population: 76.77
 Total Black: 10,111
 % of Population: 3.21
 Total Hispanic: 33,978
 % of Population: 10.78
 Total Asian: 24,333
 % of Population: 7.72

See Exhibit 3 at p. 5

Senate District 6

Total Adjusted Population: 315,163
Deviation: 7,807
Deviation %: 2.54
Demographics:

Total NH White: 190,354
% of Population: 60.40
Total Black: 46,383
% of Population: 14.72
Total Hispanic: 56,994
% of Population: 18.08
Total Asian: 16,427
% of Population: 5.21

See Exhibit 3 at p. 6

Senate District 7

Total Adjusted Population: 315,163
Deviation: 7,807
Deviation %: 2.54
Demographics:
Total NH White: 196,125
% of Population: 62.23
Total Black: 23,509
% of Population: 7.46
Total Hispanic: 43,581
% of Population: 13.83
Total Asian: 44,858
% of Population: 14.23

See Exhibit 3 at p. 7

Senate District 8

Total Adjusted Population: 315,163
Deviation: 7,807
Deviation %: 2.54
Demographics:
Total NH White: 199,459
% of Population: 63.29
Total Black: 48,180
% of Population: 15.29
Total Hispanic: 54,673
% of Population: 17.35

Total Asian: 7,494
% of Population: 2.38

See Exhibit 3 at p. 8

Senate District 9

Total Adjusted Population: 315,164
Deviation: 7,808
Deviation %: 2.54
Demographics:
Total NH White: 211,656
% of Population: 67.16
Total Black: 36,114
% of Population: 11.46
Total Hispanic: 44,521
% of Population: 14.13
Total Asian: 16,919
% of Population: 5.37

See Exhibit 3 at p. 9

19. The adjusted total populations, deviations and demographics of Senate Districts 10 to 33 in **New York City** are as follows:

Senate District 10

Total Adjusted Population: 319,113
Deviation: 11,575
Deviation %: 3.83
Demographics:
Total NH White: 19,958
% of Population: 6.25
Total Black: 163,005
% of Population: 51.08
Total Hispanic: 66,508
% of Population: 20.84
Total Asian: 36,659
% of Population: 11.49

See Exhibit 3 at p. 10

Senate District 11

Total Adjusted Population: 319,114
Deviation: 11,758
Deviation %: 3.83
Demographics:
 Total NH White: 142,776
 % of Population: 44.74
 Total Black: 11,606
 % of Population: 3.64
 Total Hispanic: 49,027
 % of Population: 15.36
 Total Asian: 105,561
 % of Population: 33.08

See Exhibit 3 at p. 11

Senate District 12

Total Adjusted Population: 319,114
Deviation: 11,758
Deviation %: 3.83
Demographics:
 Total NH White: 114,601
 % of Population: 35.91
 Total Black: 15,244
 % of Population: 4.78
 Total Hispanic: 116,752
 % of Population: 36.59
 Total Asian: 62,541
 % of Population: 19.60

See Exhibit 3 at p. 12

Senate District 13

Total Adjusted Population: 319,115

Deviation: 11,759

Deviation %: 3.83

Demographics:

Total NH White: 45,780

% of Population: 14.35

Total Black: 20,991

% of Population: 6.58

Total Hispanic: 194,048

% of Population: 60.81

Total Asian: 51,793

% of Population: 16.23

See Exhibit 3 at p. 13

Senate District 14

Total Adjusted Population: 319,112

Deviation: 11,756

Deviation %: 3.83

Demographics:

Total NH White: 33,116

% of Population: 10.38

Total Black: 163,736

% of Population: 51.31

Total Hispanic: 57,240

% of Population: 17.94

Total Asian: 45,341

% of Population: 14.21

See Exhibit 3 at p. 14

Senate District 15

Total Adjusted Population: 319,115

Deviation: 11,759

Deviation %: 3.83

Demographics:

Total NH White: 184,865

% of Population: 57.93
Total Black: 12,207
% of Population: 3.83
Total Hispanic: 76,420
% of Population: 23.95
Total Asian: 36,887
% of Population: 11.56

See Exhibit 3 at p. 15

Senate District 16

Total Adjusted Population: 319,113
Deviation: 11,757
Deviation %: 3.83
Demographics:
Total NH White: 75,946
% of Population: 23.80
Total Black: 10,383
% of Population: 3.40
Total Hispanic: 54,618
% of Population: 17.12
Total Asian: 169,623
% of Population: 53.15

See Exhibit 3 at p. 16

Senate District 17

Total Adjusted Population: 318,022
Deviation: 10,666
Deviation %: 3.47
Demographics:
Total NH White: 209,195
% of Population: 65.78
Total Black: 8,270
% of Population: 2.60
Total Hispanic: 37,684
% of Population: 11.85

Total Asian: 57,648
% of Population: 18.13

See Exhibit 8 at p. 17

Senate District 18

Total Adjusted Population: 318,022
Deviation: 10,666
Deviation %: 3.47
Demographics:
Total NH White: 56,895
% of Population: 17.89
Total Black: 65,614
% of Population: 20.63
Total Hispanic: 170,733
% of Population: 53.69
Total Asian: 16,758
% of Population: 5.27

See Exhibit 3 at p. 18

Senate District 19

Total Adjusted Population: 318,019
Deviation: 10,663
Deviation %: 3.47
Demographics:
Total NH White: 57,712
% of Population: 18.15
Total Black: 183,648
% of Population: 57.75
Total Hispanic: 48,006
% of Population: 15.10
Total Asian: 21,487
% of Population: 6.76

See Exhibit 3 at p. 19

Senate District 20

Total Adjusted Population: 318,021

Deviation: 10,665

Deviation %: 3.47

Demographics:

Total NH White: 44,677

% of Population: 14.05

Total Black: 172,584

% of Population: 54.27

Total Hispanic: 63,985

% of Population: 20.12

Total Asian: 29,786

% of Population: 9.37

See Exhibit 3 at p. 20

Senate District 21

Total Adjusted Population: 318,021

Deviation: 10,665

Deviation %: 3.47

Demographics:

Total NH White: 65,805

% of Population: 20.69

Total Black: 177,684

% of Population: 55.87

Total Hispanic: 45,852

% of Population: 14.42

Total Asian: 19,813

% of Population: 6.23

See Exhibit 3 at p. 21

Senate District 22

Total Adjusted Population: 318,022

Deviation: 10,666

Deviation %: 3.47

Demographics:

Total NH White: 199,589
% of Population: 62.76
Total Black: 3,164
% of Population: 0.99
Total Hispanic: 38, 137
% of Population: 11.99
Total Asian: 71, 933
% of Population: 22.62

See Exhibit 3 at p. 22

Senate District 23

Total Adjusted Population: 318,021
Deviation: 10,665
Deviation %: 3.47

Demographics:

Total NH White: 145,940
% of Population: 45.89
Total Black: 53,125
% of Population: 16.70
Total Hispanic: 74,296
% of Population: 23.36
Total Asian: 37,712
% of Population: 11.86

See Exhibit 3 at p. 23

Senate District 24

Total Adjusted Population: 318,021
Deviation: 10,665
Deviation %: 3.47

Demographics:

Total NH White: 252,213
% of Population: 79.31
Total Black: 5,868
% of Population: 1.85
Total Hispanic: 32,760

% of Population: 10.30
Total Asian: 22,750
% of Population: 7.15

See Exhibit 3 at p. 24

Senate District 25

Total Adjusted Population: 318,021
Deviation: 10,665
Deviation %: 3.47
Demographics:
Total NH White: 62,960
% of Population: 19.80
Total Black: 176,429
% of Population: 55.48
Total Hispanic: 57,757
% of Population: 18.16
Total Asian: 11,761
% of Population: 3.70

See Exhibit 3 at p. 25

Senate District 26

Total Adjusted Population: 318,021
Deviation: 10,665
Deviation %: 3.47
Demographics:
Total NH White: 180,052
% of Population: 56.62
Total Black: 13,753
% of Population: 4.32
Total Hispanic: 45,949
% of Population: 14.45
Total Asian: 70,732
% of Population: 22.24

See Exhibit 3 at p. 26

Senate District 27

Total Adjusted Population: 318,021

Deviation: 10,665

Deviation %: 3.47

Demographics:

Total NH White: 212,139

% of Population: 66.71

Total Black: 15,082

% of Population: 4.74

Total Hispanic: 39,939

% of Population: 12.56

Total Asian: 41,766

% of Population: 13.13

See Exhibit 3 at p. 27

Senate District 28

Total Adjusted Population: 318,021

Deviation: 10,665

Deviation %: 3.47

Demographics:

Total NH White: 254,270

% of Population: 79.95

Total Black: 6,647

% of Population: 2.09

Total Hispanic: 19,501

% of Population: 6.13

Total Asian: 30,994

% of Population: 9.75

See Exhibit 3 at p. 28

Senate District 29

Total Adjusted Population: 318,021

Deviation: 10,665

Deviation %: 3.47

Demographics:

Total NH White: 64,059

% of Population: 20.14

Total Black: 67,939

% of Population: 21.36

Total Hispanic: 167,886

% of Population: 52.79

Total Asian: 12,617

% of Population: 3.97

See Exhibit 3 at p. 29

Senate District 30

Total Adjusted Population: 318,021

Deviation: 10,665

Deviation %: 3.47

Demographics:

Total NH White: 61,037

% of Population: 19.19

Total Black: 134,996

% of Population: 42.45

Total Hispanic: 98,507

% of Population: 30.97

Total Asian: 14,854

% of Population: 4.67

See Exhibit 3 at p. 30

Senate District 31

Total Adjusted Population: 318,021

Deviation: 10,665

Deviation %: 3.47

Demographics:

Total NH White: 92,091
 % of Population: 28.96
Total Black: 27,153
 % of Population: 8.54
Total Hispanic: 179,096
 % of Population: 56.32
Total Asian: 14,015
 % of Population: 4.41

See Exhibit 3 at p. 31

Senate District 32

Total Adjusted Population: 318,021
Deviation: 10,665
Deviation %: 3.47
Demographics:
 Total NH White: 6,085
 % of Population: 1.91
 Total Black: 103,544
 % of Population: 32.56
 Total Hispanic: 193,077
 % of Population: 60.71
 Total Asian: 8,884
 % of Population: 2.79

See Exhibit 3 at p. 32

Senate District 33

Total Adjusted Population: 318,019
Deviation: 10,663
Deviation %: 3.47
Demographics:
 Total NH White: 12,543
 % of Population: 3.94
 Total Black: 78,442
 % of Population: 24.67

Total Hispanic: 213,011
% of Population: 66.98
Total Asian: 8,579
% of Population: 2.70

See Exhibit 3 at p. 33

20. The adjusted total populations, deviations and demographics of Senate Districts 34 and 36 in the **Bronx** and **Westchester** are as follows:

Senate District 34

Total Adjusted Population: 318,021
Deviation: 10,665
Deviation %: 3.47
Demographics:
Total NH White: 127,305
% of Population: 40.03
Total Black: 42,955
% of Population: 13.51
Total Hispanic: 120,719
% of Population: 37.96
Total Asian: 19,598
% of Population: 6.16

See Exhibit 3 at p. 34

Senate District 36

Total Adjusted Population: 318,023
Deviation: 10,667
Deviation %: 3.47
Demographics:
Total NH White: 24,336
% of Population: 7.65
Total Black: 181,283
% of Population: 57.00
Total Hispanic: 92,613
% of Population: 29.12
Total Asian: 10,017

% of Population: 3.15

See Exhibit 3 at p. 36

21. The adjusted total populations, deviations and demographics of Senate Districts 35 to 37 in **Westchester** are as follows:

Senate District 35

Total Adjusted Population: 307,463

Deviation: 107

Deviation %: 0.03

Demographics:

Total NH White: 131,634

% of Population: 42.81

Total Black: 52,909

% of Population: 17.21

Total Hispanic: 94,435

% of Population: 30.71

Total Asian: 21,622

% of Population: 7.03

See Exhibit 3 at p. 35

Senate District 37

Total Adjusted Population: 307,463

Deviation: 107

Deviation %: 0.03

Demographics:

Total NH White: 210,931

% of Population: 68.60

Total Black: 15,743

% of Population: 5.12

Total Hispanic: 58,457

% of Population: 19.01

Total Asian: 16,957

% of Population: 5.52

See Exhibit 3 at p. 37

22. The adjusted total populations, deviations and demographics of Senate Districts 38 to 63 to the **north** of New York City are as follows:

Senate District 38

Total Adjusted Population: 296,208
Deviation: -11,148
Deviation %: -3.63
Demographics:
 Total NH White: 196,243
 % of Population: 66.25
 Total Black: 33,004
 % of Population: 11.14
 Total Hispanic: 42,838
 % of Population: 14.46
 Total Asian: 18,972
 % of Population: 6.40

See Exhibit 3 at p. 38

Senate District 39

Total Adjusted Population: 293,888
Deviation: -13,468
Deviation %: -4.38
Demographics:
 Total NH White: 194,247
 % of Population: 66.10
 Total Black: 26,276
 % of Population: 8.94
 Total Hispanic: 59,345
 % of Population: 20.19
 Total Asian: 7,713
 % of Population: 2.62

See Exhibit 3 at p. 39

Senate District 40

Total Adjusted Population: 302,408

Deviation: -4,948

Deviation %: -1.61

Demographics:

Total NH White: 231,555

% of Population: 76.57

Total Black: 13,535

% of Population: 4.48

Total Hispanic: 41,707

% of Population: 13.79

Total Asian: 10,643

% of Population: 3.52

See Exhibit 3 at p. 40

Senate District 41

Total Adjusted Population: 306,760

Deviation: -596

Deviation %: 0.19

Demographics:

Total NH White: 232,673

% of Population: 75.85

Total Black: 25,018

% of Population: 8.16

Total Hispanic: 31,856

% of Population: 10.38

Total Asian: 10,339

% of Population: 3.37

See Exhibit 3 at p. 41

Senate District 42

Total Adjusted Population: 292,711

Deviation: -14,645

Deviation %: -4.76

Demographics:

Total NH White: 216,677
% of Population: 74.02
Total Black: 21,078
% of Population: 7.20
Total Hispanic: 42,733
% of Population: 14.60
Total Asian: 5,301
% of Population: 1.81

See Exhibit 3 at p. 42

Senate District 43

Total Adjusted Population: 292,750
Deviation: -14,606
Deviation %: -4.75

Demographics:

Total NH White: 269,381
% of Population: 92.02
Total Black: 6,695
% of Population: 2.29
Total Hispanic: 7,546
% of Population: 2.58
Total Asian: 3,931
% of Population: 1.34

See Exhibit 3 at p. 43

Senate District 44

Total Adjusted Population: 292,749
Deviation: -14,607
Deviation %: -4.75

Demographics:

Total NH White: 210,563
% of Population: 71.93
Total Black: 43,139
% of Population: 14.74

Total Hispanic: 17,008
% of Population: 5.81
Total Asian: 13,910
% of Population: 4.75

See Exhibit 3 at p. 44

Senate District 45

Total Adjusted Population: 293,101
Deviation: -14,255
Deviation %: -4.64
Demographics:
Total NH White: 276,163
% of Population: 94.22
Total Black: 2,821
% of Population: 0.96
Total Hispanic: 4,223
% of Population: 1.44
Total Asian: 2,008
% of Population: 0.69

See Exhibit 3 at p. 45

Senate District 46

Total Adjusted Population: 292,750
Deviation: -14,606
Deviation %: -4.75
Demographics:
Total NH White: 255,348
% of Population: 87.22
Total Black: 9,142
% of Population: 3.12
Total Hispanic: 16,839
% of Population: 5.75
Total Asian: 5,546
% of Population: 1.89

See Exhibit 3 at p. 46

Senate District 47

Total Adjusted Population: 293,195

Deviation: -14,161

Deviation %: -4.61

Demographics:

Total NH White: 257,027

% of Population: 87.66

Total Black: 12,396

% of Population: 4.23

Total Hispanic: 10,637

% of Population: 3.63

Total Asian: 7,028

% of Population: 2.40

See Exhibit 3 at p. 47

Senate District 48

Total Adjusted Population: 292,870

Deviation: -14,486

Deviation %: -4.71

Demographics:

Total NH White: 268,818

% of Population: 91.79

Total Black: 6,268

% of Population: 2.14

Total Hispanic: 9,013

% of Population: 3.08

Total Asian: 2,501

% of Population: 0.85

See Exhibit 3 at p. 48

Senate District 49

Total Adjusted Population: 292,749

Deviation: -14,607

Deviation %: -4.75

Demographics:

Total NH White: 248,189
% of Population: 84.78
Total Black: 15,424
% of Population: 5.27
Total Hispanic: 11,868
% of Population: 4.05
Total Asian: 7,112
% of Population: 2.43

See Exhibit 3 at p. 49

Senate District 50

Total Adjusted Population: 292,444
Deviation: -14,912
Deviation %: -4.85
Demographics:
Total NH White: 257,584
% of Population: 88.08
Total Black: 11,764
% of Population: 4.02
Total Hispanic: 7,120
% of Population: 2.43
Total Asian: 8,250
% of Population: 2.82

See Exhibit 3 at p. 50

Senate District 51

Total Adjusted Population: 292,344
Deviation: -15,012
Deviation %: -4.88
Demographics:
Total NH White: 273,790
% of Population: 93.65
Total Black: 3,881
% of Population: 1.33
Total Hispanic: 7,412
% of Population: 2.54

Total Asian: 2,437
% of Population: 0.83

See Exhibit 3 at p. 51

Senate District 52

Total Adjusted Population: 292,375
Deviation: -14,981
Deviation %: -4.87
Demographics:
Total NH White: 260,587
% of Population: 89.13
Total Black: 9,732
% of Population: 3.33
Total Hispanic: 8,368
% of Population: 2.86
Total Asian: 7,565
% of Population: 2.59

See Exhibit 3 at p. 52

Senate District 53

Total Adjusted Population: 292,445
Deviation: -14,911
Deviation %: -4.85
Demographics:
Total NH White: 221,290
% of Population: 75.67
Total Black: 40,213
% of Population: 13.75
Total Hispanic: 13,970
% of Population: 4.78
Total Asian: 7,158
% of Population: 2.45

See Exhibit 3 at p. 53

Senate District 54

Total Adjusted Population: 292,445

Deviation: -14,911

Deviation %: -4.85

Demographics:

Total NH White: 266,828

% of Population: 91.24

Total Black: 6,980

% of Population: 2.39

Total Hispanic: 9,622

% of Population: 3.29

Total Asian: 3,890

% of Population: 1.33

See Exhibit 3 at p. 54

Senate District 55

Total Adjusted Population: 292,306

Deviation: -15,050

Deviation %: -4.90

Demographics:

Total NH White: 229,558

% of Population: 78.53

Total Black: 29,901

% of Population: 10.23

Total Hispanic: 19,949

% of Population: 6.82

Total Asian: 7,050

% of Population: 2.41

See Exhibit 3 at p. 55

Senate District 56

Total Adjusted Population: 292,307

Deviation: -15,049

Deviation %: -4.90

Demographics:

Total NH White: 195,068
 % of Population: 66.73
Total Black: 51,322
 % of Population: 17.56
Total Hispanic: 27,962
 % of Population: 9.57
Total Asian: 10,686
 % of Population: 3.66

See Exhibit 3 at p. 56

Senate District 57

Total Adjusted Population: 292,081
Deviation: -15,275
Deviation %: -4.97

Demographics:

Total NH White: 267,888
 % of Population: 91.72
Total Black: 4,203
 % of Population: 1.44
Total Hispanic: 10,787
 % of Population: 3.69
Total Asian: 1,771
 % of Population: 0.61

See Exhibit 3 at p. 57

Senate District 58

Total Adjusted Population: 292,933
Deviation: -14,423
Deviation %: -4.69

Demographics:

Total NH White: 260,988
 % of Population: 89.09
Total Black: 8,762
 % of Population: 2.99
Total Hispanic: 6,950

% of Population: 2.37
Total Asian: 9,503
% of Population: 3.24

See Exhibit 3 at p. 58

Senate District 59

Total Adjusted Population: 292,392
Deviation: -14,964
Deviation %: -4.87
Demographics:
Total NH White: 272,041
% of Population: 93.04
Total Black: 5,911
% of Population: 2.02
Total Hispanic: 5,562
% of Population: 1.90
Total Asian: 4,718
% of Population: 1.61

See Exhibit 3 at p. 59

Senate District 60

Total Adjusted Population: 292,562
Deviation: -14,794
Deviation %: -4.81
Demographics:
Total NH White: 246,968
% of Population: 84.42
Total Black: 16,196
% of Population: 5.54
Total Hispanic: 16,631
% of Population: 5.68
Total Asian: 5,199
% of Population: 1.78

See Exhibit 3 at p. 60

Senate District 61

Total Adjusted Population: 292,307

Deviation: -15,049

Deviation %: -4.90

Demographics:

Total NH White: 233,425

% of Population: 79.86

Total Black: 31,684

% of Population: 10.84

Total Hispanic: 7,706

% of Population: 2.64

Total Asian: 13,175

% of Population: 4.51

See Exhibit 3 at p. 61

Senate District 62

Total Adjusted Population: 292,166

Deviation: -15,190

Deviation %: -4.94

Demographics:

Total NH White: 257,512

% of Population: 88.14

Total Black: 17,106

% of Population: 5.85

Total Hispanic: 7,179

% of Population: 2.46

Total Asian: 2,319

% of Population: 0.79

See Exhibit 3 at p. 62

Senate District 63

Total Adjusted Population: 292,562

Deviation: -14,794

Deviation %: -4.81

Demographics:

Total NH White: 164,537

% of Population: 56.24

Total Black: 95,010

% of Population: 32.48

Total Hispanic: 19,057

% of Population: 6.51

Total Asian: 6,812

% of Population: 2.33

See Exhibit 3 at p. 63

B. The Impact Or Effect Of The Differences In Deviations In 2012 Senate Plan

23. As shown by the foregoing, all of the Senate Districts downstate, including the Senate Districts on Long Island are over-populated; while the Senate Districts north of New York City are all underpopulated. For example, fourteen of the Senate Districts to the north of New York City are underpopulated by over 15,000 people, four by over 14,000 people. Of the remaining Senate districts north of the New York City, most are underpopulated by over 10,000 people. Cumulatively, the underpopulation of upstate is far from *de minimis*.

24. All of the New York City Senate Districts have populations 3.3 (Queens County) or 3.47 (the rest of the New York City) above the mean. In contrast, the 28 Senate districts to north are underpopulated by on average -4.13% below the statewide mean. Breitbart Declaration at pp. 8-9, paragraphs 19-20; Beveridge Declaration at p. 8 -9, at paragraphs 24-27.

25. Furthermore, the 26 districts wholly or partly within New York City – including the two Bronx/Westchester districts, Senate Districts 34 and 36, have an aggregate population of 8, 276, 194, enough for 26.93 districts of the mean population of 307, 356. The 28 districts to the north of New York City have an aggregate population of 8, 250, 734 people enough for only 26,

84 districts of the mean population. Breithbart Declaration at pp. 8-9, paragraphs 19 and 21. Beveridge Declaration at p. 8 -9, at paragraphs 24-26.

26. In short, the 2012 Senate Plan deprives New York City of almost an entire Senate District and gives the upstate region one district (actually one and one-seventh) more than its promotional share of the total population. Breitbart Declaration at p. 9, paragraph 22; Beveridge Declaration at p. 9, paragraph 27.

C. The Regional Malapportionment In The Enacted 2012 Senate Plan Is Not Justified By Traditional Redistricting Principles

27. The New York State Constitution requires that state legislative districts be contiguous and “in as compact form as practicable.” New York State Constitution, Art. III, Sections 4 and 5. It further requires that such districts consist of contiguous territory and limits the division of counties, towns and city blocks in forming state legislative districts. *Id.* The enacted Senate plan is odds with each of these requirements.

28. In particular, even at a glance, it is clear that many of the districts in the new 2012 Senate Plan are neither contiguous or non-compact and that, in many instances, are almost impossible to follow except on a large scale map. See Exhibit 1. And see, Breitbart Declaration at p. 15, paragraph 39.

29. In addition, contrary to Article III, Section 4, which prohibits dividing counties into multiple Senate districts, not wholly contained within the county, the 2012 Senate Plan divides so many counties, divides them into so many pieces, and creates so many pairs of bi-county districts that it virtually erases county boundaries as a basis for drawing districts. Breitbart Declaration at p/ 16, paragraphs 41 -42; Beveridge Declaration at p. 16-17, at paragraphs 46-47.

30. For example, although Rockland and Albany Counties each have the correct population to constitute Senate districts by themselves; both are divided in the 2012 Senate plan. And, it is obvious from the promiscuous division of the surrounding counties that neither is divided so that another nearby county can be kept intact. Similarly, Onondaga and Orange counties each have the population for one whole district and a fraction. However, the 2012 Senate Plan fails to create one whole district in either. Breitbart Declaration at pp 16-17, paragraphs 41 -42; Beveridge Declaration at p. 16-17, at paragraphs 46-47.

31. The New York State Court of Appeals has paid special attention to “minor counties” in applying the county integrity rule. See, Schneider v. Rockefeller, 31 N.Y.2d 420, 427, n.1 (1972).) A “minor county,” with respect to redistricting, is one that does not have the population for even one wholly contained district. In essence, the county integrity rule requires that the number of “minor counties” divided, and the number of districts among which any such county is divided, be minimized. Notwithstanding this, the 2012 Senate plan divides 16 ‘minor counties’: Cayuga, Chenango, Dutchess, Delaware, Herkimer, Livingston, Oneida, Ontario, Putnam Rensselaer, St. Lawrence, Saratoga, Schenectady, Tompkins, Ulster, and Washington. Breitbart Declaration at p. 17, paragraph 43; Beveridge Declaration at p. 16, paragraph 48..

32. The degree to which individual ‘minor counties’ are divided in the 2012 plan is also remarkable. In the 2012 Senate plan, four ‘minor counties’ are each divided among three districts: Cayuga (Districts 50, 51, and 54), Delaware (Districts 42, 51, and 52), St. Lawrence (Districts 45, 47, and 48), and Tompkins (Districts 51, 54, and 58). And Ulster County is divided among *four* districts (Districts 39, 42, 46, and 51). Breitbart Declaration at p. 18, paragraph 44; Beveridge Declaration at pp. 17-18 at paragraph 49.

33. Moreover, the 2012 Senate plan creates seven pairs of districts in which both districts contain parts of the same two counties. The pairs of bi-county districts in the 2012 Senate Plan are:

Monroe / Ontario: Districts 54 and 55
Cayuga / Tompkins: Districts 51 and 54
Delaware / Ulster: Districts 42 and 51
Orange / Ulster: Districts 39 and 42
Dutchess / Putnam: Districts 40 and 41
Bronx / Westchester: Districts 34 and 36
Nassau / Suffolk: Districts 5 and 8

Breitbart Declaration at p. 18, paragraph 44; Beveridge Declaration at p. 18, paragraph 50.

34. The 2012 Senate Plan also runs afoul of the “block-on-border rule.” The “block-on-border” rule derives from the Article III, Section 4 of the state constitution: “No town, except a town having more than a full ratio of apportionment, and no block in a city enclosed by streets or public ways, shall be divided in the formation of senate districts; nor shall any district contain a greater excess in population over an adjoining district in the same county, than the population of a town or block therein adjoining such district. Counties, towns or blocks which, from their location, may be included in either of two districts, shall be so placed as to make said districts most nearly equal in number of inhabitants” The 2012 Senate Plan, in many instances fails to comply with or ignores the block-on-border rule. Breitbart Declaration at p. 19-21, paragraphs 46- 47; Beveridge Declaration at pp. 19-20, paragraphs 51- 52.

35. Finally, although the New York State Constitution is silent on the issue of communities of interest, the Supreme Court, as well as courts in this Circuit, have recognized that preservation of communities of interest is “a legitimate goal in creating a district plan.” Diez v. Silver, 978 F. Supp. 96, 123 (E.D. N.Y. 1997). See also, Miller v. Johnson, 515 U.S. 900, 915 (1995).

36. The new Senate Plan, S. 6696, “cracks” or “splits” certain established and emerging Black communities, particularly within the three counties covered by Section 5 of the Voting Rights Act. These Senate Districts include:

- **10SD** (South Queens) -- Splits off the area west of the Van Wyck Expressway which forms a community of interest with the area east of the Van Wyck.
- **14SD** (South-East Queens) – Cracks the Jamaica Estates community by cutting in and out of the area. Senate District 14 is also not compact.
- **19SD** (Central Brooklyn and East Brooklyn) – Splits Flatlands area. The appendage of Marine Park should have been eliminated.
- **20SD** (Central Brooklyn) – The hammer-shaped appendage which places a portion of Boro Park of West Brooklyn into SD20 should have been eliminated. Senate District 20 also cracks both Crown Heights and Prospect Heights. To prevent this, the northern boundary of SD20 should have been placed at St. Marks Place. In addition, the two cultural icons contiguous to SD 20, the Brooklyn Museum and the main branch of the Brooklyn Public Library, should be placed in the district.
- **21SD** (Central Brooklyn and South Brooklyn) – Cracks both the communities of Flatbush and Flatlands. All of Flatbush should have been united in SD21. Prospect Park and Greenwood Cemetery should have been part of SD20.
- **25SD** (Central Brooklyn) – Cracks both traditional Black communities of Crown Heights and Prospect Heights. The North-East area of Bedford Stuyvesant and all of Prospect Heights should have been included in SD25
- **30SD** (Harlem) – Cracks Harlem into three pieces by cutting out West Harlem to Hudson River from Martin Luther King Blvd to 147th Street and by cutting out East Harlem. Harlem should have been kept whole from the Hudson River to East River.
- **36SD** (Lower Westchester and Northern Bronx) – Splits off East Yonkers and Fleetwood, whose residents form a community of interest with the Blacks in the Lower Westchester District. This district should have gone north to the city boundary to capture the entire community of interest in Lower Westchester.

See Exhibit A attached to the Declaration of Joan P. Gibbs, dated April 9, 2012.

37. In short, the population deviations in the new Senate Plan between upstate and downstate are not justified by traditional redistricting principles. Rather, the evidence, even on the limited record herein, strongly suggests that these deviations were systematically and intentionally applied by the Legislature, specifically the Senate Majority to avoid creating a new Senate seat in New York and to create a new Non-Hispanic White seat upstate. In so doing, the Senate Majority violated the “one, vote principle” and debased or diluted the votes of residents of New York City, in general, and, specifically, Black and other racial and language minorities living in New York City in violation of the Fourteenth Amendment.

III. THE SENATE MAJORITY IN LOCATING THE SENATE DISTRICT UPSTATE, RATHER THAN IN NEW YORK CITY WAS IMPERMISSIBLY MOTIVATED BY A DESIRE TO CREATE A NEW SAFE WHITE SEAT IN VIOLATION OF THE FOURTEENTHMENT

38. As shown above, New York City has sufficient population to include an additional Senate seat, the Senate Minority opted to locate the new Senate seat upstate, rather than downstate.

39. In their previous submissions herein, Plaintiffs-Intervenors, relying on the numbering of the districts, cited Senate District 63 as the new Senate district. See e.g., Plaintiffs-Intervenors Memorandum In Support Of Their Motions For A Preliminary Injunction, Declaratory Judgment, Appointment Of Special Master And Expedited Discovery at pp. 3-8.

40. However, according to the Senate Majority, the new senate district is Senate District 46. See, Senate Majority’s Response to Plaintiffs’ April 12 Submissions at page 47. If in fact, the new Senate District is Senate District 46, as the Senate Majority has asserted, the total adjusted populations, deviations, demographics and voting age populations for Senate 46 are, as shown below, even more supportive of Plaintiffs-Intervenors claims.

Senate District 63

41. A copy of Senate District 63 is attached hereto as Exhibit 4. A copy of the description of its boundaries of Senate District 63 as detailed in Chapter 16 of the Laws of 2012 is attached as Exhibit 5.

42. The adjusted total population of Senate District 63 is 292,562. See Exhibit 3 at page 63. Hence, Senate District 63 is under-populated by 14, 794 people and, has a deviation of -4.81. Id.

43. The adjusted total population of Non-Hispanic Whites in Senate District 63 is 242, 981 or 77.10% of the population. Id. The adjusted total population of Non-Hispanic Whites 18 years old or older in Senate District 63 is 193, 137 or 79% of the population. Id.

44. The adjusted total population of Blacks in Senate District 63 is 16, 825 or 5.34% of the population. Id. The adjusted total population of Blacks eighteen years or older is 12,431 or 5.10% of the population. Id.

45. The adjusted total population of Hispanics in Senate District 63 is 19,057 or 6.51% of the population. Id. The adjusted population of Hispanics eighteen years or older in Senate District 63 is 12,078 or 5.31% of the population. Id.

46. The adjusted total population of Asians in Senate District 63 is 6, 812 or 2.33% of the population. Id. The adjusted total population of Asians eighteen years or older in Senate District 63 is 5,190 or 2.28% of the population. Id.

Senate District 46

47. A copy of Senate District 46 is attached hereto as Exhibit 6. A copy of the description of its boundaries of Senate District 46 as detailed in Chapter 16 of the Laws of 2012 is attached as Exhibit 7.

48. The adjusted total population of Senate District 46 is 292,760. Exhibit 3 at page 46. Hence, Senate District 46 is under-populated by 14, 606 people, and, thus, has a deviation of - 4.75. Id.

49. The adjusted total population of Non-Hispanic Whites in Senate District 46 is 255, 348 or 89.43% of the population. Id. The total population of Non-Hispanic Whites eighteen years or older is 206, 568 or 89.43% of the population. Id.

50. The adjusted total population of Blacks in Senate District 46 is 9,142 people or 3.12% of the population. Id. The adjusted total population of Blacks eighteen years or older in Senate District 46 is 6,676 or 2.89% of the population. Id.

52. The adjusted total population of Hispanics in Senate District 46 is 16, 839 or 5.75 of% of the population. Id. The adjusted total population of Hispanics eighteen years or older in Senate District 46 is 10,562 or 4.57% of the population. Id.

52. The adjusted total population of Asians in Senate District 46 is 5, 546 or 1.89% of the population. Id. The adjusted total population of Asians eighteen years or older in Senate District 46 is 4, 087 or 1.77% of the population. Id.

53. In short, whether the new Senate District is Senate District 46 or Senate District 63, the adjusted total populations, including the voting age populations of Senate District 46 and Senate strongly suggests that the Senate Majority in locating the new Senate seat upstate, rather than downstate, specifically with New York City, did so to avoid creating seat downstate and to create a new on-Hispanic seat. In so doing, the Senate Majority, deprived New York City residents, in general, of a new Senate seat, and Black and other racial and language minorities in New York City, in particular, of a new majority-minority seat.

IV. THE PROCESS AND CIRCUMSTANCES SURROUNDING AND LEADING UP TO THE PASSAGE OF THE NEW SENATE PLAN WERE HIGHLY SUSPECT

54. The process and circumstances surrounding and leading up to the passage of S. 6696 were highly suspect. Between July 2011 and November 2011 held a number of pre-plan public hearings, ostensibly for the purpose of affording the public the opportunity to express their views as to how the new Senate and Assembly plans should be created. During the course of these hearings, the members of the Senate Majority LATFOR never explicitly informed the public of their intention to increase the size of the Senate from 62 to 63 seats.

55. Indeed, LATFOR's decision to increase the number of Senate seats from 62 to 63 only became publicly known on January 6, 2012, when counsel for the Senate Majority, Mr. Michael Carvin, published a memorandum, dated January 5, 2012, on the LATFOR website addressed to Defendants Dean Skelos and Defendant Michael Nozzolio on the "Senate Size ." However, by that time, all of the pre-plan public hearings had already been held and several 62 Senate Districts had been submitted for consideration.

56. The Senate Majority's secrecy and lack of public accountability with respect to the S. 6696 continued up to vote on S. 6696. For example, during the debates in the Senate preceding the vote on S. 6696 on March 14, 2012, when several members of the Senate Minority questioned LATFOR Co-Chairman Senator Michael Nozzolio about, *inter alia*, the impact of the increase in the number of seats on minority voting strength, the Senate Majority abruptly cut off all debate two hours ahead of schedule and brought the plan up for an immediate vote.

57. 36 senators voted in favor of S.6696, 24 senators were absent for the vote. Among those who were absent were fifteen members of the New York State Black, Puerto Rican, Hispanic and Asian Legislative Caucus , some of whom had walked out in protest: Senators

Eric Adams, Martin Dilan , Ruben Diez, Adriano Espaillat, Ruth Hassel-Thompson, Shirley L. Huntley, Velmanette Montgomery, Kevin Parker, Jose Peralta, Bill Perkins, Gustavo Riveria, John L. Sampson, Jose M. Serrano, Malcolm Smith, Andrea Stewart-Cousins. See Exhibit A attached to the Declaration of Joan P. Gibbs, dated April 9, 2012.

V. ALTERNATIVE PLANS EXISTS THAT BETTER SATISFY THE REQUIREMENTS OF THE FOURTEENTH AND TRADITIONAL REDISTRICTING PRINCIPLES

58. At least two alternative Senate plans exist to the enacted Senate Plan. These two plans are the “63 District Alternative Plan” prepared by Todd Breitbart and the Common Cause-New York Senate Plan. See Exhibits 1 and 2 to the Breitbart Declaration.⁴

59. Both Mr. Breitbart’s Senate Plan and the Common Cause –New York Plan have lower deviations than s. 6696. Both Mr. Breitbart’s and the Common Cause -New York Plan contain an additional Senate in New York, *albeit* in different locations. In Mr. Breitbart’s Plan the new New York City Senate is located in the Bronx. In the Common Cause Plan, the new New York City Senate seat is located in New York County. Mr. Breitbart’s and the Common Cause-New York ‘s Senate Plans also better satisfy the traditional redistricting principles. See Breitbart Declaration at pp 6-37; Beveridge Declaration at pp. 3-36.

VI. CONCLUSION

61. Although the deviations in population in the new Senate Plan may seem *de minimis* , they are not. Rather, as shown above, they are neither necessary or justified by traditional redistricting principles. Instead, even on the limited record herein, the deviations in the new Senate Plan strongly appear to have been systematically and intentionally applied by the

⁴ The Common Cause-New York Plan,, along with an extensive description and advocacy, can be viewed on it website at <http://www.citizenredistrictny.org/wp-content/uploads/2012/03/CCNY-Senate-63-Guide-March-2012-Fully-Revised.pdf>.

Legislature, specifically the Senate Majority, to avoid creating a new Senate seat in New York City, where the majority of Black and other racial and language minorities reside and, to create a new White seat upstate.

62. That the deviations were unnecessary is further demonstrated by the two alternative Senate, the 63 Alternative Plan prepared by Mr. Breitbart and the Common Cause-New York Senate Plan.

63. The two aforementioned alternative plans also demonstrate that a new Senate district could have been withdrawn in New York.

64. The deviations in new Senate Plan deprive New Yorkers, in general, and Black and other racial and language minorities, in particular, an additional Senate seat, and hence, weakens their vote and voting strength in violation of the Fourteenth Amendment.

65. In conclusion, the undersigned respectfully requests, that this Court issue an Order granting Plaintiffs- Intervenors motion for expedited discovery and directing the Defendants to:

- (1) to produce any and all documents pertaining to the creation of the enacted 2012 Senate Plan and the location of the new Senate District therein;
- (2) provide Plaintiffs-Intervenors with the identity of the person or persons who drew the 2012 Senate maps; and
- (3) produce such person or persons for a deposition or depositions by Plaintiffs-Intervenors and the other parties herein.

Dated: Brooklyn, New York
April 27, 2012

Joan P. Gibbs

