

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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MARK A. FAVORS, et al.

Plaintiffs,

v.

ANDREW M. CUOMO, et al.

Defendants.  
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C.A. No. 11-CV-05632  
(RR)(GEL)(DLI)(RLM)

**ECF CASE**

**DECLARATION OF LEE D. APOTHEKER**

Lee D. Apotheker declares pursuant to 28 U.S.C. §1746:

1. I am an Associate with the law firm of Pannone Lopes Devereaux & West LLC, which represents Intervenor-Plaintiff Yitzchok Ullman in the above-captioned action. I submit this declaration in support of Mr. Ullman's claim for relief.
2. Attached hereto as Exhibit A (and mailed to the individual chambers of each judge) is a true and correct copy of a map which portrays the borders of current Assembly district 95. Exhibit A also portrays the borders of individual villages and election districts, and contains the periphery of the surrounding Assembly districts. Exhibit A portrays current Assembly district 95 in blue. Current Assembly district 95 is represented by the Hon. Ellen C. Jaffee. Exhibit A was prepared by the Rockland County Planning Department.
3. Attached hereto as Exhibit B are the results of individual Ramapo election districts in and around the village of New Square. Specifically, Exhibit B contains the results from Ramapo election districts 10, 21, 23, 30, 42, 55, 58, 63, 87, and 88. These election districts were overwhelmingly carried by Assemblywoman Jaffee in the 2010 election. Furthermore, upon information and belief, under the Defendants' redistricting plan, these election districts will

be within proposed Assembly district 97. Upon information and belief, Assemblywoman Jaffee, who also resides within proposed Assembly district 97, will run for re-election as the member of Assembly from proposed district 97. The election results were provided by the website of the Rockland County Board of Elections.

4. Attached hereto as Exhibit C are the results of individual election districts in and around the Village of Kaser and the hamlet of Monsey. Specifically, Exhibit C contains the results from Ramapo elections districts 18, 21, 24, 28, 35, 36, 41, 49, 56, 64, and 85. In the 2010 election, Ramapo election districts 18, 24, 28, 35, 41, and 56 were carried by Assemblywoman Jaffee's opponent, Thomas A. Morr. Ramapo election districts 21, 36, 49, and 64 were carried by Assemblywoman Jaffee but had either a small margin of victory, significant amounts of under votes, or both. Furthermore, upon information and belief, under Defendants' redistricting plan, these election districts, which are within current Assembly district 95, have been cut out of Assemblywoman Jaffee's district and distributed into proposed districts 96 and 98. The election results were also provided by the website of the Rockland County Board of Elections.

5. Attached hereto as Exhibit D are the results of the Ramapo election districts from the 2006 Democratic primary election, the 2006 general election, the 2008 Democratic primary election and the 2008 general election. By way of example, in the 2006 primary election, out of 609 ballots cast in Ramapo election district 35 (encompassing all of the Village of Kaser), six were cast in favor of Ms. Jaffee. In the general election, seventy-one votes out of a total of 677 ballots were cast for Ms. Jaffee.

6. In the 2008 primary, District 35 was similarly hostile to Ms Jaffee. She only garnered three votes out of 178 ballots that were cast. In the general election, where she ran

unopposed, she only garnered ninety-six votes out of 810 ballots cast. The election results were also provided by the website of the Rockland County Board of Elections.

7. As stated earlier, the results from the individual election districts submitted as Exhibits B, and C are in and around the villages of New Square and Kaser and the hamlet of Monsey.

New Square, Kaser, and Monsey are places where the majority of the residents are Chassidic Jews. The effect of the Defendants' redistricting plan is to separate these Jewish communities among three different Assembly districts, thereby diluting the community's ability to elect a member of Assembly who represents its interests. For more than 20 years, this community has been united in the same Assembly district.

8. Upon information and belief and based upon the attached election results, Defendants' redistricting plan, as it pertains to proposed districts 96, 97, and 98, was drawn specifically to protect the incumbent member of assembly and create a "safe" district in order to assist her re-election campaign. "State legislative plans with population deviations of less than 10% may be challenged based on alleged violation of the one person, one vote principle." Larios v. Cox, 300 F. Supp. 2d 1320, 1341 (Three-judge panel, N.D. Ga. 2004). "The proper judicial approach to a one person, one vote claim is to ascertain whether, under the particular circumstances existing in the individual State whose legislative apportionment is at issue, there has been a faithful adherence to a plan of population-based representation, which such minor deviations only as may occur in recognizing certain factors that are free from the taint of arbitrariness or discrimination." Id.

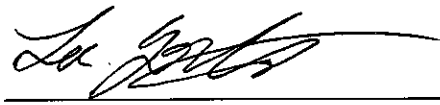
9. Upon information and belief, Defendants' apportionment plan as it pertains to proposed districts 96, 97, and 98 promotes only the protection of an incumbent member of Assembly.

While the State has a legitimate interest in preventing incumbent members from running

against one another, the protection of incumbents generally is a not a legitimate state purpose which can justify population deviations. Larios at 1348.

I declare under penalty of perjury that the attached exhibits are true and accurate representations of the geographic areas concerned and the election results. I further declare under penalty of perjury that the foregoing is true and correct.

Dated: White Plains, New York  
April 27, 2012

  
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Lee D. Apotheker