

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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MARK A. FAVORS et al.,

Plaintiffs,

No. 11 Civ. 5632 (RR) (GEL) (DLI)

v.

ANDREW M. CUOMO et al.,

Defendants.

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**MEMORANDUM OF LAW IN SUPPORT OF
MOTION TO AMEND ANSWER TO ASSERT CROSS-CLAIM**

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Senate Minority Leader John L. Sampson
and Senator Martin Malavé Dilan*

Senate Minority Leader John L. Sampson and Senator Martin Malavé Dilan respectfully move this Court for permission pursuant to Rule 15(b) of the Federal Rules of Civil Procedure to amend their Answer to the Amended Complaint to assert a Cross-Claim challenging the constitutionality of the enacted Senate plan pursuant to the Fourteenth Amendment equal population requirement.

Senators Sampson's and Dilan's proposed Amended Answer to the Amended Complaint and Cross-Claim is attached as Exhibit 1 to the accompanying Declaration of Alexander Goldenberg dated May 1, 2012.

This motion is timely. Senators Sampson's and Dilan's one person, one vote challenge to the enacted Senate plan did not become ripe for adjudication until the United States Department of Justice precleared the plan on April 27, 2012. *See Branch v. Smith*, 538 U.S. 254, 283 (2003) (Kennedy, J., concurring) ("Where state reapportionment enactments have not been precleared in accordance with § 5, the district court 'err[s] in deciding the constitutional challenges' to these acts.") (quoting *Connor v. Waller*, 421 U.S. 656 (1975)); *see also, e.g., Hughley v. Adams*, 667 F.2d 25, 26 (11th Cir. 1982) ("We also decline, for reasons of ripeness, to consider plaintiffs' remaining objections to the plan before it has received preclearance."). This motion is being filed as quickly as practicable after preclearance. Discovery has not yet commenced, and allowing the movants to assert a cross-claim will not prejudice any of the existing parties.

Rule 15(a)(2) provides that leave to amend an answer shall be "freely give[n]." Courts routinely allow defendants to amend their answers to assert cross-claims where, as here, the defendants have acted diligently and there is no prejudice to any party. *See, e.g., Coder v. Jones*, Civ. No. 11-1007, 2012 WL 844732 (D.S.D. Mar. 8, 2012) (granting leave to amend answer to include cross-claim); *R.G.N. Capital Corp. v. Yamato Transp. USA, Inc.*, 95 CIV. 2647 (CSH),

1997 WL 3278 (S.D.N.Y. Jan. 3, 1997) (same); *Russo v. Abington Mem'l Hosp.*, 881 F. Supp. 177, 183 (E.D. Pa. 1995) (same); *Burel v. Berlex Laboratories, Inc.*, No. C84-1624A, 1986 WL 30018 (N.D. Ga. Oct. 8, 1986) (same).

For these reasons, we respectfully request that the Court permit Senators Sampson and Dilan to amend their Answer to the Amended Complaint to assert a cross-claim challenging the constitutionality of the enacted Senate plan.

Dated: May 1, 2012
New York, New York

By: /s/ Eric Hecker
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