



styled *Cohen v. Cuomo*, and aver that the New York County Supreme Court has denied the petition in that proceeding and entered judgment for the respondents. Defendants deny all other allegations in paragraph 7 of the Complaint.

8. Defendants deny the allegations of paragraph 8 of the Complaint.

9. Defendants lack sufficient information to form a belief as to the truth or falsity of the allegations of paragraph 9 and therefore deny them.

10. Defendants lack sufficient information to form a belief as to the truth or falsity of the allegations of paragraph 10 and therefore deny them.

11. Defendants lack sufficient information to form a belief as to the truth or falsity of the allegations of paragraph 11 and therefore deny them.

12. Defendants lack sufficient information to form a belief as to the truth or falsity of the allegations of paragraph 12 and therefore deny them.

13. Defendants lack sufficient information to form a belief as to the truth or falsity of the allegations of paragraph 13 and therefore deny them.

14. Defendants lack sufficient information to form a belief as to the truth or falsity of the allegations of paragraph 14 and therefore deny them.

15. Defendants admit the first sentence of paragraph 15. The second sentence expresses Plaintiffs' intention to sue the Governor in his official capacity and requires no responsive pleading.

16. Defendants admit the first sentence of paragraph 16. The second sentence expresses Plaintiffs' intention to sue the Lieutenant Governor in his official capacity and requires no responsive pleading.

17. Defendants admit the first sentence of paragraph 17. The second sentence expresses Plaintiffs' intention to sue Defendant Skelos in his official capacity and requires no responsive pleading.

18. Defendants admit the first sentence of paragraph 18. The second sentence expresses Plaintiffs' intention to sue Assembly Speaker Silver in his official capacity and requires no responsive pleading.

19. Defendants admit the first sentence of paragraph 19. The second sentence expresses Plaintiffs' intention to sue Senate Minority Leader Sampson in his official capacity and requires no responsive pleading.

20. Defendants admit the first sentence of paragraph 20. The second sentence expresses Plaintiffs' intention to sue Assembly Minority Leader Kolb in his official capacity and requires no responsive pleading.

21. Defendants admit the allegations of paragraph 21 and aver that the statute that sets forth the scope of LATFOR's duties and powers speaks for itself.

22. Defendants admit the first sentence of paragraph 22. The second sentence expresses Plaintiffs' intention to sue Defendant Nozzolio, Defendant Lopez, John J. McEneny, Robert Oaks, Roman Hedges, and Martin Malave Dilan in their official capacities and requires no responsive pleading.

23. Defendants admit that the Court has subject matter jurisdiction over the claims that Plaintiffs assert under the U.S. Constitution, but deny that Plaintiffs are entitled to relief.

24. Defendants deny the allegations in paragraph 24 of the Complaint.

25. Defendants deny the allegations in paragraph 25 of the Complaint.

26. Defendants admit that venue is proper in the Eastern District of New York.

27. Paragraph 27 contains conclusions of law to which no response is required. To the extent a response is required, Defendants admit that a three-judge Court had been convened to adjudicate the claims in Plaintiffs' original Complaint.

28. Paragraph 28 contains conclusions of law to which no responsive pleading is required.

29. Paragraph 29 contains conclusions of law to which no responsive pleading is required.

30. Defendants admit the allegations of paragraph 30.

31. Defendants admit the allegations of paragraph 31.

32. Defendants admit the allegations of paragraph 32, and further state that LATFOR's website speaks for itself.

33. Defendants admit that the New York Legislature must enact a redistricting bill in order for it to become law. Defendants further state that a redistricting bill must be presented to the Governor, and that if the Governor signs it, it becomes law. Defendants further aver that, if the Governor does not sign the bill, under the New York Constitution it is returned to the Legislature for reconsideration and can become law, notwithstanding the Governor's failure to sign it, if it is approved by two-thirds of each house of the Legislature. Defendants deny that a redistricting plan adopted by this Court must be approved by the Legislature and the Governor. Defendants admit the second sentence of paragraph 33 and deny the remaining allegations of paragraph 33.

34. Defendants lack sufficient information to form a belief as to the truth or falsity of the allegations of paragraph 34 and therefore deny them.

35. Defendants deny the allegations of paragraph 35.

36. Defendants deny the allegations of the first two sentences of paragraph 36. Defendants lack sufficient information to form a belief as to the truth or falsity of the remaining allegations of paragraph 36 and therefore deny them.

37. Defendants admit that two-thirds of LATFOR members are sitting legislators, but otherwise deny the first three sentences of paragraph 37. Defendants admit that memoranda titled “Size of the Senate” and “The 135” were written, and state that those memoranda speak for themselves. To the extent Plaintiffs mischaracterize the content or import of those memoranda, Defendants deny the same.

38. Defendants state that the referenced memoranda speak for themselves. To the extent Plaintiffs mischaracterize the content or import of those memoranda, Defendants deny the same.

39. Defendants deny the allegations of paragraph 39.

40. Defendants lack sufficient information to form a belief as to the truth or falsity of the allegations in paragraph 40 and therefore deny them.

41. Defendants lack sufficient information to form a belief as to the truth or falsity of the allegations in paragraph 41 and therefore deny them.

42. Defendants admit that population equality is a traditional redistricting criterion and a constitutional requirement for legislative districts. To the extent Paragraph 42 contains conclusions of law, no response is required. Defendants lack sufficient information to form a belief as to the truth or falsity of the allegations regarding Plaintiffs’ view of “fair redistricting proposals” and therefore deny them.

43. Defendants admit that contiguity is a traditional redistricting criterion, and state that the New York Constitution speaks for itself. To the extent Paragraph 43 contains conclusions of law, no response is required.

44. Defendants admit that the Voting Rights Act has application to redistricting plans, and state that the Voting Rights Act speaks for itself. To the extent Plaintiffs mischaracterize the terms or import of the Voting Rights Act, Defendants deny the same. Defendants lack sufficient information to form a belief as to the truth or falsity of the allegations regarding “[f]air representation of minority groups” and therefore deny them.

45. Defendants admit that respect for political subdivisions is a traditional redistricting criterion, and state that the New York Constitution speaks for itself. To the extent Paragraph 45 contains conclusions of law, no response is required.

46. Defendants admit that compactness is a traditional redistricting criterion, and state that the New York Constitution speaks for itself. To the extent Paragraph 46 contains conclusions of law, no response is required.

47. Defendants admit that preservation of communities of interest is a traditional redistricting criterion. To the extent Paragraph 47 contains conclusions of law, no response is required.

48. Defendants lack sufficient information to form a belief as to the truth or falsity of the allegations regarding “the interests of justice,” deny that “the interests of justice” is a governing standard for redistricting, and therefore deny the allegations of paragraph 48.

49. Defendants admit that New York Uprising asked candidates for the New York Legislature to sign a pledge regarding “non-partisan, independent redistricting,” and state that the

contents of this written pledge speaks for itself. To the extent Plaintiffs mischaracterize the terms or import of the pledge, Defendants deny the same.

50. Defendants lack sufficient information to form a belief as to the truth or falsity of the allegations in the first sentence of paragraph 50 and therefore deny them. Defendants deny the allegations in the second sentence of paragraph 50.

51. Defendants deny the allegations of paragraph 51.

52. Paragraph 52 contains conclusions of law to which no response is required. Defendants further state that the federal Military and Overseas Voter Empowerment Act (MOVE Act) speaks for itself. To the extent Plaintiffs mischaracterize the MOVE Act, Defendants deny the same. Defendants deny any remaining allegations in paragraph 52.

53. Defendants admit the allegations of paragraph 53.

54. Defendants admit the allegations of paragraph 54.

55. Defendants deny the allegations of paragraph 55.

56. Defendants admit that Defendant Skelos's campaign committee made expenditures for the election in 2010, a non-redistricting year. Defendants lack sufficient information to form a belief as to the truth or falsity of the allegations regarding Assembly Speaker Silver in paragraph 56 and therefore deny them. Defendants deny the remaining allegations of paragraph 56.

57. Defendants lack sufficient information to form a belief as to the truth or falsity of the allegations contained in paragraph 57 and therefore deny them.

58. Paragraph 58 contains conclusions of law to which no response is required.

59. Defendants admit the allegations of paragraph 59.

60. Defendants admit that adherence to New York's existing House of Representatives districts would have given New York two more seats than it is entitled to fill. The remaining allegations of paragraph 60 contain conclusions of law to which no response is required.

61. Paragraph 61 contains conclusions of law to which no response is required. To the extent a response is required, Defendants deny the allegations of paragraph 61.

62. Defendants admit the allegations of paragraph 62.

63. Defendants admit the allegations of paragraph 63.

64. Defendants admit the first sentence of paragraph 64. Defendants lack sufficient information to form a belief as to the truth or falsity of the remaining allegations in paragraph 64 and therefore deny them.

65. Defendants admit the allegations of paragraph 65.

66. Paragraph 66 contains conclusions of law to which no response is required. Defendants further state that the New York Constitution speaks for itself.

67. Paragraph 67 contains conclusions of law to which no response is required.

68. Paragraph 68 contains conclusions of law to which no response is required.

69. Paragraph 69 contains conclusions of law to which no response is required.

70. Defendants admit the allegations of paragraph 70, and aver that the Department of Justice precleared the 2012 Senate plan on April 27, 2012.

71. Defendants admit the allegations in the first sentence of paragraph 70. Defendants lack sufficient information to form a belief as to the truth or falsity of the remaining allegations contained in paragraph 71.



72. Defendants admit that the enacted Senate Plan contains 63 Senate districts and that the previous Plan had 62 districts. Defendants deny the remaining allegations in paragraph 72.

73. Defendants deny the allegations in paragraph 73.

74. Defendants admit the allegations of paragraph 74, and aver that the Department of Justice precleared the Senate plan on April 27, 2012.

75. Defendants admit the allegations of paragraph 75 and aver that the New York County Supreme Court has denied the petition in the referenced State Court proceeding and entered judgment for the respondents.

76. Defendants admit that the start of the period during which candidates for the State legislature may collect signatures on nominating petitions is June 5, 2012.

77. Defendants deny the allegations of paragraph 77, and aver that the Department of Justice precleared the Senate plan on April 27, 2012.

78. Defendants deny the allegations of paragraph 78, and state that any concern that the Senate plan may not be precleared is moot.

79. Defendants deny the allegations of paragraph 79, and state that any concern that the Department of Justice may extend the preclearance process beyond the initial 60-day period is moot.

80. Defendants deny the allegations of paragraph 80 and further state that these allegations are moot.

81. Defendants deny the allegations of paragraph 81 and aver that the New York County Supreme Court has denied the petition in the State Court proceeding and entered judgment for respondents.

82. Defendants admit that the congressional plan was in place on March 19, 2012. Defendants deny the remaining allegations in paragraph 82.
83. Defendants admit the second sentence of paragraph 83 and deny the remaining allegations of paragraph 83.
84. Defendants deny the allegations of paragraph 84.
85. Defendants incorporate by reference their response to the allegations contained in the Complaint set forth above as if fully restated herein.
86. Defendants admit the first sentence of paragraph 86. The second sentence of paragraph 86 contains a conclusion of law to which no response is required.
87. Defendants deny the allegations of paragraph 87.
88. Defendants deny the allegations of paragraph 88.
89. Defendants deny the allegations of paragraph 89.
90. Defendants deny the allegations of paragraph 90.
91. Defendants deny the allegations of paragraph 91.
92. Defendants deny the allegations of paragraph 92.
93. Defendants deny the allegations of paragraph 93, and deny that Plaintiffs are entitled to relief.
94. Defendants deny that there is any ground for an order directing Magistrate Judge Mann to begin work on a redistricting plan, deny that Plaintiffs are entitled to any relief, and deny the remaining allegations of paragraph 94.
95. Defendants incorporate by reference their response to the allegations contained in the Complaint set forth above as if fully restated herein.
96. Defendants deny the allegations in paragraph 96.

97. Defendants deny the allegations of paragraph 97.
98. Defendants deny the allegations of paragraph 98.
99. Defendants deny the allegations of paragraph 99.
100. Defendants deny that there is any ground for an order directing Magistrate Judge Mann to begin work on a redistricting plan, deny that Plaintiffs are entitled to any relief, and deny the remaining allegations of paragraph 100.
101. Defendants deny the allegations of paragraph 101.
102. Defendants admit that Plaintiffs purport to describe the allegations of Count III of their Original Complaint and the relief that they requested in connection with that Count.
103. Defendants admit the allegations of paragraph 103.
104. Defendants incorporate by reference their response to the allegations contained in the Complaint set forth above as if fully restated herein.
105. Defendants deny the allegations of paragraph 105.
106. Defendants deny the allegations of paragraph 106.
107. Defendants deny the allegations of paragraph 107.
108. Defendants deny the allegations of paragraph 108.
109. Defendants deny the allegations of paragraph 109.
110. Defendants deny the allegations of paragraph 110.
111. Defendants deny that there is any ground for an order directing Magistrate Judge Mann to begin work on a redistricting plan, deny that Plaintiffs are entitled to any relief, and deny the remaining allegations of paragraph 111.
112. Defendants deny the allegations of paragraph 112.

113. Defendants incorporate by reference their response to the allegations contained in the Complaint set forth above as if fully restated herein.

114. Defendants deny the allegations of paragraph 114.

115. Defendants deny the allegations of paragraph 115.

1. Defendants deny the allegations of paragraph 1 of Plaintiffs' prayer for relief, and deny that Plaintiffs are entitled to relief.

2. Defendants deny the allegations of paragraph 2 of Plaintiffs' prayer for relief, and deny that Plaintiffs are entitled to relief.

3. Defendants deny the allegations of paragraph 3 of Plaintiffs' prayer for relief, and deny that Plaintiffs are entitled to relief.

4. Defendants deny the allegations of paragraph 4 of Plaintiffs' prayer for relief, and deny that Plaintiffs are entitled to relief.

5. Defendants deny the allegations of paragraph 5 of Plaintiffs' prayer for relief, and deny that Plaintiffs are entitled to relief.

6. Defendants deny the allegations of paragraph 6 of Plaintiffs' prayer for relief, and deny that Plaintiffs are entitled to relief.

7. Defendants deny the allegations of paragraph 7 of Plaintiffs' prayer for relief, and deny that Plaintiffs are entitled to relief.

8. Defendants deny the allegations of paragraph 8 of Plaintiffs' prayer for relief, and deny that Plaintiffs are entitled to relief.

## **AFFIRMATIVE DEFENSES**

Without assuming the burden of proof, Defendants assert the following affirmative defenses:

### **FIRST AFFIRMATIVE DEFENSE**

#### **(Failure To State A Claim)**

Plaintiffs have failed to allege sufficient facts upon which a claim for relief may be granted.

### **SECOND AFFIRMATIVE DEFENSE**

#### **(Standing)**

Plaintiffs lack standing to assert their claims.

### **THIRD AFFIRMATIVE DEFENSE**

#### **(Lack Of Justiciable Controversy)**

Plaintiffs fail to raise a justiciable controversy between Plaintiffs and Defendants because Plaintiffs' claims are not ripe or are moot.

WHEREFORE, Defendants respectfully request that the Court:

1. Dismiss Plaintiffs' claims with prejudice and enter judgment for Defendants; and
2. Grant such other relief to Defendants as the Court may deem just and proper.

Dated: May 2, 2012

Respectfully submitted,

/s/Michael A. Carvin

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**CERTIFICATE OF SERVICE**

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