

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ALBANY

SENATOR ELIZABETH O'C. LITTLE, SENATOR
PATRICK GALLIVAN, SENATOR PATRICIA
RITCHIE, SENATOR JAMES SEWARD, SENATOR
GEORGE MAZIARZ, SENATOR CATHARINE
YOUNG, SENATOR JOSEPH GRIFFO, SENATOR
STEPHEN M. SALAND, SENATOR THOMAS
O'MARA, JAMES PATTERSON, JOHN MILLS,
WILLIAM NELSON, ROBERT FERRIS, WAYNE
SPEENBURGH, DAVID CALLARD, WAYNE
McMASTER, BRIAN SCALA, PETER TORTORICI,

Plaintiffs,

-against-

NEW YORK LEGISLATIVE TASK FORCE ON
DEMOGRAPHIC RESEARCH AND
REAPPORTIONMENT, and NEW YORK STATE
DEPARTMENT OF CORRECTIONS,

Defendants.

**ANSWER OF
DEFENDANT NEW
YORK STATE
DEPARTMENT OF
CORRECTION AND
COMMUNITY
SUPERVISION**
Index No. 2310-11

_____, J.

Defendant New York State Department of Department of Corrections and Community Supervision (sued herein as either the New York State Department of Corrections or as New York State Department of Correctional Services, and hereinafter referred to as "DOCCS"), by its attorney, Eric T. Schneiderman, Attorney General of the State of New York (Stephen M. Kerwin, Assistant Attorney General, of counsel) answers the Complaint dated April 4, 2011 as follows:

1. Denies the allegations in paragraphs 7, 8, 9, 10, 11, 24, 25, 26, 28, 29, 39, 40, 47, 48, 49, 50, 55, 56, 57, 58, 60, 71, 73, 79, 86, 87, 88, 89, 90, 91, 92, 93, 94, 96, 97, 98, 99, 100, 105, 114, 115, 117, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 139, 141, 147, 148, 149, 150, 151, 152, 153, 160, 161, 165, 166, 168, 169, 170, 171, 172, 173, 175, 178, 179, 182, 187, 188, 189, 190,

191, 192, 194, 195, 198, 201, 202, 204, 205, 208, 210, 211, 214, 217, 218, 219, 220, 221, 223, 229, 230, 231, 232 and 236 of the Complaint.

2. Denies sufficient knowledge or information to form a belief as to the truthfulness of the allegations in paragraphs 3, 12, 13, 14, 15, 16, 17, 18, 19, 20, 31, 37, 45, 46, 52, 54, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 72, 76, 82, 83, 102, 106, 108, 110, 112, 113, 134, 135, 136, 137, 156, 159, 162, 163, 167, 177, 185, 186, 199, 200, 203, 207, 209, 212, 213, 215, 216, 224, 233 and 235 of the Complaint.

3. Admits the allegations in paragraphs 23, 27, 75, 77, 84, 101 and 104 of the Complaint.

4. With regard to paragraph 103, admits that the budget process is, in part, governed by the New York State Constitution and the New York State Finance Law.

5. Denies sufficient knowledge or information to form a belief as to the truthfulness of the allegations in paragraph 21 except denies that the votes of plaintiffs are diluted by reason of Part XX.

6. Denies sufficient knowledge or information to form a belief as to the truthfulness of the allegations in paragraph 22, and refers the Court to Chapter 45 of the Laws of 1978 as the best evidence and most accurate version of its content.

7. With regard to paragraph 78 of the Complaint, admits that as of January 1, 2010 DOCCS housed 213 inmates serving life sentences without the possibility of parole, but denies the balance of the allegations in that paragraph.

8. Admits the truth, as of January 1, 2010, of the allegations in paragraphs 80 and 81 of the Complaint.

9. Makes no response to the introductory statements in paragraphs 1 and 2 of the Complaint. To the extent those paragraphs include allegations, they are denied.

10. Makes no response to the statements in paragraph 237 of the Complaint in that they include no allegations. To the extent that the statements in those paragraphs are construed to be allegations, they are denied.

11. With respect to the allegations contained in paragraphs 4, 5, 6, 30, 32, 33, 34, 35, 36, 38, 118, 119, 120, 143, 144, 145, 146, 155, 157, 158, 164, 176, 180, 181, 183, 184, 193 and 197 of the Complaint, respectfully refers the Court to Part XX of Chapter 57 of the Laws of 2010 as the best evidence and most accurate version of its content. DOCCS denies the additional allegations in these paragraphs .

12. With respect to the allegations contained in paragraphs 41, 42, 43, 44, 51, 53, 59, 74, 107, 109, 111, 116, 132 and 142 of the Complaint, respectfully refers the Court to the New York State Constitution as the best evidence and most accurate version of its content. DOCCS denies the additional allegations in these paragraphs.

13. Paragraphs 133, 138, 225, 226, 227, 228 and 234 contain legal arguments, not allegations of fact, and are improper in a Complaint. To the extent that the statements in those paragraphs are construed as allegations, they are denied.

14. Repeats and re-alleges each response made herein to the allegations of the Complaint that are incorporated into paragraphs 85, 95, 140, 154, 174, 196, 206 and 222 thereof.

15. Denies each and every allegation of in the Complaint not specifically responded to above.

AFFIRMATIVE DEFENSES

16. Some or all of the Plaintiffs do not have standing to assert some or all of the claims alleged in their Complaint.

17. The Complaint presents claims which are non-justiciable.

18. Chapter 57 of the Laws of 2010 was approved by the New York State Senate in conformity with all parliamentary rules governing that body at that time.

19. Insofar as the Complaint presents a facial challenge to Part XX of Chapter 57 of the Laws of 2010, it fails to state a cause of action.

20. Part XX of Chapter 57 of the Laws of 2010 implements Article III, § 4 of the New York State Constitution, reconciles that provision with Article II, § 4 of the Constitution, and does not violate that constitutional provision, nor Article I, § 11 of the New York Constitution.

21. Enactment of Chapter 57 of the Laws of 2010 did not violate Article VII of the New York State Constitution.

22. The Complaint fails to state a cause of action, in whole or in part.

23. To the extent that DOCCS has already transmitted information required by Part XX, the plaintiffs assert claims for which relief could not be granted.

WHEREFORE, Defendant New York State Department of Corrections and Community Supervision respectfully requests that the relief requested in the Complaint be denied, that the Complaint and this action be dismissed, and that it be awarded costs and disbursements, together with such other relief as may be just.

Dated: Albany, New York
May13, 2011

ERIC T. SCHNEIDERMAN
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VERIFICATION

Maureen E. Boll, being duly sworn, deposes and says that I am the Deputy Commissioner and Counsel of the New York State Department of Corrections and Community Supervision; that I have read the Complaint and the foregoing Answer to the Complaint, and the Answer is true to my knowledge, except as to those matters alleged upon information and belief, and that as to those matters, I believe them to be true.

_____s/_____
Maureen E. Boll

Sworn to before me on the
12th day of May 2011

_____s/_____
Notary Public