SUPREME COURT STATE OF NEW YORK
COUNTY OF ALBANY

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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, NEW YORK STATE DEPARTMENT OF CORRECTIONS,

Defendants.

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Index No. 2310-2011
Date Purchased 4-4-2011

Plaintiff(s) designate(s)
ALBANY
County as the place of trial

The basis of the venue is
DEFENDANT'S RESIDENCE

SUMMONS

Plaintiff(s) reside(s) at

County of

STATE OF NEW YORK
ATTORNEY GENERAL
MANAGING ATTY'S OFC.
RECEIVED
2011 APR -4 AM 11:50

To the above-named Defendant(s)

You are hereby summoned to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiff's Attorney(s) within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated: New York, New York
April 4, 2011

DAVID L. LEWIS, ESQUIRE
Attorney for the Plaintiffs
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Defendant's address:

NYS Legislative Task Force on Demographic Research & Reapportionment
250 Broadway, Suite 2100
New York, New York 10007

NYS Department of Correctional Services
Building 2
1220 Washington Avenue
Albany, New York 12226-2050

SUPREME COURT STATE OF NEW YORK
COUNTY OF ALBANY

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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 and PETER TORTORICI,

Plaintiffs,

-against-

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

Defendants.

----------X

Index No. 2310-2011

VERIFIED COMPLAINT

Plaintiffs, hereby complain of the defendants, New York State Legislative Task Force on Demographic Research and Reapportionment, and New York State Department of Correctional Services, as follows:

PRELIMINARY STATEMENT

1. This is an action seeking a declaratory judgment, pursuant to CPLR §3001 that Section XX of Chapter 57 of the Laws of 2010 is unconstitutional and, *inter alia*, a temporary restraining order and permanent injunction against the defendants from carrying out any acts in furtherance of Section XX.

NATURE OF THE ACTION

2. Plaintiffs bring this declaratory judgment action seeking an Order declaring that Section XX of Chapter 57 of the Laws of the New York ("Section XX"), amending the Correction Law and the Legislative Law as contained in an Article VII budget bill, is unconstitutional and thus, null and void, and temporarily restraining and permanently enjoining the New York State Legislative Task Force on Demographic Research and Reapportionment, and the New York State Department of Correctional Services from acting in accordance with said Section XX. Section XX is unconstitutional based upon the New York State Constitution, Article I Section 11, Article III, Sections 1 and 4, and Article VII, Section 4. Section XX exacerbates vote dilution of certain communities and enhances the voting power of other communities by the fictitious movement of a phantom population of almost 58,000 non-voting prisoners into residences already occupied by others, and from upstate Republican districts to downstate New York City Democratic districts which constitutes political gerrymandering.

INTRODUCTION

3. Section XX was inserted by then-Governor David Paterson into an Article VII budget bill after extensive lobbying by Democratic State legislators, including the current Attorney General.

4. Section XX made no appropriation and did not relate to state revenues.

5. Amending the Correction Law and the Legislative Law, Section XX provided that for the purposes solely of redistricting, incarcerated persons shall be "counted as residents of their places of residence", and that such places shall be deemed to be those "prior to [their] incarceration" as opposed to the Federal Decennial Census place of enumeration, the place of their incarceration.

6. Section XX contained a severability clause.

7. Without amending the Constitution and without placing such an issue amending the Constitution before the People as required by the State Constitution, the legislative enactment of Section XX illegally removes from the State Constitution the requirement that the only basis for reapportionment purposes shall be the Federal Decennial Census and replaces it with a statutory exception to the use of the Federal Decennial Census, not listed as among the exceptions to the use of the Census in the State Constitution. The State Constitution sets out the limited number of exceptions to the use of the Census for enumeration. Section XX is not one of the conditions of such different and unconstitutional alteration of enumeration. Section XX illegally diminishes the number of inhabitants required to be counted by the Constitution by declaring certain inhabitants of state prisons, who have long been counted, not to be counted.

8. Section XX exceeds the permissible constitutional language for N.Y. State Constitution Article VII bills.

9. Section XX denies equal protection under New York State Constitution, Article I Section 11, to a segment of the population by exacerbating inequality in the enumeration of inhabitants artificially inflating urban districts at the expense of districts with prison institutions within such rural districts despite the fact that such districts bear the costs of such institutions.

10. Section XX also denies equal protection by enacting irrational classifications.

11. Section XX also provides unequal treatment to different classes of voters based upon geography and based upon political party so as to constitute a basis for partisan gerrymandering.

PARTIES

12. Senator Elizabeth O'C. Little is the duly elected representative of the 45th Senate District. Senator Little is also a voter in that District. Within that district are prisons whose inhabitants are counted for apportionment purposes as within that District.

13. Senator Patrick Gallivan is the duly elected representative of the 59th Senate District. Senator Gallivan is also a voter in that District. Within that District are prisons whose inhabitants are counted for apportionment purposes as within that District.

14. Senator Patricia Ritchie is the duly elected representative of the 48th Senate District. Senator Ritchie is also a voter in that District. Within that district are prisons whose inhabitants are counted for apportionment purposes as within that District.

15. Senator James Seward is the duly elected representative of the 51st Senate District. Senator Seward is also a voter in that District. Within that district are prisons whose inhabitants are counted for apportionment purposes as within that District.

16. Senator George Maziarz is the duly elected representative of the 62nd Senate District. Senator Maziarz is also a voter in that District. Within that district are prisons whose inhabitants are counted for apportionment purposes as within that District.

17. Senator Catharine Young is the duly elected representative of the 57th Senate District. Senator Young is also a voter in that District. Within that District are prisons whose inhabitants are counted for apportionment purposes as within that District.

18. Senator Joseph Griffo is the duly elected representative of the 47th Senate District. Senator Griffo is also a voter in that District. Within that District are prisons whose inhabitants are counted for apportionment purposes as within that District.

19. Senator Stephen M. Saland is the duly elected representative of the 41st Senate District. Senator Seward is also a voter in that District. Within that district are prisons whose inhabitants are counted for apportionment purposes as within that District.

20. Senator Thomas O'Mara is the duly elected representative of the 53rd Senate District. Senator O'Mara is also a voter in that District. Within that District are prisons whose inhabitants are counted for apportionment purposes as within that District.

21. The following plaintiffs, James Patterson, John Mills, William Nelson, Robert Ferris, Wayne Speenburgh, David Callard, Wayne McMaster, Brian Scala and Peter Tortorici are voters and residents of the Senate Districts affected by Section XX of Chapter 57 of the Laws of 2010, and whose votes are diluted by the enactment.

22. The New York State Legislative Task Force on Demographic Research and Reapportionment (the "Task Force") was established by Chapter 45 of the New York State Laws of 1978 to research and study the techniques and methodologies to be used by the United States Commerce Department, Bureau of the Census ("Census Bureau"), in carrying out the Federal Decennial Census.

23. The New York State Department of Correctional Services ("DOCS") is the department within the executive branch of New York State government charged with the administration of correctional services in all respects in New York State.

JURISDICTION

24. Each of the plaintiffs have been harmed or are about to be harmed by the actions of the defendant Task Force and the actions taken by DOCS.

25. Each of the Senator plaintiffs have standing as potential candidates, voters, taxpayers and residents of the Senatorial Districts to be impacted by Section XX, and in part

because the failure to accord such standing would be in effect to erect an impenetrable barrier to any judicial scrutiny of legislative action.

26. Each of the Citizen plaintiffs have standing as voters, taxpayers and residents of Senatorial Districts to be impacted by Section XX, including having to bear the economic burden of sustaining prisoners in their communities by virtue of taxes in support of services to the prisons.

27. Venue is set in Albany County.

FACTUAL ALLEGATIONS

A. Revenue Bill Section XX

28. Chapter 57 of the Laws of New York of 2010 was an Article VII budget bill and an extender for the operation of government and a revenue bill, presented to the Legislature as a budget bill. It was the last in a series of extenders for the operation of government. If it did not pass, the entire government of the state would have been shut down.

29. Section XX of Chapter 57 did not have anything to do with the budget or revenue portions of the Article VII budget bill.

30. Section XX provides that in a year where the Federal Decennial Census is taken but does not implement "a policy of reporting incarcerated persons at such persons residential addressees prior to incarceration", then the DOCS shall provide such "information as to prisoners within their jurisdiction" including "the residential address of such person prior to incarceration" (if any) to the Task Force. Section XX goes on to provide that the Task Force shall "determine the Census block corresponding to the street address of each person's residential address prior to incarceration, if any, and the Census block of the prison."

31. A "block" is the smallest entity for which the Census Bureau collects and tabulates Federal Decennial Census information.

32. Section XX further provides that until the Census implements a policy of reporting prisoners at their residence addresses, the Task Force shall use the data to develop a database so as "all incarcerated persons shall be, where possible, allocated for redistricting purposes, such that each geographic unit reflects incarcerated populations at their respective residential addresses prior to incarceration" rather than at their addresses where they are incarcerated.

33. Section XX also provides that persons whose addresses before incarceration were outside New York are to be considered from an unknown address, and thus not reported despite their presence in the State, and despite the fact that they are considered inhabitants under the State Constitution.

34. Section XX also provides that incarcerated persons for whom the Task Force cannot "identify their prior residential address shall be considered to be counted at an address unknown and shall be excluded from the data set."

35. The provision also recites that Senate and Assembly Districts shall be drawn using the "amended population data set".

36. The challenged statute requires that incarcerated persons be "backed" out of the count for the county where the prison is located and, by the use of administrative records maintained by the State, be allocated back to their counties of residence prior to incarceration.

37. The current Federal Decennial Census counts incarcerated persons as being within the state whose residence addresses prior to incarceration were outside the state, and treats all incarcerated persons as inhabitants of their place of incarceration.

38. Section XX also provides that where an incarcerated person is confined in a Federal correctional facility located within the State, then such person previously counted in the apportionment shall no longer count for apportionment purposes. This law now creates an exception such that certain persons required to be counted by the Constitution are now not counted.

39. Section II also excludes inhabitants from enumeration at all on the basis that the Task Force cannot find a residence address for a prisoner.

40. Therefore, Section XX enacts and empowers the Task Force and DOCS to conduct a state Census for a portion of the population, and thereby create its own enumeration.

B. <u>The New York State Constitution</u>

41. The New York State Constitution prescribes the exclusive permissible method and manner of enumeration for purposes of apportionment.

42. Article III Section 4 of the New York State Constitution provides that the Federal Decennial Census "shall be controlling as to the number of inhabitants in the state or any part thereof for the purpose of apportionment of members of the assembly and adjustment or alteration of senate and assembly Districts."

43. The Constitution states, in uncompromising specificity, that the Federal Decennial Census "shall be controlling", in determining the "number of inhabitants" in "any part "of the State".

44. The Constitution expressly set forth a limited and specific set of circumstances where a state enumeration is to be used instead of the Federal Census. None of those constitutional preconditions for the use of a state enumeration has occurred, nor do any of those exceptions relate to the counting of incarcerated persons.

45. Since 1931, the Federal Decennial Census has been controlling for apportionment purposes in New York.

46. The use of the Federal Decennial Census prevents political manipulation of the counting of inhabitants.

47. Section XX creates a specific exception to the use of the Federal Census that is not within the stated exceptions permitted by the Constitution.

48. The failure to count these prisoners as inhabitants, who place a burden upon the locality, violates the Constitution's determination that for apportionment purposes, inhabitants are to be counted at the place where they are counted in the Federal Decennial Census.

49. The elimination from enumeration mandates by Section XX are specifically prohibited by the Constitution requirement that the Federal Decennial Census "shall be controlling."

50. Such alteration of the enumeration of incarcerated persons constitutes political manipulation of the counting of inhabitants.

51. Article III, Section 4 mandates that Senate Districts be readjusted or altered so that each Senate District shall contain "as nearly as may be" an equal number of "inhabitants, excluding aliens."

52. Senate and Assembly Districts are set by enumerating inhabitants "inhabitants".

53. Article III, Section 5-a states: 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.

54. The setting of districts by the use of inhabitants allows for objective manageable enumeration and requires no legal determinations as to residence and determination of intention.

55. The presence of a non-alien at any single address on the day of the Federal Decennial Census is the sole criteria for being enumerated.

56. Section XX unconstitutionally alters this method without a constitutional amendment.

57. The State Constitution mandates that population for the purposes of reapportionment be determined solely by the Federal Decennial Census, as the Census deems them to be counted, and thus requires the inclusion of incarcerated persons when counting the whole number of persons.

58. The State Constitution requires that incarcerated persons are to be counted as they are counted under the Federal Decennial Census, that is, at their place of incarceration.

59. Article II, Section 4 of the State Constitution provides: "For the purpose of voting, no person shall be deemed to have gained or lost a residence, by reason of his or her presence or absence . . . while confined in any public prison." For purposes of enumeration, they are inhabitants found at the place of incarceration.

60. Incarcerated persons sentenced to felony jail time have no right to vote under New York State law, and thus gain or lose nothing by being counted at the institution of confinement.

C. <u>The Census</u>

61. The Census Bureau counts persons at the place where they generally eat, sleep and work. This practice is known as the "usual residence" rule.

62. This has been the practice of the Federal Decennial Census based upon historical precedents dating back to the First Decennial Census Act of 1790.

63. Since 1850, the Federal Decennial Census counted incarcerated persons at their place of incarceration.

64. The Census Bureau has developed a set of special enumeration and residence rules for specific population groups. As part of each Decennial Census, the Census counts persons living in what it calls "group quarters". These include persons living in local jails, state and Federal prisons, college dormitories, homeless shelters, nursing homes, armed forces installations, persons on maritime vessels, migrant workers and other settings where numerous people may be housed in a single facility.

65. All residents in group quarters are counted as being inhabitants of the address where the group quarters is located, instead of where the residents might otherwise be living were they were not residents of group quarters, or where they might expect to return.

66. For the purposes of counting in the Federal Decennial Census, prison inmates are inhabitants of the institutions in which they are confined.

67. The Federal Decennial Census notes that the usual residence at which it counts people is not necessarily the same as a person's voting residence or legal residence.

68. The Census Bureau itself concluded that a system of counting incarcerated persons at any place other than their place of incarceration will decrease the accuracy of the Federal Decennial Census count.

69. The Federal Decennial Census is not a projection of future intentions, but one of present enumeration.

70. The Federal Decennial Census is used as a form of enumeration. It does not qualify or disqualify voters.

71. The Federal Decennial Census quantifies inhabitants for enumeration and is the basis for apportionment of representation.

72. Prisoners counted in group quarters do not gain or lose a residence for the purposes of voting.

D. Prisoners in the State of New York

73. The State Constitution's mandate to follow the Federal Decennial Census has always required that prisoners be counted for apportionment purposes in their group quarters, which are the correctional facilities where they are incarcerated.

74. The State Constitution provides that the method used in the Federal Decennial Census shall be controlling, and thus, prisoners are to be counted for apportionment purposes as the Census counts them (in the institution where they are incarcerated).

75. As of January 1, 2010, DOCS reported that it had a population of 58,378 incarcerated persons.

76. Prisoners in state correctional facilities serve long periods of confinement in the group quarters due to the length of their sentences.

77. Many prisoners serve sentences of an indeterminate length as the possibility for release and parole prior to the expiration of their sentences is determined by parole boards.

78. DOCS currently houses 213 inmates serving life sentences without possibility of parole. Under Section XX, these inmates are to be counted at their residence prior to their incarceration, and not as inhabitants of the institution where they are permanently confined.

79. Incarcerated persons do not have any other fixed abode in which they could properly be denominated as inhabitants. If they initiate an action relating to their incarceration, they are required to do so in the County where they are incarcerated.

80. Nearly half of the prisoners in DOCS custody (49%) are from New York City's five boroughs.

81. Twelve (12%) percent of the prisoners in DOCS custody are from the suburban counties of New York State.

82. Incarcerated persons draw upon the services of the communities in which their prisons are located.

83. Inmates use community resources including the local courts, hospitals and health services, water, sewer and other infrastructure. Such communities must consider incarcerated persons with their local population when budgeting and planning for fire, rescue, police, water, sewer, sanitation, road maintenance and other public services.

84. Under New York State law, no incarcerated person has the right to vote in State elections.

AS AND FOR A FIRST CAUSE OF ACTION
(Declaratory Judgment under CPLR §3001)

85. Plaintiffs repeat and reallege each of the allegations set forth in paragraphs "1" through "84" of this Verified Complaint as if fully set forth herein.

86. Section XX creates a structural change by an artificial realignment of political power in the State, and it does so by impermissibly amending the meaning and text of the State Constitution by legislation.

87. Section XX of Chapter 57 of the Laws of 2010 is unconstitutional, contravening the text of the Constitution in Article III, section 4 requiring that Federal Decennial Census be "controlling" for purposes of apportionment.

88. The law is unconstitutional because it mandates that the State adopt a policy of counting incarcerated persons at their prior home addresses although the Federal Decennial Census counts such persons at their place of incarceration.

89. The law creates an unconstitutional method of counting inhabitants that differs from the enumeration method used in the Federal Decennial Census.

90. Section XX is unconstitutional because the State Constitution requires that no other method of enumeration may be used.

91. Section XX provides that the drawing of Senate and Assembly seats shall be done by amended population data sets. The use of such amended data sets violates the State Constitution, which does not permit the exclusions of incarcerated persons from apportionment counts in Senate Districts where prisoners are incarcerated.

92. Section XX undermines the arrangement of representation as determined by the State Constitution by excluding certain inhabitants who are counted by the Federal Decennial Census from the enumeration.

93. Section XX also alters the number of inhabitants in certain areas of the State by counting certain inhabitants located in upstate Senate Districts and transferring them to downstate Senate Districts.

94. Section XX realigns incarcerated persons to residences where they are not inhabitants as defined by the counting method of the Federal Decennial Census.

AS AND FOR A SECOND CAUSE OF ACTION
(Declaratory judgment that Section XX is void as encroaching upon the powers of the legislature)

95. Plaintiffs repeat and reallege each of the allegations set forth in paragraphs "1" through "94" of this Verified Complaint as if fully set forth herein.

96. Chapter 57 of the Laws of 2010 was presented to the Legislature as an Article VII budget bill by then Governor Paterson. The budget bill included a budget extender that appropriated funds to permit the State government to continue operating.

97. Separately, Section XX of the revenue bill and budget extender provided for the alteration of the means by which incarcerated persons are counted for reapportionment.

98. Section XX did not relate to the State's revenue or budget.

99. Section XX is a permanent change to the methods of enumeration and apportionment.

100. Section XX is an abuse of the Article VII power of the Governor at the expense of and in derogation of Article III, Section 1 legislative powers.

THE BUDGET PROCESS

101. Each year the Governor and the State Legislature, the Senate and Assembly, engage in the process of creating a budget for the State of New York.

102. Of all the functions of government, the budget process is the most crucial.

103. The budget process is governed by the New York State Constitution and the New York State Finance Law.

104. Pursuant to Article VII, the Governor sends to the Senate and Assembly two types of bills. One type of bills appropriates money and is called appropriation bills. The second type of bills is called Article VII bills which do not appropriate money but are considered by the Governor as "relating to the budget."

105. Non appropriation bills generally contain programmatic provisions detailing the specific manner in which an appropriation is to be implemented, such as the source of funding, allocation and sub-allocation of moneys, and the criteria for disbursement.

106. Other provisions are often included concerning the operation of other government programs and the administration of government agencies.

107. Article VII bills are treated differently by the Constitution in order to insure that executive budgeting is the method of budgeting in New York.

108. The purpose is to restrict the power of the Legislature in budgeting areas.

109. By the terms of the Constitution, the Legislature may not alter an appropriation bill submitted by the Governor except to strike out or reduce items of appropriation or add items. They must then enact or reject them in their entirety.

110. The "no alteration" provision is a Constitutional limitation on Legislative power, enacted by the People.

111. The State Constitution explicitly limits the substantive content of an appropriation bill by what is called the "anti-rider" provision that provides that no provision shall be embraced in any appropriation bill, submitted by the governor, or in such supplemental appropriation bill, unless it relates specifically to some particular appropriation in the bill. Any such provision shall be limited in its operation to such appropriation.

THE LAST BUDGET CYCLE: GOVERNMENT BY EXTENDER

112. In the last budget cycle, then-Governor Paterson presented Article VII bills that were not initially acted upon.

113. Thereafter, the then-Governor presented as Article VII bills what were denominated as budget extenders for the continued operation of the State government. As part of the extenders, the Article VII bills contained non-appropriation language.

114. This restriction on legislative power was demonstrated by the fact that any attempt by a Republican member of the Senate to propose an amendment to the extenders was ruled as unconstitutional and thus improper by the Senate's presiding officer.

115. By placing the non-budgetary item into an Article VII budget revenue bill and making it an extender for the continuation of the government, the State Legislature was unable to amend the Article VII bill to remove Section XX.

116. Article VII prevented the State Legislature from exercising its Article III, Section 1 powers to act on its own.

117. The no-alteration clause shielded the non-appropriation language of Section XX from the State Legislature's ability to exercise its constitutional powers and delete Section XX.

118. Section XX was substantive programmatic legislation that contained its own severability clause.

119. Section XX did not contain an appropriation.

120. Section XX was not a fiscal or a budgetary piece of legislation.

ARTICLE VII VIOLATIONS

121. The then-Governor, in placing Section XX in an Article VII bill and insulating it from legislative amendment, used an appropriation bill for essentially a non-budgetary purpose in excess of the then-Governor's constitutional powers.

122. By virtue of the then-Governor's presentation of the extender as embedded in an Article VII bill, the Legislature was faced with the alternative of shutting down the entire operation of State government, or accepting the non-appropriation measures placed within the appropriation bill.

123. Section XX was enacted unconstitutionally in that it usurped the State Legislature's power under Article III, Section 1.

124. By reason of this usurpation and by reason that the sole alternative was to vote against the continuity of State government, members of the Legislature were deprived of their powers under Article III.

125. In this situation, the then-governor became omnipotent and the members of the State Legislature constitutionally helpless as it had no power to remove the purely legislative, non-appropriation language from the Article VII bills.

126. Section XX's enactment violates the anti-rider provision of the State Constitution, Article VIII, Section 6.

127. The enactment of Section XX should be voided.

128. The insertion of Section XX into a budget bill requires a judicial determination as to what effect limits such as the anti-rider clause of Article VII, Section 6 of the State Constitution impose on the content of Article VII bills.

129. The inclusion of a non-revenue item in an Article VII bill also violates Article VII.

130. Therefore a dispute exists concerning the constitutional authority to force the legislature to pass non-revenue items in a revenue bill and requires a judicial determination of the scope non-apportionment or non-revenue language in Article VII bills.

USE OF A BUDGET BILL TO IMPROPERLY AMEND THE CONSTITUTION

131. Any change in the counting of incarcerated persons for the purpose of redistricting must be made by voters via a Constitutional amendment, and not by the State Legislature through the use of a budget bill.

132. To enact a constitutional amendment, the text of the amendment must pass two successive legislatures before it can be presented to the People of the State for ratification.

133. The means of amending the State Constitution by enacting legislation in a budget bill is itself unconstitutional.

134. Where a constitutional amendment may be enacted in the absence of constitutional convention, which requires passage by two successive legislatures, the use of an Article VII bill abuses the power of the People to amend their constitution.

135. In the aftermath of a 1993 Court of Appeals determination, governors have provided non-appropriation Article VII bills that amended sections of law which had no relation to any specific items of appropriation, and could be enacted at any time of the year before or after the budget is approved.

136. In 2004, the Court of Appeals set the parameter of constitutional limits as to what Article VII non appropriation bills may contain.

137. The Court of Appeals stated that there may come a day when the power to enact a budget using Article VII language exceeds the power of the Governor and infringes on the powers of the Legislature.

138. The day has come.

139. A declaratory judgment should issue declaring Section XX as null and void as violative of Articles III and VII of the Constitution.

AS AND FOR A THIRD CAUSE OF ACTION
(Equal Protection under Article III, Section 4 and Article I, Section 11)

140. Plaintiffs repeat and reallege each of the allegations set forth in paragraphs "1" through "139" of this Verified Complaint as if fully set forth herein.

141. Section XX violates Article III, Section 4 which requires that each Senate District contain "as nearly as may be" an equal number of inhabitants.

142. Article III, Section 4 requires that in reapportioning districts in the Senate "each senate district contain as nearly as may be an equal number of inhabitants".

143. Section XX mandates the numerical movement of approximately 58,000 prisoners from the upstate counties in which they are inhabitants to other counties, principally those in the City of New York and other downstate locations.

144. Section XX removes 58,000 inhabitants from the current place of enumeration and adds phantom population principally to downstate counties.

145. It also eliminates inhabitants entirely from the State.

146. Section XX refuses to count inhabitants who can be found in prison facilities when the Task Force cannot assign an address to such inhabitant. The Census Bureau can find and assign an incarcerated person to their group quarter address, the prison facility, but under the Section XX they are not to be counted anywhere in violation of Article III, Section 5a.

147. Such a numerical assignment by statute exacerbates the weight of vote differential between upstate and downstate counties that already exists because even with the total population being counted, there remains the disparate presence in downstate counties of ineligible voters and traditionally lower voter turnout rates. The weight of the vote upstate counties is unfairly reduced in comparison to that of downstate counties.

148. Even if Senate Districts are of equal population, the weight of the vote of persons residing upstate is lessened because disproportionately more people residing downstate are ineligible or unwilling to vote. By including these fictional inhabitants (incarcerated persons) in the downstate population, Section XX exacerbates the diminution of votes in upstate counties.

149. The total differences in the proportionate weight of votes of citizens upstate is further exacerbated because of this dramatic shift and realignment to downstate of incarcerated persons ineligible to vote.

150. Removing 58,000 inhabitants and placing approximately 40,000 of them in New York City and surrounding suburban areas exacerbates the dilution of upstate votes.

151. Section XX mandates reapportionment by unequal enumeration. It creates unequal populations, thereby diminishing the relative voting strength by virtue of population allocation

152. The movement of 29,000 prisoners, approximately half of the DOCS's prisoners, into New York City alone will create a situation where without the actual population, the metropolitan counties will have greater numbers so as to have unequal representation and thus control over the affairs of the State.

153. Such adverse effect and exacerbation is a denial of equal protection under the State Constitution, Article I, Section 11.

AS AND FOR A FOURTH CAUSE OF ACTION
(Counting prisoners in other than group quarters violates equal protection because it is not a rational classification)

154. Plaintiffs repeat and reallege each of the allegations set forth in paragraphs "1" through "153" of this Verified Complaint as if fully set forth herein.

155. Section XX requires incarcerated persons, and only incarcerated persons, who are counted under a group quarters enumeration to be reassigned from such census enumeration and assigned to census blocs so as to be counted as if they were returned to their "home".

156. Group quarters enumeration by the Federal Decennial Census counts incarcerated persons and other individuals, such as persons in local jails, federal prisons, group homes,

residential treatment centers, health care facilities, nursing home facilities, hospitals, homeless shelters, other shelter facilities, such as domestic violence shelters, students in academic residences such as college and university dormitories, armed forces bases and installations, maritime personnel on vessels, migrant workers, and any other facility where persons may be housed in a group setting.

157. Section XX seeks to identify an originating residence only for incarcerated persons.

158. Section XX backs out incarcerated persons from the group quarter residence for reapportionment purposes, and assigns to them a "home" address which places them within a Census block.

159. All other persons counted in group quarters are to be counted where they eat sleep and live pursuant to the Federal Decennial Census.

160. Only incarcerated persons are to be artificially reassigned to addresses.

161. The State Constitution does not permit persons in group quarters be allocated back to their original place of residence or their original addresses.

162. Persons in group quarters however are not counted in their "homes", no matter how much they intend to return to their home.

163. None of these populations in group quarters are to be "backed out" of reapportionment Census information.

164. Only incarcerated persons by Section XX are to be reassigned out of group quarters where they are physically present and reassigned to other addresses where they once may have lived, but no longer do.

165. Section XX denies equal protection to all non-prisoners counted in group quarters.

166. In New York State, upon the conviction of a felony, a person loses the right to vote. Upon the commission of the crimes, persons incarcerated lose the right to determine their residence. For social purposes they are removed from the community. Persons incarcerated for such felonies lost the right to determine their own residence and they become prisoners of the state. Removed from the community, they lose freedom of movement and the right to return to a home.

167. Others in group quarters have not been so adjudged.

168. The treatment of non-prisoners in group quarters is unrelated to the achievement of any combination of legitimate purposes by the State such that the legislature's actions were irrational.

169. Such a selection of one group, prisoners who have no right to vote, and not others who generally retain the right to vote is an arbitrary, invidious and capricious classification.

170. The disparate treatment of persons residing in group quarters that possess the right to vote and are counted at the location of group quarters in the usual manner is a denial of equal protection. Section XX is a selection of preferential counting methods for persons specifically constitutionally barred and serves no legitimate state interest or purpose.

171. The selection of prisoners is not a rational basis for treatment of such prisoners differently than others in group- quarters.

172. Section XX serves no legitimate state interest.

173. The enactment is unreasonable, arbitrary and capricious by revising counting procedures to suit a single group of non voters.

AS AND FOR A FIFTH CAUSE OF ACTION
(Equal Protection violation by use of Irrational Classification and Enumeration because it creates a false enumeration)

174. Plaintiffs repeat and reallege each of the allegations set forth in paragraphs "1" through "173" of this Verified Complaint as if fully set forth herein.

175. Section XX is irrational as a means of enumeration and thus violates equal protection under Article I, Section 11 and Article III, Section 4. .

176. Section XX requires reassigning prisoners to addresses where they have not lived for years and may not live again.

177. People in institutional settings often have no other fixed place of abode and the length of their stay is often either indefinite or permanent. Such is the case with incarcerated persons.

178. The requirement to count prisoners at an address to which it is presumed they will return is irrational.

179. Section XX is irrational in that it pretends that all incarcerated persons will return to the home they came from after serving time, without any reason to believe such is the case.

180. Section XX makes no exception for the enumeration of prisoners serving life without parole or life sentences despite the fact that they will never return to the community from which they came.

181. Section XX makes no distinctions such that it returns to "residence" persons who have committed crimes against the inhabitants at that residence, be they spouses or children.

182. Section XX seeks to count persons at places even though they may have no ability or intention to return to such place thereby eliminating it as ever being a residence.

183. It makes no distinction exempting prisoners serving life terms who cannot return to the community.

184. It makes no distinction for those prisoners serving terms such that they will not return to the community during the Census decade in question because their sentences exceed the time period of utility of the Census.

185. The Census Bureau has developed a consistent and rational means of classifying persons as inhabitants of group quarters.

186. The Federal Decennial Census was selected to be the determining factor for reapportionment by the framers of the State Constitution to prevent political manipulation of the counting of inhabitants so as to receive a true enumeration.

187. The entirety of reapportionment process depends upon the veracity of the enumeration.

188. The counting of incarcerated persons at addresses selected as "home" constitutes phantom transportation of inhabitants.

189. The requirement to count incarcerated persons at an address at which they do not reside constitutes the phantom placement of inhabitants.

190. The reassignment of such persons when added to a census block, when such persons do not actually reside there, is not a true enumeration.

191. It skews the enumeration.

192. Such skewed enumeration manufactures additional political power where none exists or can exist.

193. Section XX further refuses to count persons found in the institution, but for whom no address can be found, thereby wiping out whole classes of inmates from the process of

apportionment, making them non inhabitants.

194. The group quarters method of counting is a historically reasonable means of interpreting the State Constitutional phrase "inhabitants", and should not be disturbed.

195. Section XX is not enacted with a rational basis and is unreasonable and, therefore, violates equal protection under Article I, Section 11.

AS AND FOR A SIXTH CAUSE OF ACTION
(Equal Protection violation by use of Irrational Classification and Enumeration because inhabitants already occupy the addresses now being assigned to prisoners)

196. Plaintiffs repeat and reallege each of the allegations set forth in paragraphs "1" through "195" of this Verified Complaint as if fully set forth herein.

197. Section XX backs out prisoners from being counted in their group quarters and assigns them to addresses where they may have once lived.

198. No reasonable belief exists that all or most of the state's prisoners most will reside or live at the addresses selected by them or for them within the next ten years.

199. Places where incarcerated persons once resided are not left empty to await their return as Section XX presumes.

200. Inhabitants already counted by the Federal Decennial Census reside in the census bloc to which prisoners are reassigned by Section XX.

201. Section XX adds inhabitants to places where existing inhabitants occupy the space and thus make it impossible for purported returning prisoners to occupy the same space without displacing current inhabitants. To count persons that are already at that place along with prisoners who are not actually there provides greater political strength of those places at the cost of where prisoners actually are.

202. To count twice as many persons in a single residence when only one person actually lives there is irrational and deprives persons elsewhere of equal protection.

203. No empirical basis for such an assumption exists.

204. Restoration of phantom prisoners to a community provides additional political power to former addresses while leaving the burden of services costs and expenses to the locality where they remain actually housed.

205. Section XX's presumption that all prisoners will return to a previous addresses is unreasonable, irrational, arbitrary and capricious.

AS AND FOR A SEVENTH CAUSE OF ACTION
(Partisan gerrymandering)

206. Plaintiffs repeat and reallege each of the allegations set forth in paragraphs "1" through "205" of this Verified Complaint as if fully set forth herein.

207. Reapportionment determines political power.

208. The purpose of the enactment of Section XX was to shift power from the Republican Party representatives to the Democratic Party representatives.

209. In May of 2010, the then Democratic President of the Senate, Malcolm Smith stated publicly that it was the intention of the Senate Democrats, "are going to draw the lines so that Republicans will be in oblivion in the state of New York for the next 20 years."

210. Currently incarcerated persons are counted as inhabitants of Republican-represented Senatorial Districts.

211. The reallocation of 58,000 incarcerated persons primarily to Democratic represented Senatorial Districts is partisan gerrymandering.

212. Section XX was introduced by the Democratic governor at the behest of the then majority Democratic Senators and Democratic Assembly persons.

213. It was introduced without any consultation with any Republican affected by the reallocation of prisoners.

214. From beginning to end, Section XX was a wholly partisan effort.

215. Not a single Republican Senator voted for Chapter 57 of the Laws of 2010.

216. Commentators and elected officials have conceded that Section XX, in whatever form, benefits the downstate Democrats at the expense of the upstate Republicans.

217. The enactment of Section XX is the legislative use of political classifications to burden the representational rights of Republican upstate voters.

218. Section XX was enacted with the purpose and effect of maximizing the strength of the Democratic Party as against the Republican Party, its voters and elected representatives.

219. The Democrats seek to enhance their power by concentrating political power in the downstate Democratic districts.

220. Republican Senators and members of the Republican Party are intentionally discriminated against by such political partisan manipulation.

221. Democratic leaders are seeking to regain the Senate majority by an unconstitutional scheme by an unconstitutional method for unconstitutional purposes, seeking to subvert the electoral will of the People of the State.

AS AND FOR AN EIGHTH CAUSE OF ACTION
(Permanent Injunction)

222. Plaintiffs repeat and reallege each of the allegations set forth in paragraphs "1" through "221" of this Verified Complaint as if fully set forth herein.

223. The only remedy in the instant action is a permanent injunction to prevent the unconstitutional application of Section XX by virtue of actions of the Task Force as ordered by Section XX.

224. The order of the Court that is herewith sought to prevent the Task Force from altering the means and methods of prisoner counting in the determining of apportionment of the State Legislature.

225. In order to obtain an injunction, plaintiffs must establish, first, a likelihood of success on the merits, second, irreparable harm on the absence of the injunction and, third, that the balance of equities exist in favor of granting the injunction.-

226. First, Plaintiffs have a likelihood of success on their merits because the State Constitution forbids the acts sought to be done in Section XX and there was no constitutional amendment to make such a change in the counting of inhabitants

227. Second, Plaintiffs suffer irreparable harm because such counting diminish the political power of the individual voters and diminishes the political power of the Senators by the constitutional offense of phantom inhabitants being moved out of district where the district services are still provided.

228. Other elements of irreparable harm exist as well. The difficulties of Census manipulation run the risk of multiple challenges as well as the danger of multiple yearly elections of the state legislature.

229. The ability to assign places of "residence" to prisoners is all but impossible.

230. It results in certain population not to be counted in violation of the State Constitution thereby altering the basis for apportionment as set forth in the Constitution

231. Removal of these inhabitants permanently distorts the Census and representation.

232. The delegating of the determination of inhabitants' place of abode to the Task Force is an illegal delegation of power.

233. The Census Bureau itself is undertaking a study of the feasibility with a report due this year.

234. The balance of equities favors the granting of a permanent injunction.

235. No application for the within relief has been made to any Court.

236. These proceedings represent the plaintiffs' only recourse under the law.

237. These pleadings are hereby certified as non-frivolous by counsel.

WHEREFORE, plaintiffs demand the following relief:

A. Declaratory judgment that the amendments to the Correction Law and the Legislative Law in Section XX of Chapter 57 of the Laws of 2010 regarding the methods of counting incarcerated persons are null and void as being unconstitutional;

B. A permanent injunction against the Task Force prohibiting them from using amended data subsets regarding incarcerated persons in any other manner than counting them as inhabitants of their place of incarceration as enumerated by the Federal Decennial Census;

C. A permanent injunction against DOCS prohibiting the transfer of any information of an incarcerated person's "residence" as being any other than the address of the institution where they are incarcerated; and

D. Such other and further relief as the Court may deem just and proper.

DATED: April 4, 2011

Yours, etc.

/s/

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ATTORNEY'S VERIFICATION

DAVID L. LEWIS, an attorney duly admitted to the practice of law before the Courts of the State of New York, does hereby affirm under the penalties of perjury:

1. I am the attorney for the plaintiffs in the instant action, and my office is located at 225 Broadway, Suite 3300, New York, New York, in the County of New York.

2. I have personally reviewed the contents of this document with my clients, and upon the conclusion of said review as to the facts alleged therein, believe the same to be true except where made under information and belief.

3. As to all other allegations, counsel has personal knowledge thereof and believes the within allegations to be true, to his personal knowledge.

4. This Verification is made by me as an attorney pursuant to the provisions of the CPLR and applicable case law due to the fact that I maintain my office in New York County and plaintiffs reside in other counties, and because time is of the essence.

Dated: New York, New York
April 4, 2011

/s/
DAVID L. LEWIS, ESQ.