

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ALBANY

In the Matter of

Index No.

ANGELA RENNA and ROSS BRADY,

Petitioners,

-against-

VERIFIED PETITION

ANDREW CUOMO, in his official capacity as Governor of the State of New York; THE ASSEMBLY OF THE STATE OF NEW YORK; CARL HEASTIE, in his official capacity as Speaker of the Assembly of the State of New York; WILLIAM BARCLAY, in his official capacity as Minority Leader of the Assembly of the State of New York; THE SENATE OF THE STATE OF NEW YORK; ANDREA STEWART-COUSINS, in her official capacity as Temporary President of the Senate of the State of New York; ROBERT ORTT, in his official capacity as Minority Leader of the Senate of the State of New York; ROBERT MUJICA, in his official capacity as New York State Budget Director; ROSSANA ROSADO, in her official capacity as New York State Secretary of State; and, THOMAS DINAPOLI, in his official capacity as New York State Comptroller,

Respondents.

For a Judgment Under Article 78 of the Civil Practice Law and Rules

Petitioners Angela Renna and Ross Brady, for their Verified Petition in this hybrid Article 78 and declaratory judgment proceeding against Respondents Andrew Cuomo, in his official capacity as Governor of the State of New York; The Assembly of the State of New York; Carl Heastie, in his official capacity as Speaker of the Assembly of the State of New York; William Barclay, in his official capacity as Minority Leader of the Assembly of the State of New York; The Senate of the State of New York; Andrea Stewart-Cousins, in her official

capacity as Temporary President of the Senate of the State of New York; Robert Ortt, in his official capacity as Minority Leader of the Senate of the State of New York; Robert Mujica, in his official capacity as New York State Budget Director; Rossana Rosado, in her official capacity as New York State Secretary of State; and, Thomas DiNapoli, in his official capacity as New York State Comptroller, allege as follows:

Facts and Allegations

1. In 2014 New Yorkers approved a constitutional amendment requiring an Independent Redistricting Commission to redraw the state and federal legislative district maps every ten years. The amendment was designed to bring independence, objective criteria and sound reasoning, and citizen participation to the redistricting process. It mandates at least 12 public meetings. It contains criteria for drawing districts, including not harming racial or language minority voting rights, discouraging competition, or favoring incumbents. Commission members are evenly appointed by the majority and minority leaders in each house of the Legislature.

2. As Governor Cuomo explained in 2011, “[r]edistricting in New York is a system that has prioritized incumbency and partisan interests over democratic representation. This process needs to be about the people and not the politics. To help restore faith in our State government, we need to reform the system.” Ten years later, however, neither the Governor nor the Legislature have much interest in seeing the reforms play out.

3. The Governor and his agencies have prevented the Commission from starting its work by withholding for months appropriated funds the commission needed to compensate staff and acquire equipment and then imposing unconstitutional terms for administering the funds.

4. Commissioners have been in place for almost a year with no money to operate. Co-executive directors were selected but have not been be paid. There has been no money for staff. The Commission does not have the equipment it needs begin the redistricting process. And time is of the essence.

5. By no later than September 15th this year and at least 30 days before the first of twelve mandatory public hearings, draft redistricting plans, related data, and other information must be made available to the public. The final redistricting plans must be submitted to the Legislature by January 1st next year.

6. There is a great deal of work to be done before the federal census data becomes available, including hiring staff, purchasing equipment, software, and software licenses, and forming plans for obtaining public input before and after the maps are drawn.

7. To redraw the electoral maps in a compressed time, the groundwork needs to be laid down now. This is especially true because the federal census data may be delayed until August and New York stands to lose at least one, if not two, Congressional seats.

8. The Commission can access certain data from the Census Bureau and other sources to set out a framework for redistricting plans in preparing for the census data release later this year. But it needs staff and equipment in place to make those preparations.

9. Unless the Commission receives funding immediately in a manner that it can use to operate as an independent body, its ability to meet its constitutional duty to obtain public participation and produce independent, objective, and fair redistricting plans will be compromised.

New Yorkers Amended the State Constitution in 2014 to Add an Independent Redistricting Commission.

10. Legislative reapportionment and redistricting for state and federal districts occur every ten years, using population data from the decennial federal census.

11. In 2009, former New York City Mayor Ed Koch helped form and lead a coalition, New York Uprising, that made redistricting reform a priority issue. New York Uprising and other reform-minded groups pushed legislators to pledge support for redistricting reform.

12. Five years later, the Legislature put a constitutional amendment for redistricting reform before New York voters that passed in two separately elected Legislatures and Governor Cuomo supported.

13. The reform amendment established a bi-partisan commission charged with creating new districts, guided by standards designed to limit the ability of incumbent politicians to draw districts favorable to maintaining power.

14. New constitutional standards require that districts respect existing jurisdictional boundaries and take care to recognize local communities of interest, including those representing racial and ethnic minorities.

15. The reform amendment also requires that minority parties in the Senate and Assembly have a voice in the process. The Independent Redistricting Commission amendment provides two appointees respectively from the majority and minority parties in each house. Those eight members then vote to appoint two more members who cannot have been enrolled in either of the state's largest two political parties in the past five years.

The Constitution Mandates Funding for the Commission.

16. Section 5-b(i) of Article III of the Constitution states:

The state budget *shall* include necessary expenses for the expenses of the independent redistricting commission, provide for compensation and reimbursement of expenses for the members and staff of the commission, assign to the commission any additional duties that the legislature may deem

necessary to the performance of the duties stipulated in this article, and require other agencies and officials of the state of New York and its political subdivisions to provide such information and assistance as the commission may require to perform its duties.

(emphasis added).

17. The state budget for the fiscal year ending March 31, 2020 (FY 2019-20) contained a \$250,000 appropriation for the Commission added by the Legislature.

18. The FY 2019-20 state budget appropriated the \$250,000 to the Department of State in the Aid to Localities budget bill.

19. A year ago, the four Legislative leaders made their appointments to the Commission.

20. The Legislature then added an additional \$750,000 to the budget for the fiscal year ending March 31, 2021 (FY 2020-21) and re-appropriated the unused \$250,000 amount from FY 2019-20.

21. Both amounts were appropriated to the Department of State in the Aid to Localities budget bill.

22. Neither budget bill contained the compensation and expense detail required under the Constitution.

23. Nor did the budget bills place any specific requirements on the executive branch to provide the Commission with the assistance it requires to be operational.

The Executive Branch Has Failed to Fund the Commission as the Constitution Requires.

24. The Governor and his officials have exploited the lack of legislative direction in the previous years' appropriations to do nothing to help get the Commission underway.

25. Last September the Commission's members sent a letter to Respondent Mujica, state Budget Director, asking for the Commission's funding to be released (**Exhibit A**).

26. He ignored them.

27. The Commission appointed co-executive directors as mandated by the Constitution in November, despite not having access to its funding.

28. The Commission tried again in December to get its funding released—this time writing to Governor Cuomo and the legislative leaders (**Exhibit B**).

29. Only Senate Minority Leader Ortt wrote back, expressing his desire that the executive branch honor the voters' will and release the Commission's funding so that it can carry out its important constitutional mandate (**Exhibit C**).

30. Meanwhile, a coalition of diverse organizations, including the NALEO Education Fund, LatinoJustice PRLDEF, Center for Law and Social Justice, CPC-Chinese Planning Council, The New York Immigrant Coalition, League of Women Voters of New York State, Citizens Union, and ReInvent Albany, sent a letter to Respondent Governor Cuomo urging the executive branch to release the Commission's funding (**Exhibit D**).

31. The coalition noted that funding delays are jeopardizing the Commission's ability to collaborate and meet with "organizations representing diverse communities throughout the state" and to fulfill its constitutional mandate to conduct a minimum 12 public hearings around the state.

The Governor and the Legislature Are Violating the Constitution by Failing to Make Appropriations for the Commission for Next Fiscal Year.

32. Despite the express constitutional mandate that funding "shall" be provided to the Commission, neither the Governor nor the Legislature have agreed to add a new appropriation with the required budget details in the fiscal year 2022 state budget.

33. Section 2 of Article VII of the Constitution requires the Governor to submit an annual budget “containing a complete plan of expenditures proposed to be made before the close of the ensuing fiscal year.”

34. Section 1 of Article VII of the Constitution requires the Legislature to provide by December 1st an itemized estimate of its financial need that the Governor must include in the budget without revision.

35. On January 12, 2021, the Commission’s co-executive directors submitted a budget request to Budget Director Mujica, asking that an additional \$3.2 million be included in the upcoming fiscal year state budget (FY 2021-22) so that the Commission could have adequate funding to undertake its work (**Exhibit E**).

36. A week later Governor Cuomo introduced his executive budget, which did not contain a new appropriation for FY 2021-22. It did, however, include re-appropriations of the \$250,000 and \$750,000 amounts from the prior two fiscal years.

37. Neither the Legislature nor the Governor have made provisions for Commission expenditures in FY 2021-22.

38. On January 28, 2021, the Commission emailed a letter to Governor Cuomo and the legislative leaders again asking for \$1,000,000 previously appropriated to be released and requesting its necessary funding of an additional \$3.2 million be included in forthcoming FY 2021-22 budget amendments (**Exhibit F**).

39. The Commission cited the Governor and Legislature’s constitutional obligation to make necessary appropriations, provide for compensation and expense reimbursement for Commission members and staff, and require other agencies and officials to provide information and assistance as required by the Commission.

40. Governor Cuomo's 30-day budget amendments under Section 3 of Article VII of the Constitution published on February 19 did not contain any portion of the \$3.2 million the commission requested for FY 2021-22.

41. Meanwhile, a coalition of advocates submitted testimony to the Legislature's joint fiscal committee stressing the importance of Commission funding to its work (**Exhibit G**).

42. Among other things, the coalition noted that the Commission will have a minimum staffing cost of \$675,000, or 90 percent of the amounts previously appropriated and that technology and equipment costs alone could require more than the \$75,000 that remained.

43. The coalition also pointed out that the Legislature intends to appropriate funds for an existing entity, the Legislative Task Force on Demographic Research & Reapportionment (LATFOR), exceeding \$2 million.

44. The coalition further noted that LATFOR has a head-start on the Commission with staff, technology, and other resources in place to begin drawing new electoral maps.

45. Respondents Stewart-Cousins and Heastie each make two appointments to LATFOR, while Respondents Ortt and Barclay each make one.

46. LATFOR can be expected to provide assistance to the Senate and Assembly if the Commission's redistricting plans are rejected by the Legislature or Governor and made subject to legislative amendments under Section 4(a) of Article III of the Constitution.

The Executive Branch Proposes to Release Appropriated Funds to the Commission in a Form that Violates the Constitution.

47. At the time of its January 28 letter, the Commission had not yet seen a contract signed the day before between the Department of State and The Research Foundation for the State University of New York (**Exhibit H**).

48. The contract purports to fund the Commission through the SUNY Research Foundation using existing appropriations.

49. The Commission is not a party to the contract.

50. The SUNY Research contract introduces the SUNY Rockefeller Institute as academic support to the Commission and SUNY Research as the Rockefeller Institute's fiscal and staffing agent.

51. According to the contract, SUNY Research will assign staff to the Rockefeller Institute to conduct data gathering, research, and analysis to enable the Commission to do its redistricting work.

52. The Commission has no role in hiring staff assigned to Rockefeller Institute staff under the SUNY Research contract.

53. The Commission has no ability to fire staff assigned to Rockefeller Institute under the SUNY Research contract.

54. The SUNY Research contract does not contain a provision for the hiring, compensation, or reimbursement of expenses the co-executive directors the Commission members appointed under Section 5-b(h) of Article III of the Constitution.

55. The SUNY Research staff assigned to Rockefeller Institute would be employees of an independent contractor who would not qualify as public officers entitled under the Public Officers Law to be defended and saved harmless by the state in a civil action.

56. The Rockefeller Institute is not a party to the contract and has no obligation under the contract or under any law to provide services to the Commission.

57. The SUNY Research contract does not contain a provision for compensation or reimbursement of expenses for Commissioner members.

58. The Department of State reserves various rights to suspend or terminate the SUNY Research contract that excludes the Commission from having any input or control.

59. Section 5-b of Article III of the Constitution, however, exists to implement the people of New York's will to have an *independent* redistricting commission.

60. The Commission has an express constitutional duty to prepare a redistricting plan to establish senate, assembly, and congressional districts independent of the state government's executive, legislative, and judicial branches.

61. To that end, the Constitution provides that the co-executive directors appointed by the Commission members "*shall* appoint such staff as are necessary to perform the commission's duties."

62. The co-executive directors' duty to appoint is only qualified in the Constitution by a mandate that the Commission members must review the staffing plan.

63. The SUNY Research contract places staffing in the hands of SUNY Research and the Department of State and excludes the Commission's co-executive directors entirely.

64. The SUNY Research contract violates the Constitution's provision for staffing the Commission.

65. The executive branch is exercising control over the Commission and preventing it from carrying out its constitutional duties despite not having any right to appoint members to the Commission by design of the people of New York.

66. There is no meaning of "independent" that can be reconciled with the Governor controlling the Commission's staff appointments.

67. The Commission cannot be independent when the executive branch will not release appropriated funds for the Commission to use at its discretion.

68. Nor can the Commission be considered independent when neither the executive nor legislative branch are willing to propose budget amounts for the Commission in FY2021-22.

69. The Commission has an express constitutional duty to submit its redistricting plan to the Legislature no later than January 15, 2022.

70. Without funding, the Commission cannot meet its obligations under the Constitution.

71. New Yorkers are being harmed by the executive and legislative branches sabotaging a redistricting process aimed at restoring democratic representation in New York.

Parties

72. Petitioner Angela Renna is a New York resident who pays taxes to the state. She was a candidate for state legislative office in the 2020 general election and is contemplating running again in 2022.

73. Petitioner Ross Brady is a New York resident who pays taxes to the state. He is a Commission member appointed under Section 5-b(5) of Article III of the Constitution by the eight legislative-appointed Commission members.

74. Respondent Governor is head of the executive branch of the government of the State of New York.

75. Respondent Assembly is a house of the Legislature empowered under the Constitution to exercise the legislative function.

76. Respondent Heastie is Speaker of the Assembly and an officer of the Assembly. As authorized by the Constitution and statute, the Speaker appoints commissioners to the Commission.

77. Respondent Barclay is Minority Leader of the Assembly and an officer of the Assembly. As authorized by the Constitution and statute, the Minority Leader appoints commissioners to the Commission.

78. Respondent Senate is a house of the Legislature empowered under the Constitution to exercise the legislative function.

79. Respondent Stewart-Cousins is Temporary President of the Senate and an officer of the Senate. As authorized by the Constitution and statute, the Temporary President appoints commissioners to the Commission.

80. Respondent Ortt is Minority Leader of the Senate and an officer of the Senate. As authorized by the Constitution and statute, the Minority Leader appoints commissioners to the Commission.

81. Respondent Mujica is the New York State Budget Director tasked by the Legislature to issue certificates of approval before moneys appropriated in the Aid to Localities Budget Bills of 2019 and 2020 can be paid.

82. Respondent Rosado is Secretary of State and heads the executive department tasked by the Legislature with administering appropriations for the Commission in the Aid to Localities Budget Bills of 2019 and 2020.

83. Respondent DiNapoli is the New York State Comptroller who is responsible for disbursements of state funds.

Jurisdiction and Venue

84. This Court has jurisdiction under CPLR 7804(b) and CPLR 506(b) because all actions at issue in this case took place within the judicial district containing Albany County.

Declaratory Judgment: The Respondents Are Violating the Constitution

85. The SUNY Research contract violates the Constitution's provisions designed to make the Commission independent.

86. The Governor and the legislature have not submitted budgets for FY 2021-22 containing proposed appropriations for the expenses of the Commission and provide for compensation and reimbursement of expenses for the members and staff of the Commission.

87. The Governor and the legislative respondents have failed to meet their obligations under the Constitution to provide specified budget items.

88. The Governor and the legislative respondents have violated Section 5-b(i) of Article III of the Constitution.

**Article 78 Cause of Action:
Fund the Commission with Existing Appropriations**

89. Respondents Cuomo, Mujica, Rosado, and DiNapoli have failed to perform their duties enjoined on them by the Constitution and state law to release \$1,000,000 in funds to the commission so that it can operate independently.

90. Petitioners have no administrative remedies and have no other remedy at law.

91. Petitioners have not made any prior application for the relief requested here.

Relief Requested

92. Petitioners respectfully request that this Court issue an order:

- a. Declaring the SUNY Research contract in violation to the Constitution's provisions for making the Commission independent;
- b. Compelling the Respondents to take all necessary steps to release funds appropriated in 2019 and 2020 to the Commission and enable the Commission to operate as designed in the Constitution;
- c. Declaring that the Governor and the Legislature have an obligation under Section 5-b(i) of Article III of the Constitution to make appropriations for the expenses of the Commission and provide for

compensation and reimbursement of expenses for the members and staff of the Commission;

- d. Awarding attorneys' fees and costs incurred in this litigation; and
- e. Granting such other and further relief as this Court may deem just and proper.

Dated: Albany, New York
March 5, 2021

Respectfully submitted,



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Counsel for Petitioners

VERIFICATION

STATE OF NEW YORK)
COUNTY OF ALBANY) :ss

I, Cameron Macdonald, being duly sworn, deposes and says:

I am the attorney for the Petitioners in the above-captioned action.

I have reviewed the foregoing Petition and know its contents to be true to my knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters, I believe them to be true based on my review of pertinent documents and conversations with persons with personal knowledge.

This verification is made by me rather than Petitioners because the Petitioners reside outside Albany County where I maintain my office.

[Handwritten signature in blue ink]

Cameron Macdonald