

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-

Index No. 2310-2011

New York State Task Force on  
Demographic Research and  
Reapportionment, New York State  
Department of Correctional Services,  
Defendants,

**VERIFIED ANSWER**

-and-

NAACP New York State Conference,  
Voices of Community Activists and  
Leaders-New York, Common Cause of  
New York, Michael Bailey, Robert  
Ballan, Judith Brink, Tedra Cobb,  
Frederick A. Edmond III, Melvin  
Faulkner, Daniel Jenkins, Robert Kessler,  
Steven Mangual, Edward Mulraine,  
Christine Parker, Pamela Payne, Divine  
Pryor, Tabitha Sieloff, and Gretchen  
Stevens,

Defendant-Intervenors.

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DEFENDANT-INTERVENORS' VERIFIED ANSWER TO VERIFIED COMPLAINT

*PRELIMINARY STATEMENT*

During previous redistricting cycles, New York included incarcerated persons in the district in which they were confined when drawing state legislative districts, even though incarcerated persons remain residents of their home communities for virtually all other purposes under New York law. Because incarcerated persons disproportionately have their home residence in urban districts with high concentrations of African-American and Latino residents, this practice resulted in the systematic dilution of minority voting rights throughout the state, by using prison populations – persons ineligible to vote – to arbitrarily and artificially award greater representation to overwhelmingly white districts that house prisons, at the expense of the urban, largely minority districts where incarcerated persons retain their domicile.

New York's previous practice also improperly diluted the voting strength of voters living in all other legislative districts throughout the state that had no prisons, or that had smaller prison populations than other districts. In addition, for purposes of local redistricting, at least 13 counties in New York already had an established practice of not including incarcerated populations as local residents when drawing their county legislative districts, because of the enormous distortions in voting strength and representation that would result from including incarcerated populations in these local districts. The practices of these counties confirm that incarcerated persons are not considered residents of the prison district.

Part XX of Chapter 57 of the Laws of 2010, challenged in this action, was enacted in 2010 to remedy the injustice of the prior method of allocating prison populations to some districts. Part XX provides that incarcerated persons shall be allocated for state legislative districting purposes to their residence immediately prior to their incarceration, and for county and municipal redistricting purposes requires those bodies to either allocate incarcerated people at their residential addresses or to remove those individuals from their population. By their lawsuit, plaintiffs seek to both prevent incarcerated people from being allocated to their prior addresses, and to remove the discretion that counties with prisons had under the old law. The counties have historically had the discretion to choose the population basis for redistricting purposes, but the plaintiffs seek to replace that discretion with a mandatory requirement to engage in prison-based gerrymandering.

Plaintiffs' challenge to this statute is without merit. By this answer, defendant-intervenors reject all of plaintiffs' claims and ask the court to deny plaintiffs' request to restore the prior unjust and indefensible practice of padding the population of districts containing the largest prison populations, a practice that diluted the voting rights of minority communities, and, indeed, impaired the rights of all persons in New York who do not reside in districts with the largest incarcerated populations.

Defendant-intervenors, in filing this answer to plaintiffs' verified complaint, respond paragraph by paragraph as follows:

1. No response is required to the statement regarding the nature of the action. Deny that Part XX of Chapter 57 of the Laws of New York (“Part XX”), which the verified complaint labels “Section XX”, is unconstitutional. Deny that plaintiffs are entitled to the relief requested.
2. No response is required to the statement regarding the nature of the action and the relief sought. Deny the remaining allegations.
3. Admit that Part XX was included in legislation that passed. Without sufficient information or knowledge to admit or deny the remaining allegations.
4. Part XX speaks for itself and therefore no response is required. The allegation also asserts a legal conclusion to which no response is required. To the extent a response is required, the allegations are denied upon information and belief.
5. Part XX speaks for itself and therefore no response is required. To the extent a response is required, the allegations are denied.
6. Admit.
7. The allegation is a legal conclusion to which no response is required. To the extent a response is required, the allegation is denied.
8. The allegation is a legal conclusion to which no response is required. To the extent a response is required, the allegation is denied.
9. The allegation is a legal conclusion to which no response is required. To the extent a response is required, the allegation is denied.
10. The allegation is a legal conclusion to which no response is required. To the extent a response is required, the allegation is denied.

11. The allegation is a legal conclusion to which no response is required. To the extent a response is required, the allegation is denied.

12. Upon information and belief, admit that plaintiff is a representative of the district specified, and that incarcerated persons within that district were, prior to the implementation of Part XX, included for apportionment purposes within that district. Without sufficient information or knowledge to admit or deny remaining allegations.

13. Upon information and belief, admit that plaintiff is a representative of the district specified, and that incarcerated persons within that district were, prior to the implementation of Part XX, included for apportionment purposes within that district. Without sufficient information or knowledge to admit or deny remaining allegations.

14. Upon information and belief, admit that plaintiff is a representative of the district specified, and that incarcerated persons within that district were, prior to the implementation of Part XX, included for apportionment purposes within that district. Without sufficient information or knowledge to admit or deny remaining allegations.

15. Upon information and belief, admit that plaintiff is a representative of the district specified, and that incarcerated persons within that district were, prior to the implementation of Part XX, included for apportionment purposes within that district. Without sufficient information or knowledge to admit or deny remaining allegations.

16. Upon information and belief, admit that plaintiff is a representative of the district specified, and that incarcerated persons within that district were, prior to the implementation of Part XX, included for apportionment purposes within that district. Without sufficient information or knowledge to admit or deny remaining allegations.

17. Upon information and belief, admit that plaintiff is a representative of the district specified, and that incarcerated persons within that district were, prior to the implementation of Part XX, included for apportionment purposes within that district. Without sufficient information or knowledge to admit or deny remaining allegations.

18. Upon information and belief, admit that plaintiff is a representative of the district specified, and that incarcerated persons within that district were, prior to the implementation of Part XX, included for apportionment purposes within that district. Without sufficient information or knowledge to admit or deny remaining allegations.

19. Upon information and belief, admit that plaintiff is a representative of the district specified, and that incarcerated persons within that district were, prior to the implementation of Part XX, included for apportionment purposes within that district. Without sufficient information or knowledge to admit or deny remaining allegations.

20. Upon information and belief, admit that plaintiff is a representative of the district specified, and that incarcerated persons within that district were, prior to the implementation of Part XX, included for apportionment purposes within that district. Without sufficient information or knowledge to admit or deny remaining allegations.

21. The allegation contains a legal conclusion to which no response is required. To the extent a response is required, that allegation is denied. Without sufficient information or knowledge to admit or deny the remaining allegations.

22. Admit that the LATFOR website provides similar information. Without sufficient information or knowledge to admit or deny remaining allegations.

23. Upon information and belief, admit that the New York State Department of Correctional Services (DOCS) is a department within the executive branch of New York

State government charged with the administration of correctional services. Upon information and belief, deny remaining allegations.

24. The allegation is a legal conclusion to which no response is required. To the extent a response is required, the allegation is denied.

25. Without sufficient information or knowledge to admit or deny.

26. Without sufficient information or knowledge to admit or deny.

27. Upon information and belief, admit.

28. Upon information and belief, admit that Chapter 57 of the Laws of New York of 2010 was a revenue bill. Without sufficient information or knowledge to admit or deny remaining allegations.

29. The allegation is a legal conclusion to which no response is required. To the extent a response is required, the allegation is denied.

30. Part XX speaks for itself and therefore no response is required.

31. Upon information and belief, admit.

32. Part XX speaks for itself and therefore no response is required.

33. Part XX speaks for itself and therefore no response is required. To the extent a response is required, the allegation is denied.

34. Part XX speaks for itself and therefore no response is required.

35. Part XX speaks for itself and therefore no response is required.

36. Part XX speaks for itself and therefore no response is required. To the extent a response is required, without sufficient information or knowledge to admit or deny because the allegation is confusing and ambiguous.

37. Without sufficient information or knowledge to admit or deny.

38. The allegation is a legal conclusion to which no response is required. To the extent a response is required, the allegation is denied.

39. Upon information and belief, deny.

40. The allegation is a legal conclusion to which no response is required. To the extent a response is required, the allegation is denied.

41. The New York State Constitution speaks for itself and therefore no response is required. To the extent a response is required, the allegation is denied.

42. The New York State Constitution speaks for itself and therefore no response is required. To the extent a response is required, the allegation is denied.

43. The New York State Constitution speaks for itself and therefore no response is required. To the extent a response is required, the allegation is denied.

44. The New York State Constitution speaks for itself and therefore no response is required. To the extent a response is required, the allegations are denied.

45. Without sufficient information or knowledge to admit or deny.

46. Without sufficient information or knowledge to admit or deny.

47. Part XX and the New York State Constitution speak for themselves and therefore no response is required. To the extent a response is required, the allegations are denied.

48. The allegation is a legal conclusion to which no response is required. To the extent a response is required, the allegation is denied.

49. The allegation is a legal conclusion to which no response is required. To the extent a response is required, the allegation is denied.



50. The allegation is a legal conclusion to which no response is required. To the extent a response is required, the allegation is denied.

51. The New York State Constitution speaks for itself and therefore no response is required.

52. Without sufficient information or knowledge to admit or deny because the allegation is confusing and ambiguous.

53. The New York State Constitution speaks for itself and therefore no response is required. To the extent a response is required, the allegations are denied.

54. Without sufficient information or knowledge to admit or deny because the allegation is confusing and ambiguous.

55. Upon information and belief, deny.

56. The allegation is a legal conclusion to which no response is required. To the extent a response is required, the allegation is denied.

57. The allegation is a legal conclusion to which no response is required. To the extent a response is required, the allegation is denied.

58. The allegation is a legal conclusion to which no response is required. To the extent a response is required, the allegation is denied.

59. The New York State Constitution speaks for itself and therefore no response is required. To the extent a response is required, the allegations are denied.

60. Admit that, under current New York law, persons convicted of felonies and sentenced to incarceration do not have the right to vote while in prison. Deny remaining allegations.

61. Without sufficient information or knowledge to admit or deny.

62. Without sufficient information or knowledge to admit or deny.

63. Without sufficient information or knowledge to admit or deny.

64. Without sufficient information or knowledge to admit or deny.

65. Without sufficient information or knowledge to admit or deny.

66. Without sufficient information or knowledge to admit or deny.

67. Without sufficient information or knowledge to admit or deny.

68. Upon information and belief, deny.

69. Without sufficient information or knowledge to admit or deny.

70. Without sufficient information or knowledge to admit or deny.

71. Upon information and belief, deny.

72. Admit that Article II, Section 4 of the New York State Constitution provides that for the purposes of voting, a person “shall not be deemed to have gained or lost a residence . . . while confined in any public prison.” Deny remaining allegations.

73. The allegation is a legal conclusion to which no response is required. To the extent a response is required, the allegation is denied.

74. The allegation is a legal conclusion to which no response is required. To the extent a response is required, the allegation is denied.

75. Without sufficient information or knowledge to admit or deny.

76. Without sufficient information or knowledge to admit or deny.

77. Without sufficient information or knowledge to admit or deny.

78. Without sufficient information or knowledge to admit or deny.

79. Deny that incarcerated persons do not have any other “fixed abode.” Without sufficient information or knowledge to admit or deny the remaining allegations because they are confusing and ambiguous.

80. Without sufficient information or knowledge to admit or deny.

81. Without sufficient information or knowledge to admit or deny.

82. Without sufficient information or knowledge to admit or deny because the allegation is confusing and ambiguous.

83. Without sufficient information or knowledge to admit or deny.

84. Deny.

85. Repeat and reallege all of the responses to allegations set forth in paragraphs “1” through “84” of the verified complaint as if fully set forth herein.

86. The allegation is a legal conclusion to which no response is required. To the extent a response is required, the allegation is denied.

87. The allegation is a legal conclusion to which no response is required. To the extent a response is required, the allegation is denied.

88. The allegation is a legal conclusion to which no response is required. To the extent a response is required, the allegation is denied.

89. The allegation is a legal conclusion to which no response is required. To the extent a response is required, the allegation is denied.

90. The allegation is a legal conclusion to which no response is required. To the extent a response is required, the allegation is denied.

91. Part XX and the New York State Constitution speak for themselves and therefore no response is required. To the extent a response is required, the allegation is denied.

92. The allegation is a legal conclusion to which no response is required. To the extent a response is required, the allegation is denied.

93. The allegation is a legal conclusion to which no response is required. To the extent a response is required, the allegation is denied.

94. The allegation is a legal conclusion to which no response is required. To the extent a response is required, the allegation is denied.

95. Repeat and reallege all of the responses to allegations set forth in paragraphs “1” through “94” of the verified complaint as if fully set forth herein.

96. Without sufficient information or knowledge to admit or deny.

97. Without sufficient information or knowledge to admit or deny because the allegation is confusing and ambiguous.

98. Upon information and belief, deny.

99. Upon information and belief, deny.

100. The allegation is a legal conclusion to which no response is required. To the extent a response is required, the allegation is denied.

101. Without sufficient information or knowledge to admit or deny.

102. Without sufficient information or knowledge to admit or deny.

103. The New York State Constitution and New York State Finance Law speak for themselves and therefore no response is required. To the extent a response is required, without sufficient information or knowledge to admit or deny.

104. Without sufficient information or knowledge to admit or deny.

105. Without sufficient information or knowledge to admit or deny because the allegation is confusing and ambiguous.

106. Without sufficient information or knowledge to admit or deny.

107. Without sufficient information or knowledge to admit or deny because the allegation is confusing and ambiguous.

108. Without sufficient information or knowledge to admit or deny.

109. The New York State Constitution speaks for itself and therefore no response is required. To the extent a response is required, without sufficient information or knowledge to admit or deny because the allegations are confusing and ambiguous.

110. The New York State Constitution speaks for itself and therefore no response is required. To the extent a response is required, without sufficient information or knowledge to admit or deny.

111. The New York State Constitution speaks for itself and therefore no response is required. To the extent a response is required, without sufficient information or knowledge to admit or deny.

112. Without sufficient information or knowledge to admit or deny.

113. Without sufficient information or knowledge to admit or deny.

114. Without sufficient information or knowledge to admit or deny.

115. Without sufficient information or knowledge to admit or deny.

116. The allegation is a legal conclusion to which no response is required. To the extent a response is required, the allegation is denied.

117. The allegation is a legal conclusion to which no response is required. To the extent a response is required, the allegation is denied.

118. Admit that Part XX contained a severability clause. Deny remaining allegations.

119. Part XX speaks for itself and therefore no response is required. To the extent a response is required, the allegation is denied.

120. The allegation is a legal conclusion to which no response is required. To the extent a response is required, the allegation is denied.

121. The allegation is a legal conclusion to which no response is required. To the extent a response is required, the allegation is denied.

122. Without sufficient information or knowledge to admit or deny.

123. The allegation is a legal conclusion to which no response is required. To the extent a response is required, the allegation is denied.

124. The allegation is a legal conclusion to which no response is required. To the extent a response is required, the allegation is denied.

125. The allegation is a legal conclusion to which no response is required. To the extent a response is required, the allegation is denied.

126. The allegation is a legal conclusion to which no response is required. To the extent a response is required, the allegation is denied.

127. The allegation is a legal conclusion to which no response is required. To the extent a response is required, the allegation is denied.

128. The allegation is a legal conclusion to which no response is required. To the extent a response is required, the allegation is denied.

129. The allegation is a legal conclusion to which no response is required. To the extent a response is required, the allegation is denied.

130. The allegation is a legal conclusion to which no response is required. To the extent a response is required, the allegation is denied.

131. The allegation is a legal conclusion to which no response is required. To the extent a response is required, the allegation is denied.

132. Upon information and belief, admit that the paragraph presents one way to amend the Constitution in New York State. Deny the remaining allegations.

133. Without sufficient information or knowledge to admit or deny because the allegation is confusing and ambiguous.

134. Without sufficient information or knowledge to admit or deny because the allegation is confusing and ambiguous.

135. Without sufficient information or knowledge to admit or deny.

136. Without sufficient information or knowledge to admit or deny.

137. Without sufficient information or knowledge to admit or deny.

138. Without sufficient information or knowledge to admit or deny because the allegation is confusing and ambiguous.

139. The allegation is a legal conclusion to which no response is required. To the extent a response is required, the allegation is denied.

140. Repeat and reallege all of the responses to allegations set forth in paragraphs “1” through “139” of the verified complaint as if fully set forth herein.

141. The allegation is a legal conclusion to which no response is required. To the extent a response is required, the allegation is denied.

142. The New York State Constitution speaks for itself and therefore no response is required.

143. Without sufficient information or knowledge to admit or deny because the allegations are confusing and ambiguous.

144. Without sufficient information or knowledge to admit or deny.

145. Without sufficient information or knowledge to admit or deny.

146. Without sufficient information or knowledge to admit or deny.

147. The allegation is a legal conclusion to which no response is required. To the extent a response is required, the allegation is denied.

148. The allegation is a legal conclusion to which no response is required. To the extent a response is required, the allegation is denied.

149. The allegation is a legal conclusion to which no response is required. To the extent a response is required, the allegation is denied.

150. The allegation is a legal conclusion to which no response is required. To the extent a response is required, the allegation is denied.

151. The allegation is a legal conclusion to which no response is required. To the extent a response is required, the allegation is denied.

152. The allegation is a legal conclusion to which no response is required. To the extent a response is required, without sufficient information or knowledge to admit or deny.

153. The allegation is a legal conclusion to which no response is required. To the extent a response is required, the allegation is denied.



154. Repeat and reallege all of the responses to allegations set forth in paragraphs “1” through “153” of the verified complaint as if fully set forth herein.

155. Part XX speaks for itself and therefore no response is required. To the extent a response is required, the allegation is denied.

156. Without sufficient information or knowledge to admit or deny.

157. Upon information and belief, admit.

158. Without sufficient information or knowledge to admit or deny because the allegation is confusing and ambiguous.

159. Without sufficient information or knowledge to admit or deny.

160. Admit that Part XX only reallocates incarcerated persons. Deny remaining allegations.

161. The allegation is a legal conclusion to which no response is required. To the extent a response is required, the allegation is denied.

162. Without sufficient information or knowledge to admit or deny because the allegation is confusing and ambiguous.

163. Without sufficient information or knowledge to admit or deny because the allegation is confusing and ambiguous.

164. Admit that Part XX only reallocates incarcerated persons. Deny remaining allegations.

165. The allegation is a legal conclusion to which no response is required. To the extent a response is required, the allegation is denied.

166. Admit that a person loses the right to vote in New York when convicted of a felony and sentenced to incarceration. Deny remaining allegations.

167. Without sufficient information or knowledge to admit or deny because the allegation is confusing and ambiguous.

168. Without sufficient information or knowledge to admit or deny.

169. The allegation is a legal conclusion to which no response is required. To the extent a response is required, the allegation is denied.

170. The allegation is a legal conclusion to which no response is required. To the extent a response is required, the allegation is denied.

171. The allegation is a legal conclusion to which no response is required. To the extent a response is required, the allegation is denied.

172. The allegation is a legal conclusion to which no response is required. To the extent a response is required, the allegation is denied.

173. The allegation is a legal conclusion to which no response is required. To the extent a response is required, the allegation is denied.

174. Repeat and reallege all of the responses to allegations set forth in paragraphs “1” through “173” of the verified complaint as if fully set forth herein.

175. The allegation is a legal conclusion to which no response is required. To the extent a response is required, the allegation is denied.

176. Deny.

177. Without sufficient information or knowledge to admit or deny because the allegation is confusing and ambiguous.

178. The allegation is a legal conclusion to which no response is required. To the extent a response is required, the allegation is denied.

179. The allegation is a legal conclusion to which no response is required. To the extent a response is required, the allegation is denied.

180. Part XX speaks for itself and therefore no response is required. To the extent a response is required, without sufficient information or knowledge to admit or deny.

181. Part XX speaks for itself and no response is required. To the extent a response is required, the allegation is denied.

182. The allegation is a legal conclusion to which no response is required. To the extent a response is required, the allegation is denied.

183. Without sufficient information or knowledge to admit or deny.

184. Without sufficient information or knowledge to admit or deny.

185. Without sufficient information or knowledge to admit or deny.

186. Upon information and belief, deny the allegation that the Federal Decennial Census was selected as the exclusive determining factor for reapportionment. Without sufficient information or knowledge to admit or deny the remaining allegations.

187. Without sufficient information or knowledge to admit or deny.

188. The allegation is a legal conclusion to which no response is required. To the extent a response is required, the allegation is denied.

189. The allegation is a legal conclusion to which no response is required. To the extent a response is required, the allegation is denied.

190. The allegation is a legal conclusion to which no response is required. To the extent a response is required, the allegation is denied.

191. The allegation is a legal conclusion to which no response is required. To the extent a response is required, the allegation is denied.

192. The allegation is a legal conclusion to which no response is required. To the extent a response is required, the allegation is denied.

193. Without sufficient information or knowledge to admit or deny.

194. The allegation is a legal conclusion to which no response is required. To the extent a response is required, the allegation is denied.

195. The allegation is a legal conclusion to which no response is required. To the extent a response is required, the allegation is denied.

196. Repeat and reallege all of the responses to allegations set forth in paragraphs “1” through “195” of the verified complaint as if fully set forth herein.

197. Without sufficient information or knowledge to admit or deny because the allegation is confusing and ambiguous.

198. Deny.

199. Without sufficient information or knowledge to admit or deny.

200. Without sufficient information or knowledge to admit or deny.

201. Without sufficient information or knowledge to admit or deny that Part XX “adds inhabitants to places where existing inhabitants occupy the space.” Deny the remaining allegations.

202. The allegation is a legal conclusion to which no response is required. To the extent a response is required, the allegation is denied.

203. Without sufficient information or knowledge to admit or deny because the allegation is confusing and ambiguous.

204. Deny.

205. The allegation is a legal conclusion to which no response is required. To the extent a response is required, the allegation is denied.

206. Repeat and reallege all of the responses to allegations set forth in paragraphs “1” through “205” of the verified complaint as if fully set forth herein.

207. Admit that apportionment is one determinant of political power. Deny remaining allegations.

208. Deny.

209. Without sufficient information or knowledge to admit or deny.

210. Without sufficient information or knowledge to admit or deny.

211. The allegation is a legal conclusion to which no response is required. To the extent a response is required, the allegation is denied.

212. Without sufficient information or knowledge to admit or deny.

213. Without sufficient information or knowledge to admit or deny.

214. Deny.

215. Upon information and belief, admit.

216. Without sufficient information or knowledge to admit or deny.

217. The allegation is a legal conclusion to which no response is required. To the extent a response is required, the allegation is denied.

218. The allegation is a legal conclusion to which no response is required. To the extent a response is required, the allegation is denied.

219. Without sufficient information or knowledge to admit or deny.

220. The allegation is a legal conclusion to which no response is required. To the extent a response is required, the allegation is denied.

221. The allegation is a legal conclusion to which no response is required. To the extent a response is required, the allegation is denied.

222. Repeat and reallege all of the responses to allegations set forth in paragraphs “1” through “221” of the verified complaint as if fully set forth herein.

223. The allegation is a legal conclusion to which no response is required. To the extent a response is required, the allegation is denied.

224. No response is required to the statement regarding the nature of the relief sought. To the extent a response is required, deny that plaintiffs are entitled to the relief they seek.

225. No response is required to the description of the standard for the granting of a preliminary injunction. To the extent a response is required, deny that plaintiffs are entitled to a preliminary injunction.

226. The allegation is a legal conclusion to which no response is required. To the extent a response is required, the allegation is denied.

227. The allegation is a legal conclusion to which no response is required. To the extent a response is required, the allegation is denied.

228. The allegation is a legal conclusion to which no response is required. To the extent a response is required, the allegation is denied.

229. Upon information and belief, deny.

230. Deny.

231. Deny.

232. The allegation is a legal conclusion to which no response is required. To the extent a response is required, the allegation is denied.

233. Without sufficient information or knowledge to admit or deny.

234. The allegation is a legal conclusion to which no response is required. To the extent a response is required, the allegation is denied.

235. Without sufficient information or knowledge to admit or deny.

236. Without sufficient information or knowledge to admit or deny.

237. Admit plaintiffs seek the relief requested. Deny plaintiffs are entitled to the relief they seek. Without sufficient information or knowledge to admit or deny the remaining allegations.

238. Deny each and every allegation in the verified complaint not specifically responded to above.

#### *AFFIRMATIVE DEFENSES*

1. The complaint fails to state a claim as a matter of law.

2. The court lacks jurisdiction over some or all of the plaintiffs' claims because of plaintiffs' lack of standing, the claims are not justiciable, and/or the claims are not ripe for adjudication.

3. The practice of allocating incarcerated persons as residents of the prison district violates the Equal Protection guarantees of the Fourteenth Amendment to the United States Constitution and Article I, Section 11 of the New York State Constitution, and the enactment of Part XX therefore was necessary and proper to ensure New York's compliance with Equal Protection guarantees.

WHEREFORE, Defendant-intervenors request that the verified complaint be dismissed in its entirety.

Dated: May 17, 2011

Respectfully submitted,

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