



March 18, 2014

By facsimile & postal mail

Governor Andrew Cuomo
Executive Chamber
State Capitol
Albany, New York 12224

Dear Governor Cuomo:

The New York Voting Rights Consortium,¹ a group of leading local and national voting rights advocates, writes to express our grave concerns over your failure to schedule special elections to fill the 12 legislative vacancies in New York State Senate and Assembly seats, which represent approximately 1.8 million voters across the state, over 800,000 of whom are people of color.

In particular, the Consortium is deeply troubled by the reality that, at this moment, hundreds of thousands of our Asian, Black, and Latino constituents are unrepresented in seven districts in Brooklyn and the Bronx. These voters of color primarily reside in the currently-vacant 54th, 55th, 59th, and 60th Assembly Districts in Brooklyn,² and the 77th and 79th Assembly Districts in the Bronx.³ African-American, Asian American, and Latino residents for these six vacant Assembly Districts make up *92% or more* of the districts' total populations. Also unrepresented is the 20th Senatorial District in Brooklyn, which is overwhelmingly Black, Latino, and Asian.⁴

The lack of representation is particularly critical for Brooklyn residents. The unrepresented portions of the borough stretch over large populations encompassing Eastern and Central Brooklyn. In allowing seats to be left vacant, over 400,000 African-American, Asian American,

¹ The New York Voting Rights Consortium is a non-partisan coalition organizations consisting of the Asian American Legal Defense and Educational Fund, the Center for Law and Social Justice at Medgar Evers College, La Fuente, Inc., LatinoJustice PRLDEF, the NAACP Legal Defense and Educational Fund, Inc., the National Institute for Latino Policy, and others. The New York Voting Rights Consortium is committed to the full enforcement of federal and state laws that protect the voting rights of people of color.

² In November 2013, then-New York State Assembly members Rafael Espinal, Alan Maisel, and Inez Barron were elected to the New York City Council, leaving vacant the 54th, 59th, and 60th District seats in Brooklyn. The 55th Assembly District's population of color amounts to 95% of its total population.

³ The 77th District has been without representation since former Assembly member Vanessa Gibson's election to the New York City Council; the 79th District, since the district's incumbent's automatic removal. As a result, approximately 250,000 African-American, Asian American, and Latino residents in the Bronx are currently without representation.

⁴ Eric Adams, who formerly represented the 20th Senatorial District, was elected Borough President of Brooklyn.



and Latino residents in the affected Brooklyn districts remain voiceless in the State Assembly; similarly, over 269,000 African-American, Asian American, and Latino residents are voiceless in the State Senate. These New Yorkers are entitled to representation in the state government.

All of the voters of color in these districts are protected by, among other laws, the federal Voting Rights Act of 1965.⁵ We are profoundly concerned that your failure to act swiftly will not only run afoul of this law, but also will keep these especially vulnerable communities without representation until January 2015, and without the tools to confront and address both significant local everyday concerns and broader statewide legislative priorities.

As you know, because the vacancies occurred before April 1, state law empowers you to call special elections or, alternatively, to leave the seats vacant until the next general election, which will not occur until this November.⁶ We urge you, in the strongest possible terms, to exercise the first option. Indeed, for four decades, the New York Court of Appeals has required that the governor promptly call for special elections to fill all such legislative seats.⁷ Unfortunately, thus far, despite direct calls from the Assembly Speaker,⁸ members of Congress and the state legislatures,⁹ the New York City Council,¹⁰ public interest groups,¹¹ and your own former special

⁵ 42 U.S.C. § 1973.

⁶ N.Y. Public Officers Law § 42(4) (McKinney's 2011).

⁷ “[W]hen a vacancy in elective office occurs, the vacancy must be filled by special election in the shortest space of time reasonably possible.” *Roher v. Dinkins*, 32 NY2d 180, 188 (1973).

⁸ Ken Lovett, *Sheldon Silver Wants Gov. Cuomo To Call Special Elections To Fill 11 Vacant Legislative Seats*, N.Y. Daily News (Jan. 17, 2014 12:05 PM), <http://www.nydailynews.com/blogs/dailypolitics/2014/01/sheldon-silver-calls-on-gov-cuomo-to-call-special-elections-for-11-vacant-nys->

⁹ Letter from the Central Brooklyn Black Legislators Coalition to Gov. Andrew Cuomo, State of New York, (Feb. 4, 2014) (Attachment A); Letter from Sen. Kevin S. Parker, State Senate of New York, to Gov. Andrew Cuomo, State of New York, (Jan. 27, 2014) (Attachment B).

¹⁰ See Yi Yang, *NYC Officials Call for Special Elections to Fill Empty Seats in State Legislature*, Epoch Times, (Mar. 10, 2014 7:00 AM), <http://www.theepochtimes.com/n3/552216-nyc-officials-call-for-special-elections-to-fill-empty-seats-in-state-legislature/>; Ross Barkan, *City Council Resolution to Ask Cuomo to Call Special Elections*, N.Y. Observer, (Feb. 3, 2014 8:35 AM), <http://politicker.com/2014/02/city-council-resolution-to-ask-cuomo-to-call-special-elections/>; *Councilwoman Inez Barron's Resolution for Special Elections Passes Unanimously*, East Brooklyn, (Feb. 5, 2014), <http://eastbrooklyn.com/inez-barrons-resolution-on-special-election-gets-unanimous-vote/>.

¹¹ Ken Lovett, *Common Cause Calls On Gov. Cuomo To Call Special Elections To Fill 10 Legislative Vacancies*, N.Y. Daily News, (Jan. 13, 2014 6:14 PM), <http://www.nydailynews.com/blogs/dailypolitics/2014/01/common-cause-ny-calls-on-gov-cuomo-to-call-special-elections>.



counsel,¹² no such call has been made. The failure to set special elections notably also puts New York out of sync with the practices of its neighboring states.¹³

The right to vote and governmental representation is the most fundamental aspect of our free and democratic society. Yet, the inaction to date threatens to deny access to this precious right for 800,000 of our constituents, and many others, who remain unrepresented and denied the opportunity to elect representatives at a critical moment. In addition to lacking representation in the budget process, these voters were unrepresented in recent debates and votes on important bills addressing issues—including the New York DREAM Act (access to higher education for immigrant youth), early childhood education, appointments to the Board of Regents, high stakes testing, and early voting—that are directly relevant to communities of color. The lack of representation from the vacant districts is unacceptable.

While we understand that your articulated reluctance to call for special elections stems from concerns over the administrative costs of such elections, “mere inconvenience to the state is no justification for burdening citizens in the exercise of their protected right . . . to vote.”¹⁴ Indeed, in cases where federal courts in New York found that government action hindered people of color’s equal access to the political process, these courts have repeatedly required jurisdictions to hold special elections in order to vindicate the right to vote.¹⁵ When the fundamental right to vote is weighed against simple inconvenience to the state, “the latter must give way.”¹⁶

The Consortium therefore respectfully requests that you order a special election for all 12 of the vacant seats in the State Assembly and State Senate by **April 24, 2014**. We strongly urge you to ensure that the disfranchised across the state—and, in particular, voters of color—are afforded an equal opportunity to elect representatives well in advance of the next general election.

We welcome the opportunity to meet in person to resolve this important matter amicably and as soon as possible to ensure timely special elections. Therefore, please respond to the above

¹² Jerry Goldfeder, Op-ed, *A Million of Us Have No Vote in Albany*, N.Y. Daily News, Feb. 3, 2014, available at <http://www.nydailynews.com/opinion/million-vote-albany-article-1.1706939>.

¹³ *Id.*

¹⁴ *Operation Push v. Allain*, 674 F. Supp. 1245, 1266 (N.D. Miss. 1988), *aff’d sub nom.* 932 2d 400 (5th Cir. 1991).

¹⁵ See, e.g., *Arbor Hill Concerned Citizens v. County of Albany*, 357 F. 3d 260 (2d Cir. 2004); *Goosby v. Town Board of the Town of Hempstead*, 180 F.3d 476 (2d Cir. 1999); *United States v. Village of Port Chester*, 704 F.Supp.2d 411 (S.D.N.Y. 2010); *Coal. for Educ. in Dist. One v. Bd. of Elections of N.Y.C.*, 370 F. Supp. 42 (S.D.N.Y.), *aff’d*, 495 F.2d 1090 (2d Cir. 1974).

¹⁶ *Bishop v. Lomenzo*, 350 F. Supp. 576, 588 (E.D.N.Y. 1972).



in writing by **Wednesday, April 2, 2014** and feel free to reach out to us directly with any questions.

Sincerely,

The New York Voting Rights Consortium

Ryan P. Haygood
Director, Political Participation Group
Natasha Korgaonkar
Leah Aden
Deuel Ross
NAACP Legal Defense and Education Fund, Inc. (LDF)

Margaret Fung
Executive Director
Glenn Magpantay
Jerry Vattamala
Asian American Legal Defense and Educational Fund

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Executive Director
Joan P. Gibbs
Center for Law and Social Justice, Medgar Evers College, CUNY

Jose Perez
Deputy General Counsel & Legal Director
Jackson Chin
LatinoJustice PRLDEF

Lucia Gomez-Jimenez
Executive Director
La Fuente, Inc.

Angelo Falcon
President
National Institute on Latino Policy

Ltr. to Governor Cuomo
March 18, 2014
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CC (via email): Alphonso David, Deputy Secretary and Counsel for Civil Rights, Office
of the Secretary to the Governor
Kristen Clarke, Chief, Civil Rights Bureau, New York Attorney General

[Attachments]

ATTACHMENT A

THE CENTRAL BROOKLYN BLACK LEGISLATORS COALITION

February 4, 2014

Hon. Letitia James
New York City Public Advocate

Hon. Eric Adams
Brooklyn Borough President

Congressmember Yvette D. Clarke
9th Congressional District

Congressmember Hakeem Jeffries
8th Congressional District

Senator Velmanette Montgomery
18th Senatorial District

Senator John Sampson
19th Senatorial District

Senator Kevin S. Parker
21st Senatorial District

Assemblymember N. Nick Perry
58th Assembly District

Assemblymember Annette M. Robinson
56th Assembly District

Assemblymember William F. Boyland, Jr.
55th Assembly District

Assemblymember Karim Camara
43rd Assembly District

Assemblymember Walter T. Mosley
57th Assembly District

Councilmember Darlene Mealy
41st Councilmanic District

Councilmember Mathieu Eugene
40th Councilmanic District

Councilmember Jumaane D. Williams
45th Councilmanic District

Councilmember Inez D. Barron
42nd Councilmanic District

Councilmember Robert Comegy, Jr.
36th Councilmanic District

Governor Andrew Cuomo
Executive Chamber
State Capitol
Albany, New York 12224

Dear Governor Cuomo:

We write to you as the Coalition of Black Brooklyn Legislators, which includes elected officials on the federal, state and city levels of government, to express our collective concern that the delay in scheduling special elections for several State Assembly and State Senate seats has effectively disenfranchised approximately 1.5 million New Yorkers. The issues represented in this letter affect nine (9) Assembly districts and two (2) Senate districts across the State of New York. To deny these communities adequate government representation constitutes an unfair administration of justice, a violation of their constitutional rights, and "Taxation without Representation".

In Brooklyn, in particular, hundreds of thousands of residents are affected by the vacancies that were created in three (3) Assembly districts and one (1) Senate district. In November 2013, New York State Assemblymembers Inez Barron of the 60th District, Rafael Espinal of the 54th District, and Alan Maisel of the 59th District, were elected to the New York City Council. A member of the State Senate, Eric Adams of the 20th senatorial district, was elected Borough President of Brooklyn. As of January 2014, the respective state government seats that they previously represented were left vacant. In the case of the Assembly seats, their offices have been closed. Under the present political calendar, where the general election is not held until November 2014, these vacancies can last for essentially one year – January 2015.

These districts are majority-minority districts and as a result are subject to the protections of the Voting Rights Act of 1965. Each member of the State Assembly represents approximately 128,000 people. Each member of the State Senate represents approximately 300,000 people. As a result, there are today, in Brooklyn alone, approximately 700,000 New Yorkers that lack representation in either the New York State Assembly or the New York State Senate. The 54th and 60th Assembly districts each presently comprises of a 95% Black, Latino and Asian voting age population constituency. The 59th Assembly district presently comprises of a 66% Black, Latino and Asian voting age population constituency. The 20th senatorial district presently comprises of a 55% Black, Latino and Asian voting age population constituency. These facts support the contention that the affected districts are predominately communities of color.

THE CENTRAL BROOKLYN BLACK LEGISLATORS COALITION

Today, the people of Brooklyn pay their taxes – income taxes on their wages, sales taxes on products and services, capital gain taxes, property taxes, and the various fees required to obtain a driver’s license or operate a business. Yet, hundreds of thousands of these men and women are not represented in the State Legislature, and are, therefore, without a voice in the debates, deliberations, conversations, and votes that determine the future of their communities. We believe this is tantamount to “**Taxation without Representation**”.

As the New York State legislative calendar typically ends in June, the delay in scheduling special elections until June or September will, in effect, prevent those affected from participating in the form of representative self-government known to us as “democracy.” Over the course of your tenure as Governor, you have prided your administration on securing on-time annual state budgets. We anticipate that this year’s budget will be completed timely; however, a fundamental difference will be that decisions regarding funding for major social programs, public housing, public education, health initiatives, business incentives, state agency programs and budgets, and taxes and fees would be ultimately determined without the interest of these communities being served by their duly elected representatives. Not having representation at this stage renders these communities vulnerable, defenseless, disadvantaged and ultimately underserved with respect to the state budgetary process.

We understand that the decision to call for a special election remains within the discretionary powers of your office; however, this power is not unfettered. We reject the notion that the decision to hold special elections would be unduly burdensome and not cost effective. We believe that the cost of leaving the seats vacant and offices closed, in some of the most vulnerable communities in our state, is too high a price to pay and sets bad precedent in the state of our democracy. When state action, or inaction, contradicts that of federal law, a balancing test should be conducted to determine whether the state’s interest in saving money substantially outweighs the deprivation of representation in the state legislature.

We wholeheartedly support, our colleagues, Councilwoman Inez Barron and Senator Kevin Parker, in their pleas to you to fill these legislative vacancies in the “...shortest space of time reasonably possible”, as mandated by the New York State Court of Appeals in the decision of Rohr v. Dinkins, 32 N.Y. 2d 180, 188 (1973). We respectfully urge you to promptly schedule special elections for the vacant seats that currently remain in the New York State Assembly and New York State Senate, in accordance with the Laws of the State of New York and with the Voting Rights Acts of 1965.

Regards,



Congressmember Yvette D. Clarke



Congressmember Hakeem Jeffries

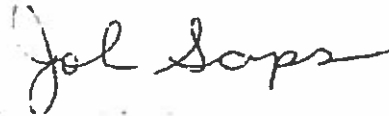


New York City Public Advocate Letitia James

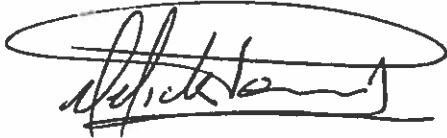
THE CENTRAL BROOKLYN BLACK LEGISLATORS COALITION



Senator Velmanette Montgomery



Senator John Sampson



Assemblymember N. Nick Perry



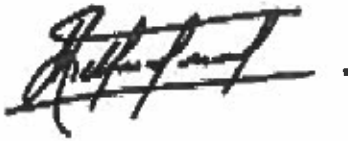
Assemblymember Annette M. Robinson



Assemblymember Karim Camara



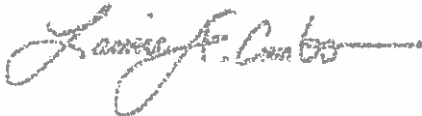
Assemblymember Walter T. Mosley



Councilmember Mathieu Eugene



Councilmember Jumaane D. Williams



Councilmember-Elect Laurie Cumbo



Councilmember-Elect Robert Cornegy, Jr.

ATTACHMENT B

RANKING MINORITY MEMBER
ENERGY & TELECOMMUNICATIONS

ALCOHOLISM &
SUBSTANCE ABUSE

COMMITTEES

BANKS
FINANCE
HIGHER EDUCATION
INSURANCE
RULES



SENATOR
KEVIN S. PARKER
21ST SENATORIAL DISTRICT
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January 27, 2014

Governor Andrew Cuomo
Executive Chamber
State Capitol
Albany, NY 12224

Dear Governor Cuomo:

I write to you concerning the issue of approximately 1.5 million New Yorkers whose Senators and/or Assemblymembers have principally left their respective legislative body since the November 2013 elections. I believe that the 12% of New Yorkers represented by the eleven empty legislative districts – i.e., nine Assembly Districts and two Senate Districts, many of which are majority African-American or Latino districts – should not lack representation during the 2014 Executive Budget process, and certainly not until January of 2015. I am respectfully requesting therefore, that you call a special election without delay, so that those New Yorkers “represented” by those “empty seats” have at least the prospect of being represented in 2014 and during the budget process.

As you know, once New York’s annual state budget is completed and enacted into law, most if not all of the state’s major social programs, health initiatives, business incentives and state agency budgets and programs, and taxes and fees are “set in stone” and largely unchangeable for the year. Therefore, to be without representation in the Executive Budget process is literally to be subject to taxation without representation.

Worse, communities without state legislative representatives have no voice in how thousands of other bills are amended, debated or passed into law. Those communities also have no representative to provide them with constituent services, or to voice their community’s concerns in legislative oversight proceedings.


Compounding the challenges faced by these unrepresented legislative districts, of the nine Assembly Seats that are currently vacant, five (5) districts are “majority-minority” – principally African-American and Latino -- districts. Of the two Senate seats vacant, one is a majority African-American district, and the other has large Latino, African-American and varied New American groups that are no longer represented in the Senate. The absence of legislative representation in these eleven districts, therefore, disproportionately harms New York’s African-American, Latino and New American communities.

The question of whether or not -- like many other constitutional rights and duties -- the Governor's discretionary power to call or choose not call special elections is outweighed by New York's constitutional requirement for speedy elections has been discussed extensively in the media over the past month. The media has discussed this issue however as an academic problem that tilts the balance of power between your office and that of the legislative conference leaders, almost completely ignoring the implications of more than a million New Yorkers being without representation during the budget process and an entire legislative session. I am asking you here not to treat this enormous number of citizens bereft of legislative representation for up to one year as a purely academic issue, and to remember and honor the needs of the New Yorkers of the eleven legislative districts without representation. It is simply not right, and violates our constitution's values, that they be denied representation during such an important time due to the failure to call special elections to fill those legislative seats.

As the Court of Appeals most recently said in 1973, "when a vacancy in elective office occurs, the vacancy must be filled by election in the shortest space of time reasonably possible." See, e.g., Roher v. Dinkins, 32 N.Y.2d 180, 188 (1973). I respectfully request therefore, as noted above, that you hold a special election without delay, so that those New Yorkers "represented" by those "empty seats" have at least the prospect of being represented in 2014 and during the budget process.

If you have any questions, do not hesitate to contact me at (718) 629-6401.

Yours in Partnership,



KEVIN PARKER