

STATE OF NEW YORK
SUPREME COURT, COUNTY OF NEW YORK

In the Matter of the Application of

Index No.: _____

DESI RISING UP AND MOVING, AARON FERNANDO, PAUL PERSAUD, SARWAN PERSAUD, NADIA PERSAUD, NADIRA PERSAUD, BISHAM PERSAUD, HARBHAJAN S. SURI, CHARANJIT S. SURI, DAVINDER S. SURI, SUKHVIR SINGH, SWARAN SINGH, LOVEDEEP MULTANI, PRINHPAL S. BAWA, KAMLESH TANEJA, RAJWINDER KAUR, INDERBIR SINGH, PARAMJIT KAUR, and RAJBIR SINGH

Petitioners,

EMERGENCY AFFIRMATION

For and Order Pursuant to Article 78 of the N.Y. C.L.P.R.

-against-

NEW YORK CITY DISTRICTING COMMISSION, CHAIR DENNIS M. WALCOTT, HON. MARILYN D. GO, MARIA MATEO, JOSHUA SCHNEPS, LISA SORIN, MSGR. KEVIN SULLIVAN, KAI-KI WONG, MAF MISBAH UDDIN, MICHAEL SCHNALL, KRISTEN A. JOHNSON, YOVAN SAMUEL COLLADO, GREGORY W. KIRSCHENBAUM, MARC WURZEL, KEVIN JOHN HANRATTY, and DR. DARRIN K. PORCHER each in their capacity as members of the New York City Districting Commission, BOARD OF ELECTIONS IN THE CITY OF NEW YORK, NEW YORK STATE BOARD OF ELECTIONS,

Respondents.

Jerry Vattamala, being duly admitted to the practice of the law in the State of New York, affirms under penalty of perjury, pursuant to CPLR §2106, that:

1. I am an attorney at the Asian American Legal Defense and Education (AALDEF), who appears on behalf of the Petitioners in this proceeding. I am fully familiar with the facts and circumstances contained herein. I make this Affirmation because the within Order to Show Cause should be deemed an emergency application.
2. The within application should be entertained forthwith, pursuant to CPLR §6301, as an application for a Temporary Restraining Order (TRO).
3. Respondents have acted arbitrarily and capriciously in violation of CPLR §7803.
4. Specifically, as more fully explained in the Verified Petition, Respondents, the Districting Commission, have acted arbitrarily and capriciously by misapplying the mandates of New York City Charter (“the Charter”) § 52(1)(b) and failing to create a city council district plan that ensures the fair and effective representation of Asian voters in Richmond Hill/South Ozone Park, to the maximum extent practicable.
5. Furthermore, Respondents, The Board of Elections in the City of New York (“City BOE”) and New York State Board of Elections (“State BOE”) are set to begin conducting elections using this arbitrary and capriciously drawn district map.
6. A temporary restraining order may be granted pending a hearing “where it appears that immediate and irreparable injury, loss or damage will result unless the defendant is restrained before the hearing can be had.” CPLR §6301. To obtain such preliminary relief, “a movant must establish (1) a probability of success on the merits, (2) a danger of irreparable injury in the absence of an injunction, and (3) a balance of the equities in the movant’s favor.” *Herczl v. Feinsilver*, 153 A.D.3d 1338, 1338 (2d Dep’t 2017).

7. Here, Petitioner's right to relief on the merits is clear: §52(1)(b) of the Charter lays out a clear order of priority that the Districting Commission must follow in creating a district plan, and the Final Adopted Map arbitrarily eschews that order, favoring a white community of interest over a higher priority racial minority group.
8. Absent immediate relief, Petitioners will suffer irreparable and imminent harm. The illegal district plan adopted by Respondents will dilute the voting and representational rights of Petitioners in the upcoming City Council elections. Courts have made clear that an infringement on a petitioner's right to vote constitutes irreparable harm. *Marchant v. New York City Bd. of Elections*, 815 F. Supp. 2d 568, 578 (E.D.N.Y. 2011) ("The court agrees that infringement on the right to vote necessarily causes irreparable harm.") With petitioning for New York City's primary election set to begin on February 28, 2023, and primary elections set for June 27, 2023, this harm is imminent. Petitioners seek immediate relief to protect the rights of racial minority voters from infringement due to this illegal districting plan.
9. The balance of equities also weighs in Petitioners' favor. Respondents cannot credibly claim an interest in continuing to ignore clear mandates of the Charter. Meanwhile, the Asian voters of Richmond Hill/South Ozone Park who have long seen their representation diluted and dispersed among several districts will continue to face barriers to fair and effective representation if relief is not granted in this election cycle. Furthermore, racial and language minority voters around the city at large will stand to benefit from this court enforcing the provisions of § 52(1)(b) that ensure the fair and effective representation of these groups.

10. Respondents should not succeed in barring requested relief under the doctrine of laches, as Petitioners have brought this case within the statute of limitations window and before the beginning of electoral activity on February 28, 2023. “The mere lapse of time, without a showing of prejudice, will not sustain a defense of laches” *Saratoga Cnty. Chamber of Com., Inc. v. Pataki*, 100 N.Y.2d 801, 798 N.E.2d 1047. Petitioners' case is detailed, fact intensive, and addresses a novel question of law. They have acted with due diligence in preparing the case, and brought it expeditiously before the beginning of petitioning for the June Primary so as to not create unnecessary duplication of efforts or confusion.
11. Because time is of the essence, Petitioners also request leave to effect service of a copy of the annexed Order to Show Cause, together with a copy of the papers upon which it is granted, upon Respondents as indicated in the accompanying Order to Show Cause: by email to the official government email addresses of the Districting Commission’s chair and the State Board of Elections’ two commissioners.
12. On February 22, 2023, I advised Respondents of Petitioner’s intent to seek relief. I attach hereto the email notification provided to Respondents on February 22, 2023.
13. No prior application has been made for the relief sought by this motion.

WHEREFORE, it is respectfully requested that this Court entertain this emergency Order to Show Cause, and grant the relief sought herein.

Dated: February 24, 2023

/s/ Jerry Vattamala

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Subject: Article 78 Petition and OSC
Date: Wednesday, February 22, 2023 7:19:36 PM
Importance: High

Dear Commissioner Walcott, Chairs Kosinski and Kellner, and President Shamoun,

For the past several months, we have been investigating a claim on behalf of voters and community organizations from Richmond Hill/South Ozone Park, Queens that the New York City Council district plan certified by the New York City Districting Commission on November 1, 2022 violates New York City Charter Section 52(1)(b)'s mandate to ensure fair and effective representation for racial minority voters. Notice of this violation was specifically raised in testimony to the Districting Commission on several occasions, but the Commission proceeded to certify a district plan in violation of the City Charter. As a result, we intend to bring an action seeking emergency relief to compel compliance with the Charter and delay the start of candidate petitioning for the June 2023 City Council primaries.

We will be filing a Petition along with an emergency Order to Show Cause in New York County Supreme Court on Friday, February 24, and will provide you with courtesy copies of the papers via email. Please let us know whether you, or any counsel you retain, consent to accept service of these papers via email. We will be requesting to be heard Monday, February 27, at 10am. We will update you with any information we hear from the court about the hearing, including date, time, and location.

Sincerely,

Jerry Vattamala

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