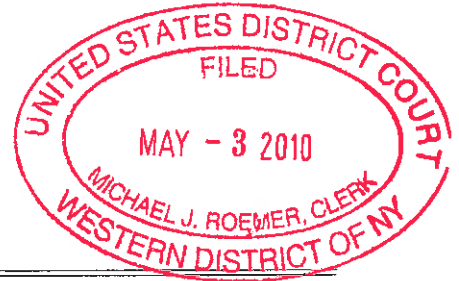


UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK



LARRY S. FOX, CYNTHIA ALFORD and
CARL EDWARDS,

Plaintiffs,

v.

DAVID A. PATERSON,
Governor of New York,

Defendant.

Civil Action Number:

10 CV 6240L

Judge: _____

VERIFIED COMPLAINT
(PRELIMINARY INJUNCTION
REQUESTED)

Now comes the Plaintiffs, Larry S. Fox, Cynthia Alford and Carl Edwards, who are electors and citizens in the Twenty-Ninth New York Congressional District, and for their Complaint does state as follows:

INTRODUCTION

1. This action, brought pursuant to 42 U.S.C. §1983, seeks temporary and permanent mandatory injunctive and declaratory relief based upon the violation, by Defendant Governor David A. Paterson, of Article I, Section 2, Clause 4 of the United States Constitution. Plaintiffs, who are electors in the Twenty-Ninth Congressional District, seek an Order requiring the Governor of the State of New York to fulfill his mandatory duties under the federal constitution

to call a special election to fill the vacancy in the Twenty-Ninth New York Congressional District created by the resignation of Eric Massa from the United States House of Representatives.

2. Though unusual, this action seeks to protect democratic liberties of the highest order, specifically, the right to legislative representation secured to every citizen by Article I, Section 2, Clause 4 of the Federal Constitution.

PARTIES

3. Plaintiffs are citizens and duly registered voters in the Twenty-Ninth Congressional District.
4. Defendant David Paterson is, and at all times relevant hereto, was Governor of the State of New York, in which capacity he is the executive officer of the state. He is required by the United States Constitution Article I, Section 2, Clause 4 to call a special election to fill any vacancy in Congressional representation which may, from time to time, occur in the state's Congressional Delegation. He is sued herein in his official capacity for purposes of obtaining mandatory injunctive and declaratory relief, and in his individual capacity with respect to the claim for attorneys' fees pursuant to 42 U.S.C. §1988(b).

JURISDICTION AND VENUE

5. This Court has jurisdiction over this matter pursuant to 28 U.S.C §1331, in that it arises under the Constitution of the United States; under 28 U.S.C. §1343(a)(3) in that it is brought to redress deprivations, under color of state authority, of rights, privileges and immunities secured by the United States Constitution; under 28 U.S.C. §1343(a)(4), in that it seeks to secure equitable relief under an act of Congress, specifically 42 U.S.C. §1983, which provides a cause of action for the protection of civil rights; under 28 U.S.C. §2201(a), in that one purpose of this action is to secure declaratory relief, and under 28 U.S.C. §2202, in that one purpose of this action is to secure preliminary and permanent injunctive relief.
6. Venue is proper in this Court under 28 U.S.C. §1391(b)(2) in that the omission of the defendant in failing to call a special election in the Twenty-Ninth Congressional District, gave rise to the claim and the Twenty-Ninth Congressional District is situated wholly within this federal judicial district.

FACTS COMMON TO ALL CLAIMS

7. The Twenty-Ninth New York Congressional District ("the District"), as presently constituted, includes all of Allegany, Cattaraugus, Chemung, Schuyler, Steuben and Yates counties and portions of Monroe and Ontario counties.
8. From January 3, 2009 until his resignation, which became effective on March 9, 2010, the District was represented in the United States House of Representatives ("the House") by Eric J. Massa ("Massa").
9. As a result of Massa's resignation, the District, its citizens and electors are presently without representation by the House.
10. That since the said vacancy occurred in the office of a Representative in Congress before the first day of July 2010 of the last year of the term of that office there is no statutory prohibition in New York Public Officers Law §42(4) to preclude a special election.
11. The defendant initially indicated that he would call a special election to fill the vacant House seat in the Twenty-Ninth Congressional District as soon as possible.
12. Subsequently, the defendant and his spokespeople have stated publicly, and on several occasions, that he does not intend to call a special election to filly the vacancy created by the resignation of Massa from the House.

Governor Paterson's spokeswoman, Maggie McKeon, indicated that Governor Paterson had concerns about the financial impact of an election on the counties given the fiscal crises.

13. Unless a special election is called at once, over 654,360 citizens in the District, including electors, who are the plaintiffs herein, will be without representation in the House until January 5, 2011, a period of more than eight months.
14. That said special election, if held, would be held in accordance with Public Officers Law §42(3) not less than thirty nor more than forty days from the date of defendant's proclamation of such election.
15. That upon information and belief, the City of Corning recently was told that it would not receive more than 2 million dollars in federal funds for sewer and water main repairs, which appears to be a direct result of not having representation in Congress.

FIRST CAUSE OF ACTION (FEDERAL CONSTITUTION)

16. Plaintiffs restate, as if fully rewritten here, each and every claim, allegation and assertion set forth in Paragraphs 1 through 15.

17. The United States Constitution provides, at Article I, Section 2, Clause 4: "When vacancies happen in the Representation from any State, the Executive Authority thereof shall issue Writs of Election to fill such Vacancies".
18. The provisions of this clause are mandatory, and require the executive authority in question to take the steps necessary to fill such Congressional vacancies, regardless of the balance of time remaining on the terms of office at issue.
19. In refusing to call a special election to fill the vacancy created by the resignation of Massa from the House, Governor Paterson is violating the plain and unambiguous mandate of Article I, Section 2, Clause 4 of the United States Constitution.
20. To the extent that the defendant may seek to rely on the discretionary nature of New York Public Officers Law §42, regarding the authority given to the executive to call a special election, it should be noted that this provision of law directly conflicts with the mandatory nature of Article I, Section 2, Clause 4 of the United States Constitution and is unconstitutional, if applied to this matter.

21. Furthermore it should be noted that while Public Officers Law §42 vests discretion in the Governor to call a special election, such discretion must yield to the command of the Constitution.

SECOND CAUSE OF ACTION (FEDERAL CONSTITUTION—FOURTEENTH AMENDMENT)

22. Plaintiff restates, as if fully rewritten here, each and every claim, allegation and assertion set forth in Paragraphs 1 through 21.

23. In refusing to call a special election to fill the vacancy created by resignation of Massa from the House, Governor Paterson is denying the fundamental rights of the people of the Twenty-Ninth Congressional District, including the plaintiffs herein, to substantive due process guaranteed to them by the Fourteenth Amendment to the United States Constitution.


24. In refusing to call a special election to fill the vacancy created by the resignation of Massa from the House, Governor Paterson is denying the fundamental right of the people of the Twenty-Ninth Congressional District to vote and have representation in the House, a right not denied to other New Yorkers, in violation of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

PRAYER FOR RELIEF

WHEREFORE the Plaintiff respectfully requests that this Court:

- A. Assume jurisdiction of this action;
- B. Declare that Defendant's actions violate the Constitution and Laws of the United States;
- C. Enter judgment against the Defendant and in favor of the Plaintiff;
- D. Enter an injunction ordering the Defendant to schedule a special election as required by the Constitution and laws of the United States complained of herein;
- E. Award Plaintiff all costs incurred in the prosecution of this action, including reasonable attorney's fees under 42 U.S.C. §1988 and other statutes; and
- F. Enter such other and further relief as the Court deems just and proper.


Respectfully Submitted,



JOHN A. CIRANDO, ESQ.
D.J. & J.A. CIRANDO, ESQS.
Attorneys for Plaintiffs
101 South Salina Street, Suite 1010
Syracuse, New York 13202
(315) 474-1285

STATE OF NEW YORK)
COUNTY OF ONTARIO) ss:

LARRY S. FOX, being duly sworn, deposes and says that deponent is a citizen and elector of the Twenty-Ninth Congressional District, residing at 4370 State Route 21 South, Canandaigua, New York 14424, and one of the plaintiffs in the within action; that deponent has read the foregoing Complaint and knows the contents thereof; that the same is true to deponent's own knowledge, except as to the matters therein stated to be alleged on information and believe, and that as to those matters deponent believes it to be true.



LARRY S. FOX

Sworn to before me this
2nd day of May, 2010



NOTARY PUBLIC

State of New York
County of Ontario

Samantha Johnson
Notary Public, State of New York
Qualified in Ontario County
No. 01506090087
My commission expires April 7th, 2011

STATE OF NEW YORK)
COUNTY OF CHEMUNG) ss:

CYNTHIA ALFORD, being duly sworn, deposes and says that deponent is a citizen and elector of the Twenty-Ninth Congressional District, residing at 630 Newtown Street, Elmira, New York 14904, and is one of the plaintiffs in the within action; that deponent has read the foregoing Complaint and knows the contents thereof; that the same is true to deponent's own knowledge, except as to the matters therein stated to be alleged on information and believe, and that as to those matters deponent believes it to be true.


CYNTHIA ALFORD

Sworn to before me this
30 day of APRIL, 2010


NOTARY PUBLIC

BRIAN MCGINLEY
Notary Public, State of New York
No. 01MC6155127
Qualified in Chemung County
Commission Expires Nov 06, 2010

STATE OF NEW YORK)
COUNTY OF CATTARAUGUS) ss:

CARL EDWARDS, being duly sworn, deposes and says that deponent is a citizen and elector of the Twenty-Ninth Congressional District, residing at 1893 Route 219, Limestone, New York 14753, and is one of the plaintiffs in the within action; that deponent has read the foregoing Complaint and knows the contents thereof; that the same is true to deponent's own knowledge, except as to the matters therein stated to be alleged on information and believe, and that as to those matters deponent believes it to be true.



CARL EDWARDS

Sworn to before me this
30th day of April, 2010



NOTARY PUBLIC

KATHLEEN A. STEVENS #01N15012682
NOTARY PUBLIC, STATE OF NEW YORK
QUALIFIED IN CATTARAUGUS CO.
MY COMMISSION EXPIRES JUNE 15, 2011