

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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THE BROOKLYN BRANCH OF THE NATIONAL  
ASSOCIATION FOR THE ADVANCEMENT OF  
COLORED PEOPLE,

Plaintiff,

- against -

PETER S. KOSINSKI, in his official capacity as Co-  
Chair of the State Board of Elections, *et al.*,

Defendants.

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**CITY BOARD OF  
ELECTIONS  
DEFENDANTS’  
PROPOSED FINDINGS  
OF FACT AND  
CONCLUSIONS OF LAW**

21 CV 7667 (KPF)

1. New York Election Law does not grant the Board any special standing to enforce the Line Warming Ban. Nothing in the Election Law (or other law) grants the Board prosecutorial or other enforcement power in connection with the Line Warming Ban. Trial Transcript (“TT”), p. 109, l. 25 – p. 110, l. 5.

2. City Board staff, like any member of the community, has the ability to report alleged violations of law to local law enforcement. Ct. Ex. 2 (Dkt. No. 108), ¶ 5.

3. City Board staff are not specifically trained to enforce the Line Warming Ban. Ct. Ex. 2, ¶ 6.

4. There is no evidence that there have been extended wait times at poll sites within the City of New York since the 2020 general election. Ct. Ex. 2, ¶ 8.

5. During the 2020 General Election, activities theoretically barred by the Line Warming Ban have occurred within the City of New York. TT, p. 101, l. 4 – p. 102, l. 11; p. 109, ll. 2-4.

6. The City Board was aware of such conduct but took no action either while such activity was taking place or after it concluded. TT, p. 109, ll. 5-9.

7. The 2020 general election was the first federal general election in New York utilizing early voting and was subject to many challenges, including a lack of poll workers and the need to maintain “social distancing” within poll sites, due to the COVID-19 pandemic emergency measures. Such challenges and the voter turnout level resulted in extended voter waiting times. Ct. Ex. 2, ¶ 9.

8. New York has now adopted a vote by mail option which is intended to permit more voters to cast votes without the need to appear at a poll site. Increased voting by mail will result in wait times at poll sites to typically remain below 30 minutes. TT, p. 105, ll. 14-22.

9. Plaintiff provided certain items of value to voters waiting on line to vote during the 2020 General Election and were neither warned that such activities were illegal, or threatened with or actually arrested and/or prosecuted for engaging in such activities. TT, p. 39, ll. 11-15; p. 43, l. 18 – p. 44, l. 7.

10. Plaintiff is aware that other groups have publicly provided food and beverages to voters waiting on line to vote but have faced no consequences for doing so. TT, p. 44, ll. 8-12; p. 45, ll. 17-22.

11. Plaintiff is aware that there is no record of enforcement of N.Y. Election L. § 17-140. TT, p. 67, ll. 9-17.

12. N.Y. Election L. § 17-140 is a dormant law. TT, p. 67, ll. 9-17.

13. Plaintiff is aware that N.Y. Election L. § 17-140 is dormant and therefore has no credible fear of prosecution. TT, p. 67, ll. 9-17; p. 80, ll. 1-12; p. 83, l. 17 – p. 84, l. 12.

14. At least one of Plaintiff's members was unaware of the existence of N.Y. Election L. § 17-140. TT, p. 80, ll. 1-8.

15. The instant lawsuit was not filed because of a fear of prosecution but because Plaintiff and its counsel are seeking a favorable ruling in order to try and get favorable rulings in other jurisdictions where similar laws may actually be enforced. TT, p. 67, l. 21 – p. 68, l. 13.

16. The City Board Defendants adopt the State Board Defendants Proposed Findings of Fact and Conclusions of Law and assert that with the exception of those matters concerning the State Board's enforcement counsel (the Election Law does not provide for the City Board to have an enforcement counsel), the findings of fact as to the role of the State Board and the conclusions of law apply with equal force to the City Board.

Dated: New York, New York  
April 12, 2024

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