

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

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

Plaintiff,

v.

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

Defendants.

Case No. 1:21-cv-07667-KPF

Judge: Katherine Polk Failla

**ANSWER AND
AFFIRMATIVE DEFENSES
TO AMENDED COMPLAINT**

Defendants Peter S. Kosinski, Douglas A. Kellner, Andrew J. Spano, Anthony J. Casale, and Kristen Zebrowski Stavisky (the “State BOE Defendants”), answer the Amended Complaint in this action as follows:

INTRODUCTION

1. State BOE Defendants deny the allegations in paragraph 1.
2. State BOE Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in the first two sentences of paragraph 2 and therefore deny the same. State BOE Defendants deny the remaining allegations in paragraph 2.
3. State BOE Defendants deny the allegations in paragraph 3.
4. State BOE Defendants deny the allegations in the first two sentences of paragraph 4.
4. State BOE Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in the remaining sentences of paragraph 4 and therefore deny the same.
5. State BOE Defendants refer to N.Y. Elec. Law § 17-140 for its contents. State BOE Defendants deny any remaining allegations in paragraph 5.

6. State BOE Defendants refer to N.Y. Elec. Law § 17-140 for its contents and application. State BOE Defendants deny the remaining allegations in paragraph 6.

7. State BOE Defendants deny the remaining allegations in paragraph 7.

8. State BOE Defendants deny the remaining allegations in paragraph 8.

JURISDICTION AND VENUE

9. As and for their response to paragraph 9, State BOE Defendants admit that Plaintiff brings this action under the referenced statutes, but denies that Plaintiff is entitled to any relief.

10. The allegations in paragraph 10 set forth legal conclusions to which no response is required. To the extent a response is required, State BOE Defendants admit that Plaintiff has invoked the jurisdiction of this Court under 28 U.S.C. §§ 1331 and 1343, but deny that Plaintiff is entitled to any such relief and deny that there is any basis in law or fact for Plaintiff's claims.

11. The allegations in paragraph 11 set forth legal conclusions to which no response is required. To the extent a response is required, State BOE Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in the remaining sentences of paragraph 11 and therefore deny the same.

12. The allegations in paragraph 12 set forth legal conclusions to which no response is required. To the extent a response is required, State BOE Defendants admit that Plaintiff seeks injunctive relief under 28 U.S.C. §§ 2201-2202 and Fed. R. Civ. P. 57 and 65, but deny that Plaintiff is entitled to any such relief and deny that there is any basis in law or fact for Plaintiff's claims.

PARTIES

13. State BOE Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in the remaining sentences of paragraph 13 and therefore deny the same.

14. State BOE Defendants admit that Plaintiff has brought this suit against State BOE Defendants in their official capacities. The remaining allegations in paragraph 14 set forth legal conclusions to which no response is required. To the extent a response is required, State BOE Defendants refer to the cited statutes for a complete recitation of their contents and application.

15. State BOE Defendants admit that Plaintiff has brought this suit against the members of the New York City Board of Elections in their official capacities. The remaining allegations in paragraph 15 set forth legal conclusions to which no response is required. To the extent a response is required, State BOE Defendants refer applicable law regarding the duties of the members of the members of the New York City Board of Elections.

STATEMENT OF FACTS AND LAW

16. State BOE Defendants refer to N.Y. Elec. Law § 17-140 for its contents and application. State BOE Defendants deny the remaining allegations in paragraph 16.

17. State BOE Defendants refer to N.Y. Elec. Law § 17-140 for its contents and application. State BOE Defendants deny the remaining allegations in paragraph 17.

18. State BOE Defendants refer to N.Y. Elec. Law § 17-140 for its contents and application. State BOE Defendants deny the remaining allegations in paragraph 18.

19. State BOE Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 19 and therefore deny the same.

20. State BOE Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 20 and therefore deny the same.

21. State BOE Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in the first and last sentences of paragraph 21 and therefore deny the same. State BOE Defendants refer to the cited provisions of N.Y. Elec. Law and New York State Constitution for their contents and application. State BOE Defendants deny the remaining allegations in paragraph 21.

22. State BOE Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 22 regarding the conduct and intentions of any alleged volunteers and therefore deny the same. State BOE Defendants deny the remaining allegations in paragraph 22.

23. State BOE Defendants refer to N.Y. Elec. Law § 17-140 for its contents and application. State BOE Defendants deny the remaining allegations in paragraph 23.

24. State BOE Defendants refer to N.Y. Elec. Law § 17-140 for its contents and application. State BOE Defendants deny the remaining allegations in paragraph 24.

25. State BOE Defendants refer to cited provisions of N.Y. Elec. Law and case authority for their contents and application. State BOE Defendants deny the remaining allegations in paragraph 25.

26. State BOE Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations of the first two sentences of paragraph 26 and therefore deny the same. State BOE Defendants refer to cited provisions of N.Y. Elec. Law for their contents and application. State BOE Defendants deny the remaining allegations in paragraph 26.

27. State BOE Defendants deny the allegations in paragraph 27.

28. State BOE Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 28 and therefore deny the same.

29. State BOE Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 29 and therefore deny the same.

30. State BOE Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 30 regarding the conduct and intentions of Plaintiff and therefore deny the same. State BOE Defendants deny the remaining allegations in paragraph 30.

31. State BOE Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 31 regarding the conduct and intentions of Plaintiff and therefore deny the same. State BOE Defendants deny the remaining allegations in paragraph 31.

32. State BOE Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 32 and therefore deny the same.

33. State BOE Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 33 and therefore deny the same.

34. State BOE Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 34 and therefore deny the same.

35. State BOE Defendants deny the allegations in paragraph 35.

36. State BOE Defendants deny the allegations in paragraph 36.

37. State BOE Defendants deny the allegations in paragraph 37.

COUNT I

38. State BOE Defendants repeat and reallege their responses to paragraphs 1 through 34.

39. The allegations in paragraph 39 set forth legal conclusions to which no response is required. To the extent a response is required, refer to the United States Constitution and cited

authority for their contents and application. State BOE Defendants deny the remaining allegations in paragraph 39.

40. State BOE Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 40 regarding the conduct and intentions of Plaintiff and therefore deny the same. State BOE Defendants deny the remaining allegations in paragraph 40.

41. State BOE Defendants refer to N.Y. Elec. Law § 17-140 for its contents and application. State BOE Defendants deny the remaining allegations in paragraph 41.

42. State BOE Defendants deny the remaining allegations in paragraph 42.

43. State BOE Defendants refer to the cited provisions of N.Y. Elec. Law for their contents and application. State BOE Defendants deny the remaining allegations in paragraph 43.

44. State BOE Defendants deny the allegations in paragraph 44.

COUNT II

45. State BOE Defendants repeat and reallege their responses to paragraphs 1 through 43.

46. State BOE Defendants deny the allegations in paragraph 46.

47. The allegations in paragraph 47 set forth legal conclusions to which no response is required. To the extent a response is required, State BOE Defendants refer to the cited authority for their contents and application and deny the remaining allegations in paragraph 47.

48. State BOE Defendants refer to N.Y. Elec. Law § 17-140 for its contents and application. State BOE Defendants deny the remaining allegations in paragraph 48.

49. State BOE Defendants refer to N.Y. Elec. Law § 17-140 for its contents and application. State BOE Defendants deny the remaining allegations in paragraph 49.

50. The allegations in paragraph 50 set forth legal conclusions to which no response is required. To the extent a response is required, State BOE Defendants deny the allegations in paragraph 50.

51. State BOE Defendants deny the allegations in paragraph 51.

52. State BOE Defendants deny the allegations in paragraph 52.

COUNT III

53. State BOE Defendants repeat and reallege their responses to paragraphs 1 through 51.

54. State BOE Defendants deny the allegations in paragraph 54. Pursuant to this Court's February 23, 2023 Opinion and Order (ECF No. 50), Plaintiff's as-applied claim has been dismissed.

55. State BOE Defendants refer to N.Y. Elec. Law § 17-140 and cited authority for their contents and application. State BOE Defendants deny the remaining allegations in paragraph 55.

56. State BOE Defendants refer to N.Y. Elec. Law § 17-140 for its contents and application. State BOE Defendants deny the remaining allegations in paragraph 56.

57. State BOE Defendants refer to N.Y. Elec. Law § 17-140 for its contents and application. State BOE Defendants deny the remaining allegations in paragraph 57.

58. State BOE Defendants refer to N.Y. Elec. Law § 17-140 for its contents and application. Pursuant to this Court's February 23, 2023 Opinion and Order (ECF No. 50), Plaintiff's as-applied claim has been dismissed. State BOE Defendants deny the remaining allegations in paragraph 58.

59. State BOE Defendants refer to N.Y. Elec. Law § 17-140 for its contents and application. State BOE Defendants deny the remaining allegations in paragraph 59.

60. Pursuant to this Court's February 23, 2023 Opinion and Order (ECF No. 50), Plaintiff's as-applied claim has been dismissed. State BOE Defendants deny the remaining allegations in paragraph 60.

61. State BOE Defendants refer to the cited authority for their contents and application. State BOE Defendants deny the remaining allegations in paragraph 61.

62. State BOE Defendants refer to the cited authority for their contents and application. State BOE Defendants deny the remaining allegations in paragraph 62.

63. Pursuant to this Court's February 23, 2023 Opinion and Order (ECF No. 50), Plaintiff's as-applied claim has been dismissed. State BOE Defendants deny the remaining allegations in paragraph 63.

64. Pursuant to this Court's February 23, 2023 Opinion and Order (ECF No. 50), Plaintiff's as-applied claim has been dismissed. State BOE Defendants deny the remaining allegations in paragraph 64.

PRAYER FOR RELIEF

65. State BOE Defendants deny that Plaintiff is entitled to the relief requested or any relief whatsoever.

AFFIRMATIVE DEFENSES

66. Without assuming any burden of pleading or proof that would otherwise rest upon Plaintiff, State BOE Defendants assert the following defenses, reserving the right to supplement its answer and defenses as discovery and investigation continue.

FIRST AFFIRMATIVE DEFENSE

(Failure to State a Claim)

67. The complaint fails to state a claim upon which relief may be granted.

SECOND AFFIRMATIVE DEFENSE

(Lack of Irreparable Harm)

68. Plaintiff is not entitled to injunctive relief due to lack of immediate or irreparable injury.

THIRD AFFIRMATIVE DEFENSE

(Sovereign Immunity)

69. Plaintiff's claim is barred, in whole or in part, by sovereign immunity under the Eleventh Amendment to the United States Constitution and the common law, except to the extent permitted by *Ex Parte Young*, 209 U.S. 123 (1908).

FOURTH AFFIRMATIVE DEFENSE

(Lack of Standing)

70. Plaintiff's claims are barred, in whole or in part, because Plaintiff lacks organizational standing and/or associational standing.

FIFTH AFFIRMATIVE DEFENSE

(Ripeness)

71. Plaintiff's claims are barred, in whole or in part, because they are not ripe for adjudication.

SIXTH AFFIRMATIVE DEFENSE

(State Interests)

72. Plaintiff's claim is barred, in whole or in part, because the State has an important and/or compelling interest in preventing the conduct in which Plaintiff seeks to engage.

SEVENTH AFFIRMATIVE DEFENSE

(Lack of Severe Burden)

73. Plaintiff's claim is barred, in whole or in part, because the challenged provision of the New York Election Law does not impose a severe burden on Plaintiff's alleged rights.

EIGHTH AFFIRMATIVE DEFENSE

(Failure of As-Applied Challenge)

74. Plaintiff's claim is barred, in whole or in part, because Plaintiff have failed to demonstrate that the challenged provision of the New York Election Law is unconstitutional as applied to Plaintiff. Pursuant to this Court's February 23, 2023 Opinion and Order (ECF No. 50), Plaintiff's as-applied claim has been dismissed.

NINTH AFFIRMATIVE DEFENSE

(Valid Exercise of State Authority)

75. Plaintiff's claim is barred, in whole or in part, because the challenged provision of the New York Election Law is a valid exercise of the State's authority to control its electoral laws and processes.

TENTH AFFIRMATIVE DEFENSE

(Lack of Expressive Conduct)

76. Plaintiff's first cause of action claim is barred, in whole or in part, Plaintiff's proposed conduct is not expressive conduct protected by the First Amendment.

ELEVENTH AFFIRMATIVE DEFENSE

(Laches)

77. Plaintiff's claims are barred by the equitable doctrine of laches.

TWELFTH AFFIRMATIVE DEFENSE

(Reservation of Right to Assert Additional Defenses)

78. State BOE Defendants reserve the right to amend their Answer to add additional defenses, including lack of subject matter jurisdiction based on the mootness doctrine, as further information becomes available in discovery.

WHEREFORE, State BOE Defendants demand judgment against Plaintiff as follows:

- (a) dismissing the amended complaint in its entirety, with prejudice;
- (b) awarding State BOE Defendants their costs and expenses incurred in connection with the defense of this action; and
- (c) granting such other and further relief as the Court deems just and proper.

Dated: March 9, 2023

Respectfully submitted,

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