

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF RICHMOND

VITO J. FOSSELLA, *et al.*,

Plaintiffs,

-against-

ERIC ADAMS, *et al.*,

Defendants.

Index No. 85007/2022

**DEFENDANT THE NEW YORK CITY BOARD OF ELECTIONS’
ANSWER TO COMPLAINT**

Defendant, Board of Elections in the City of New York (“BOE”), through its counsel, submits its responses to allegations contained in the within Complaint, dated January 10, 2022 (the “Complaint”) as follows:

1. With respect to the allegations contained in Paragraphs 1, 37, 39-40, and 59-60 of the Complaint, the BOE respectfully refers the Court to the text and legislative history of the law that is the subject of the Complaint, and with respect to the allegations contained in Paragraph 60, the BOE also respectfully refers the Court to the New York State Municipal Home Rule Law.

2. With respect to the allegations contained in Paragraph 2 of the Complaint, the BOE respectfully refers the Court to the New York State Constitution, New York State Election Law and New York State Municipal Home Rule Law.

3. With respect to the allegations contained in Paragraph 3 of the Complaint, the BOE acknowledges that plaintiffs are requesting said relief.

4. With respect to the allegations contained in Paragraphs 4-22 and 44-45, the BOE denies knowledge or information sufficient to form a belief as to their truth or falsity.

5. With respect to the allegations contained in Paragraphs 23 and 25, the BOE admits that the indicated parties are co-defendants in the within action.

6. With respect to the allegations contained in Paragraph 24, the BOE respectfully refers the Court to the New York State Constitution and the New York State Election Law to ascertain the BOE's administrative responsibilities.

7. With respect to the allegations contained in Paragraph 26, the BOE denies it had any role in any alleged cause of action referred to therein.

8. With respect to the allegations contained in Paragraphs 27-33 and 47-50, the BOE respectfully refers the Court to the New York State Constitution.

9. With respect to the allegations contained in Paragraphs 34-35 and 54, the BOE respectfully refers the Court to the New York State Election Law, and with respect to the allegations contained in Paragraph 35, also respectfully refers the Court to the case cited therein.

10. With respect to the allegations contained in Paragraphs 36 and 58, the BOE respectfully refers the Court to the New York State Municipal Home Rule Law.

11. With respect to the allegations contained in Paragraph 38, the BOE respectfully refers the Court to the New York City Charter.

12. With respect to the allegations contained in Paragraphs 41-42, the BOE respectfully refers the Court to the United States Census Report, and with respect to the allegations contained in Paragraph 42, also respectfully refers the Court to voting data as published by the New York State Board of Elections and the BOE.

13. With respect to the allegations contained in Paragraph 43, the BOE respectfully refers the Court to voting data as published by the New York State Board of Elections and the BOE.

14. With respect to the allegations contained in Paragraphs 46, 53 and 57 the BOE respectfully refers the Court to its responses to Paragraphs 1-45.

15. With respect to the allegations contained in Paragraphs 51-52, the BOE respectfully refers the Court to the text and legislative history of the law that is the subject of the Complaint and the New York State Constitution.

16. With respect to the allegations contained in Paragraphs 55-56, the BOE respectfully refers the Court to the text and legislative history of the law that is the subject of the Complaint, New York State Election Law, and the New York State Municipal Home Rule Law.

AS AND FOR DEFENDANT BOE'S FIRST AFFIRMATIVE DEFENSE

17. The Complaint fails to allege facts sufficient to state a cause of action against Defendant BOE upon which relief can be granted.

AS AND FOR DEFENDANT BOE'S SECOND AFFIRMATIVE DEFENSE

18. The Complaint fails to name the New York State Board of Elections as a necessary and indispensable party in this action.

AS AND FOR A FIRST CROSS-CLAIM AGAINST CO-DEFENDANTS

19. The law that is the subject of the Complaint contains a provision, §1057-ss, the enactment of which is preempted by various New York State Laws.

20. The New York Election Law delineates, through a comprehensive and detailed scheme, the specific and limited ways in which the New York City Council shall exercise jurisdiction with respect to the BOE.

21. The New York Election Law and New York Penal Law delineate, through a comprehensive and detailed scheme, the specific and limited ways in which the BOE may face penalties for the manner in which it performs its duties.

22. As such, §1057-ss of the subject law unlawfully goes beyond the jurisdiction enjoyed by the New York City Council with respect to the BOE, and is, therefore, an improper provision of the law.

23. Furthermore, §1057-vv of the law at issue, which purportedly creates a rebuttable presumption that a criminal violation under §1057-ss has occurred, in addition to going beyond the jurisdiction of the New York City Council with respect to the BOE, improperly shifts the burden of proof in violation of BOE's due process rights, and, therefore, is an improper and unconstitutional provision of the law.

24. The United States Supreme Court has recognized that a "presumption of innocence" is a vital guarantee. *See Estelle v. Williams*, 425, U.S. 501, 503 (1976). Relatedly, the Court has found that due process requires a presumption of innocence. *Taylor v. Kentucky*, 436 U.S. 478 (1978).

25. New York similarly recognizes that "the presumption of the defendant's innocence" is a "fundamental legal principle[] applicable to criminal cases in general." CPL § 300.10(2) (Consol. 2022).

26. Accordingly, §§1057-ss and -vv of the subject law should be stricken.

27. The BOE fully intends to comply with the remaining provisions of the subject law pursuant to its authority, constrained only by the New York State Election Law as it pertains to the authority and obligations of the New York State Board of Elections.

WHEREFORE, Defendant BOE respectfully requests that the Court declare null and void §§1057-ss and -vv of the subject law and grant any such further relief as this Court deems just and proper.

Dated: New York, New York.
April 11, 2022

/s/ Jerry H. Goldfeder
Jerry H. Goldfeder
Shauneida C. Navarrete
Michael G. Mallon
STROOCK & STROOCK & LAVAN LLP
180 Maiden Lane
New York, New York 10038
Telephone: (212) 806-5400

HOLTZMAN VOGEL BARAN
TORCHINSKY & JOSEFIK PLLC
Edward Wenger
John Cycon
2300 N Street NW, Suite 643A
Washington, DC 20037
(202) 737-8808

*Attorneys for Defendant The New York City
Board of Elections*

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