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May 10, 2022

By ECF

The Honorable Gary L. Sharpe
United States District Judge
James T. Foley U.S. Courthouse
445 Broadway, Room 411
Albany, NY 12207

Re: *United States of America v. New York State Board of Elections, et al.*
10-cv-1214 (GLS)

Dear Judge Sharpe:

We represent proposed intervenors and New York voters, Belinda de Gaudemar and Susan Schoenfeld (“UOCAVA Plaintiffs”), together with the Elias Law Group LLP. We write to enclose another declaration in further opposition to the State Board of Elections (SBOE)’s May 5, 2022 Letter Motion Requesting a Supplemental Order (ECF No. 92).

Dated: May 10, 2022

Respectfully Submitted,

ELIAS LAW GROUP LLP

EMERY CELLI BRINCKERHOFF
ABADY WARD & MAAZEL LLP

By: /s/ Aria C. Branch

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Enclosure

**Pro hac vice applications to be submitted.*

**DECLARATION OF JACKIE ORTIZ AS THE DEMOCRATIC COMMISSIONER OF
THE MONROE COUNTY BOARD OF ELECTIONS**

Pursuant to 28 U.S.C. § 1746, I hereby declare as follows:

1. I am over the age of 18, have personal knowledge of the facts stated in this declaration, and can competently testify to their truth.

2. I am the Democratic Commissioner of the Monroe County Board of Elections. I was appointed to this position in July 2020.

3. County and City Elections Commissioners and their staff have the ultimate responsibility for complying with the 45-day pre-election ballot transmission requirement of the Uniformed and Overseas Absentee Voting Act, as amended by the Military and Overseas Voter Empowerment Act (collectively, "UOCAVA").

4. I believe that if New York delays its federal primary election to August 23, 2022, the Monroe County Board of Elections will have difficulty meeting the 45-day deadline for the general election that federal law imposes (or the 46-day deadline that New York law imposes) for sending ballots to overseas and military voters. If there are any close elections in the primary that trigger the new automatic manual recount law or result in any post-election litigation, or there are other delays, it will be impossible to meet the UOCAVA deadline. I am equally concerned that this problem would plague all of the county and city boards of elections in the state ("Boards"), especially ones that are in counties that are more populous than Monroe County.

5. An August 23 primary date puts extreme pressure on an already tight deadline for transmitting absentee ballots to overseas and military voters. Before a Board can transmit absentee ballots to UOCAVA voters for the general election, many steps need to occur.

6. First, Boards must count the primary election ballots in a process known as the "canvass." Boards are not allowed to tabulate any ballots, including absentee or early voting ballots, until 9 p.m. on Election Day. Thus, there is no way to get a head start on this counting process. Further, Boards must count absentee ballots that are postmarked by election day that arrive until the seventh day after the election. If an absentee ballot is rejected for certain minor issues, a Board must inform the voter, by mail, of the voter's right to cure the defect and have the ballot counted. The voter then has seven business days to cure their ballot starting from the date of the Board mailing the cure notice. The statutory deadline for finishing the canvass is 13 days after the primary.

7. Along with the canvass, the Board must audit 3% of the voting machines that were used in the election. This audit must also be completed within 13 days of the primary election.

8. After that, the Board must conduct a recanvass by the 20th day after the election. If the margin of an election following the recanvass is 20 votes or less or 0.5% or less, then the Board

must conduct a manual recount. Further, in a contest where 1 million or more ballots have been cast and the margin of victory is less than 5,000 votes, the Boards involved must conduct a manual recount. Where two or more counties are impacted by a specific election, the state board of elections must determine whether a recount is triggered based on the recanvass results of all the Boards of the counties involved. Additionally, candidates could petition a court for a recount even if the margin is greater. Our last recount, which included a countywide race, took approximately one week and nearly 20 individuals to complete as we had over 174,000 ballots to hand count.

9. Following the canvass, audit, and recanvass, the Board must send certified election results to the State Board of Elections so that the State Board can determine the winner of any elections involving districts that cross county lines. Only once the State Board certifies the results does the Board know who will be on the ballot. The State Board must certify the candidates on the general election ballot by the 55th day before the general election.

10. Only once the Board knows which candidates will be on the general election ballot can it design absentee ballots. Because of overlapping political boundaries, boards usually have to design several different ballot styles. For example, if everyone living in a county resides in the same Congressional district, but there are two State Senate Districts and three Assembly Districts crossing through the county, the Board needs to make sure it has ballots with each possible ballot permutation. This process usually takes approximately a week to complete. Monroe County currently has 23 ballot styles for the 2022 primary.

11. Boards then have to proof all the forms of the ballot, print test versions of every ballot, make sure the machines can read all the tests ballots properly, then print the ballots that will go to the voters. These steps take another couple of days.

12. The Board must place ballots in envelopes and audit that it has put the correct ballot for each voter in the applicable envelope. This process takes another day. After all this work is done, the Board may deposit the absentee ballots in the mail for UOCAVA voters.

13. In addition to preparing to transmit UOCAVA ballots, the Board will be recruiting and training poll workers, securing polling sites, registering voters, setting up and testing electronic poll books, obtaining election supplies, and preparing for early voting. These competing needs detract resources from UOCAVA compliance.

14. The UOCAVA deadline under federal law is September 24, and New York requires such ballots to be mailed the day prior. Thus, the deadline this year is September 23. That leaves Boards only 32 days from the August 23rd primary election to complete all the steps just described. The State Board does not even have to certify which candidates will be on the ballot until September 14, providing just 9 days to design, print, and mail ballots. Given this short time frame, it will be difficult for the Monroe County Board of Elections or any Board to meet the deadline for transmitting UOCAVA ballots. In the event any delays to the process described above occur, including any administrative errors, and especially manual recounts or post-election litigation, it

would be impossible to meet the deadline. Although there is no way to predict specific delays, in my experience, elections rarely go perfectly.

Executed on this ¹⁰____th day of May, 2022.

Jackie Ortiz

Jackie Ortiz

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