

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

PHYLLIS COACHMAN, ANTHONY GILHUYS,
KATHERINE JAMES, and DEROY MURDOCK,

Plaintiffs,

-against-

THE CITY OF NEW YORK and THE NEW YORK
CITY BOARD OF ELECTIONS,

Defendant.

Civil Case No. 1:22-cv-05123

**DEFENDANT THE BOARD OF ELECTIONS IN THE CITY OF NEW YORK'S
ANSWER TO PLAINTIFFS' COMPLAINT**

Defendant, The Board of Elections in the City of New York (incorrectly denominated as the New York City Board of Elections) ("BOE"), through its counsel, submits its responses to allegations contained in Plaintiffs' August 29, 2022 Complaint (the "Complaint") as follows:

1. With respect to the allegations contained in Paragraphs 1 and 14 of the Complaint, the BOE denies knowledge or information sufficient to form a belief as to their truth or falsity but respectfully refers the Court to the New York State Constitution and the New York State Election Law as they pertain to the administrative responsibilities of the BOE.

2. With respect to the allegations contained in Paragraph 2 of the Complaint, the BOE denies it had any role in any alleged cause of action referred to therein and respectfully refers the Court to the indicated cases, submissions, or articles referred to therein.

3. With respect to the allegations contained in Paragraphs 3-5 of the Complaint, the BOE denies it had any role in any alleged cause of action referred to therein.

4. With respect to the allegations contained in Paragraphs 6-10, 36, 47, 57, and 70-71 of the Complaint, 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 Paragraph 11, the BOE agrees to the extent that the Board must enforce all city laws that have not been enjoined. The BOE denies to the extent that Plaintiffs allege that the Board must enforce the law they challenge, because that law has been enjoined by the Supreme Court of New York in *Fossella v. Adams*, Index No. 85007/2022 (N.Y. Sup. Ct. Richmond Co. 2022). The BOE respectfully refers the Court to the New York State Constitution and the New York State Election Law as they pertain to the administrative responsibilities of the BOE.

6. With respect to the allegations contained in Paragraphs 12, 23-29, 32, 37-41, 45-46, 67-69, and 73 of the Complaint, the BOE denies knowledge or information sufficient to form a belief as to their truth or falsity but respectfully refers the Court to the text and legislative history of the law that is the subject of the within Complaint.

7. With respect to the allegations contained in Paragraph 13, the BOE agrees and respectfully refers the Court to the text and legislative history of the law that is the subject of the within Complaint.

8. With respect to the allegations contained in Paragraphs 15-19, 21-22, 63, and 66 of the Complaint, the BOE denies knowledge or information sufficient to form a belief as to their truth or falsity but respectfully refers the Court to the text of the Fifteenth Amendment to the United States Constitution, its legislative history, and the common law interpreting said Amendment.

9. With respect to the allegations contained in Paragraph 20 of the Complaint, the BOE denies knowledge or information sufficient to form a belief as to their truth or falsity but respectfully refers the Court to the text of the Fifteenth Amendment to the United States Constitution and Section 2 of the Voting Rights Act, their legislative history, and the common law interpreting the same, as well as the text and legislative history of the law that is the subject of the within Complaint.

10. With respect to the allegations contained in Paragraphs 30, 31 and 34 of the Complaint, the BOE denies knowledge or information sufficient to form a belief as to their truth or falsity but respectfully refers the Court to the United States Census to ascertain the accuracy of the data alleged therein.

11. With respect to the allegations contained in Paragraph 33 of the Complaint, the BOE denies knowledge or information sufficient to form a belief as to their truth or falsity but respectfully refers the Court to the text of the Fifteenth Amendment to the United States Constitution and Section 2 of the Voting Rights Act, their legislative history, and the common law interpreting the same.

12. With respect to the allegations contained in Paragraphs 35 and 54 of the Complaint, the BOE denies knowledge or information sufficient to form a belief as to their truth or falsity but respectfully refers the Court to the certified election results.

13. With respect to the allegations contained in Paragraphs 42-44 of the Complaint, the BOE denies knowledge or information sufficient to form a belief as to their truth or falsity but respectfully refers the Court to the indicated case referred to therein as well as to Sec. 23(2)(e) of the New York State Municipal Home Rule Law as referred therein.

14. With respect to the allegations contained in Paragraphs 48, 51-53, 56, and 58 of the Complaint, the BOE denies knowledge or information sufficient to form a belief as to their truth or falsity but respectfully refers the Court to the indicated cases, submissions or articles referred to therein.

15. With respect to the allegations contained in Paragraphs 49-50, 55, and 64-65 of the Complaint, the BOE denies knowledge or information sufficient to form a belief as to their truth or falsity but respectfully refers the Court to the United States Voting Rights Act, its legislative history, and cases interpreting said law; and with respect to the allegations contained in Paragraph 49, to the case cited therein; and with respect to the allegations contained in Paragraph 50, to the Voting Determination Letters cited therein.

16. With respect to the allegations of Paragraph 59, the BOE denies knowledge or information sufficient to form a belief as to their truth or falsity, but respectfully refers the Court to the certified election results.

17. With respect to the allegations contained in Paragraph 60 of the Complaint, the BOE respectfully refers the Court to its responses to Paragraphs 1-59.

18. With respect to the allegations contained in Paragraph 61 of the Complaint, the BOE agrees and respectfully refers the Court to the Title 42, U.S.C. § 1983, its legislative history, and cases interpreting said law.

19. With respect to the allegations contained in Paragraph 62 of the Complaint, the BOE agrees and respectfully refers the Court to the text of the Fifteenth Amendment to the United States Constitution.

20. With respect to the allegations contained in Paragraph 72 of the Complaint, the BOE denies knowledge or information sufficient to form a belief as to their truth or falsity, but respectfully refers the Court to the indicated cases, submissions or articles referred to therein.

AS AND FOR DEFENDANT BOE'S FIRST AFFIRMATIVE DEFENSE

21. 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

22. The Complaint fails to name the New York State Board of Elections, which is a necessary and indispensable party to this action.

AS AND FOR DEFENDANT BOE'S THIRD AFFIRMATIVE DEFENSE

23. The Complaint should be dismissed on the ground that the New York State Supreme Court has already ruled that the subject law is invalid.

WHEREFORE, Defendant BCE respectfully requests that the Court grant such relief as this Court deems just and proper.

Dated: New York, New York
October 7, 2022

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