

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF SARATOGA

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In the matter of
RICH AMEDURE,
ROBERT SMULLEN, WILLIAM FITZPATRICK,
NICK LANGWORTHY,
THE NEW YORK STATE REPUBLICAN PARTY,
GERARD KASSAR,
THE NEW YORK STATE CONSERVATIVE PARTY,
CARL ZIELMAN
THE SARATOGA COUNTY REPUBLICAN PARTY,
RALPH M. MOHR, AND ERIK HAIGHT,

No. 2022-2145

Petitioners,

Hon. Diane Freestone

-against-

STATE OF NEW YORK, BOARD OF ELECTIONS
OF THE STATE OF NEW YORK,
GOVERNOR OF THE STATE OF NEW YORK,
SENATE OF THE STATE OF NEW YORK MAJORITY LEADER
AND PRESIDENT PRO TEMPORE OF THE SENATE
OF THE STATE OF NEW YORK, MINORITY LEADER OF THE
SENATE OF THE STATE OF NEW YORK,
ASSEMBLY OF THE STATE, OF NEW YORK,
MAJORITY LEADER OF THE ASSEMBLY
OF THE STATE OF NEW YORK,
MINORITY LEADER OF THE ASSEMBLY
OF THE STATE OF NEW YORK;
SPEAKER OF THE ASSEMBLY OF
THE STATE OF NEW YORK,

Respondents.

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**REPLY IN SUPPORT OF PROPOSED DEMOCRATIC INTERVENORS' MOTION TO
INTERVENE AS RESPONDENTS**

Proposed Intervenor-Respondents DCCC, congressional candidate Jackie Gordon, New York State Democratic Committee, New York State Democratic Committee Chairman Jay Jacobs, Wyoming County Democratic Committee, Wyoming County Democratic Committee Chairwoman Cynthia Appleton, and New York voters Declan Taintor, Harris Brown, Christine

Walkowicz, and Claire Ackerman (collectively, “Proposed Democratic Intervenors”), through their attorneys, hereby submit this reply brief in support of their motion to intervene as respondents.

INTRODUCTION

The only parties opposing Proposed Democratic Intervenors’ motion to intervene are Petitioners and the Minority Leaders of the Senate and Assembly. The latter are nominally designated as Respondents, but previously sought realignment as petitioners to reflect their actual position in the case.¹ The Minority Leaders failed to file anything with the Court explaining the basis for their opposition. Thus, the only filing in which any party opposes the intervention of Proposed Democratic Intervenors is a one-and-a-half-page letter to the Court from Petitioners, stating in broad, conclusory terms that allowing intervention by *any* party will “burden the record and delay this case.” (Dkt. 27, Pet. Ltr. at 1).²

In fact, from the outset, Proposed Democratic Intervenors have moved expeditiously and abided by all deadlines set by the Court in this case. There is no basis for presuming they will cause delay, and they have no intention of doing so. Petitioners, not Proposed Democratic Intervenors, have delayed this case by inexplicably waiting to bring this action until voting was already underway, challenging an election law that was signed into law in December of last year and has been in place for nine elections, including two primary elections held earlier this year. The Court should reject Petitioners’ argument that relevant and important stakeholders—including

¹ They subsequently withdrew this request to avoid “additional briefing and motion practice.” (Dkt. 31, Ltr. to Court).

² As for the other parties to this action, the New York State Assembly, Assembly Speaker Carl Heastie, and Assembly Majority Leader Crystal People-Stokes support intervention, (Dkt. 34, Ltr. to Court); New York State Board of Elections Commissioners Douglas Kellner and Andrew Spano, the New York State Senate, and Senate Majority Leader and President Pro Tempore Andrea Stewart-Cousins do not oppose; and the State and Governor take no position. (Dkt. 32, Ltr. to Court).

New York voters who would be adversely impacted by the relief Petitioners seek, and the Democratic Committees that must work to support their voters and candidates under the rules at issue in this action—should be excluded from full participation due to the manufactured urgency that Petitioners have themselves created.

Petitioners' letter response also notably lacks any relevant legal or factual support for their conclusory arguments in opposition to Proposed Democratic Intervenors' motion to intervene. Because Proposed Democratic Intervenors have a clear, irrefutable interest in this case and meet all the other factors necessary for intervention as of right under CPLR 1012(a), this Court should grant Proposed Democratic Intervenors' motion. Alternatively, Proposed Democratic Intervenors request permissive intervention under CPLR 1013.

ARGUMENT

Two intervention motions are pending before this Court for two different sets of proposed intervenors, each of which presents unique interests in this case. But Petitioners have chosen not to respond to either of them with any specificity. Instead, Petitioners submitted a brief, conclusory letter response that fails to address any of the intervenors' arguments in support of their intervention. Indeed, Petitioners' letter does not provide *any* reason why the specific interests asserted by the proposed intervenors are insufficient to warrant intervention. Instead, Petitioners apparently seek to bypass the briefing process altogether with an invitation for the Court to call their counsel to answer any questions it may have. (Pet. Ltr. at 2). The Court should decline Petitioners' invitation for impermissible *ex parte* communication. And it should reject their attempt to exclude New York voters and important political stakeholders from this action. Proposed Democratic Intervenors seek to protect unique interests not already represented by the parties in this action and have unique perspectives that will aid the Court in its adjudication of this matter.

Petitioners' letter asserts three reasons—all unsupported and all incorrect—why the Court should not allow Proposed Democratic Intervenors to intervene in this litigation. Petitioners state broadly that (1) “many” proposed intervenors either lack standing to sue in the first instance, are not “necessary parties,” or are “not materially affected” by the relief Petitioners seek; (2) any intervention will cause delay and confusion; and (3) “[t]here has been no claim that the current parties . . . cannot adequately defend the case.” (Pet. Ltr. at 2). None of this is true with regard to Proposed Democratic Intervenors, and none provides a basis for denying their motion to intervene.

First, Petitioners claim that “[m]any of the applicants for intervention lack standing to sue in this matter, are not necessary parties and/or are not materially affected by the relief the Plaintiff/Petitioners request from the Court.” (Pet. Ltr. at 1). Proposed Democratic Intervenors are not trying to sue anyone. And the law does not limit intervention to “necessary parties.” Nor does the law require that intervenors be “materially affected by the relief” that Petitioners seek. CPLR 1012(a) and 1013 simply require that intervenors have a real and substantial interest in the outcome of the proceeding. *See Windward Bora, LLC v. PNC Bank*, 173 N.Y.S.3d 52, 54 (2d Dep’t 2022) (“Whether intervention is sought as a matter of right under CPLR 1012(a), or as a matter of discretion under CPLR 1013, is of little practical significance since a timely motion for leave to intervene should be granted, in either event, where the intervenor has a real and substantial interest in the outcome of the proceedings.”). Nevertheless, Proposed Democratic Intervenors have a real and substantial interest in the outcome of this case—as detailed at length in their motion to intervene—and they have explained why they will be materially affected by the relief Petitioners seek. (Dkt. 18, Proposed Democratic Intervenors’ Mot. to Intervene at 7–10). Petitioners do not dispute any of the specific interests and threatened harms that Proposed Democratic Intervenors detail in their motion. Indeed, Petitioners’ conclusory argument that Proposed Democratic

Intervenors—New York voters who intend to vote absentee because of fear of contracting COVID-19 and Democratic candidates and political organizations that would be harmed if the rules were to change at this late date—do not have a real and substantial interest (or, to borrow Petitioners’ language do not stand to be “materially harmed”) in the outcome of this proceeding defies logic.

Second, Petitioners assert that any intervention will lead to delay and confusion. Petitioners identify no basis for this assumption, and it is contrary to the record before the Court. Proposed Democratic Intervenors moved expeditiously to intervene in this action, filing their motion to intervene and verified answer a mere eight days after Petitioners filed this action. They promptly appeared at the Court’s October 5 hearing and complied with the Court’s order to file their brief in opposition by October 7. Proposed Democratic Intervenors will continue to abide by any timelines that the Court sets, and their intervention will not cause delay. The only parties that have delayed here are Petitioners. As detailed in prior filings, they inexplicably delayed in bringing this action, waiting until New York voters were already casting ballots before seeking extraordinary relief changing the rules of the election mid-stream. As explained in Proposed Democratic Intervenors’ brief in opposition, the Court should deny relief as a result. (Dkt. 67, Proposed Democratic Intervenors’ Mem. in Opp. at 7–12). To permit Petitioners to exclude relevant participants because *Petitioners* chose to sit on their rights for nearly a year would be grossly inequitable. As for Petitioners’ contention that allowing *anyone* to intervene could cause confusion, they fail to explain it, and it, too, should be rejected; there is simply no basis for that statement.

Finally, Petitioners’ assertion that no claim has been made that the current parties cannot adequately defend the case is also directly contrary to the record before the Court. (Pet. Ltr. at 2). A substantial portion of Proposed Democratic Intervenors’ motion to intervene is devoted to

articulating the ways in which the other respondents in this matter do not adequately represent Proposed Democratic Intervenors' direct and substantial interests. (Proposed Democratic Intervenors' Mot. to Intervene at 7–10). That unrefuted fact distinguishes this case from the solitary case that Petitioners cite in their letter: *Norse Energy Corp. USA v. Town of Dryden*, 964 N.Y.S.2d 714 (3d Dep't 2013). In that case, the proposed intervenors "failed to demonstrate a substantial interest in the outcome of the action different" from the parties already involved. *Norse Energy Corp. USA*, 964 N.Y.S.2d at 718. The same cannot be said here.

CONCLUSION

For the reasons stated above, Proposed Democratic Intervenors respectfully request that this Court grant their motion to intervene as respondents in this case as of right under CPLR 1012(a), or, in the alternative, in this Court's discretion under CPLR 1013.

Dated: October 11, 2022

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Dated: October 11, 2022

/s/ Richard A. Medina

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