MESSINA PERILLO HILL

October 26, 2022

Ms. Amy Conway, Esq.
Motion Clerk
Supreme Court Appellate Division – Third Department
Justice Building – PO Box 7288
Albany, New York 12224

RE: Amedure, et al v. State of New York, Docket No. CV-22-1955

Dear Ms. Conway:

It was with great anguish that I was made aware that this Court signed an amended Order to Show Cause in the above referenced matter that extends any stay previously granted to the Appellants to cover the preservation order issued by the Supreme Court yesterday. We believe that this amended Order should be vacated for the following substantive and procedural reasons.

In the first instance, notice of the signed Order to Show Cause was received as I was preparing a reply to the Attorney General's letter of October 25, 2022. In stark contrast to the seven Orders to Show Cause submitted and signed yesterday,

there was no communication from the Motion Clerk setting the time for submission of papers in connection with the amended Order to Show Cause at issue here.

The preservation order did not exist at the time of Appellants application for temporary relief. It could NOT have been within the ambit of the application to the Court which preceded its signing. Accordingly, the merits of the motion to stay this preservation order were not before the Court. Because no opportunity to be heard was allowed, none of our reasons for denying the stay were brought to bar or considered.

Previously, these same Appellants sought to deny the Plaintiff – Petitioners their right to reply to answering papers, and to be heard. Here, they have tried to muzzle their opponents again. At this juncture, despite the law and the rules, they appear to have succeeded.

As one Appellate Court has recognized, temporary *ex parte* relief should not be granted where the petitioner failed to follow the procedure set forth in the Uniform Rules, see Tesone v. Hoffman, 84 A.D.3d 1219, 1220-21 (2d Dep't 2011) (quoting 22 NYCRR § 202.7(f)) ("The initial temporary restraining order, set forth in the order to show cause . . . , should not have been granted *ex parte* since the plaintiffs failed to allege or demonstrate 'significant prejudice to the party seeking the restraining order by the giving of notice.')" Here, we were entitled to notice and an opportunity to be heard under the rules.

Accordingly, the stay granted should be vacated.

We respectfully demand an opportunity to submit and be heard on the Appellants' application in accordance with the rules. Please advise if we need to submit a second amended Order to Show Cause.

A further reason to vacate this stay is that here, the preservation order is what maintains the status quo. If the stay remains in effect, voters changing their

minds and appearing at the polls to vote will be disenfranchised. Votes from convicted felons and the dead will be included in the count in contravention of law. Votes of those not meeting the Constitutional requirements to vote will get counted. There is real harm to the Plaintiffs and the voters ONLY if the preservation order is not allowed to stand.

What is before the Court is the situation where a house is ordered to be torn down. If there is no preservation order the house is destroyed. Staying the preservation order destroys the house – rendering the final review of the order moot. The house – and here the election process as it has been carried out for nearly a century – can not be magically restored once it is destroyed. We can not understand why this Court would rule in favour of mooting and precluding Judicial review of this matter and the ballots of this election.

It is only logical that the Parties and Elections Officials involved here should defer to this Appellate Division and the Courts to await the final adjudication of the important Constitutional issue brought forward in this case. Here, the Appellants, who are candidates in the subject election, have determined to ram ballots through the administrative process with Judicial review precluded.

Indeed, the stay requested in the Amended Order to Show Cause is a blatant attempt to moot this case before it is argued [mootness would apply *only* to this election]. The Appellants, particularly those who are candidates, would have this Court allow for the execution of the terms of an unconstitutional statute at the expense of the voters who will have the ballots of those not qualified to vote, not qualified to vote absentee, or voting in contravention of law, included in the count – and canceling out – their valid votes. No one, under terms of this pernicious law, will even have an opportunity to turn to the Courts for Justice.

Vote dilution – the evil twin of depriving a voter of their right to vote – has been recognized by the Courts as a real harm to voting rights. Vote dilution cannot be undone after the fact. As a result, courts often issue preliminary relief to prevent vote dilution, whether from fraud or other causes. See, e.g., Brakebill v. Jaeger, 905 F.3d 553, 559-60 (8th Cir. 2018) (finding irreparable harm, reasoning: "Voters could cast a ballot in the wrong precinct and dilute the votes of those who reside in the precinct. Enough wrong-precinct voters could even affect the outcome of a local election."). "'[D]ilution of a right so fundamental as the right to vote constitutes irreparable injury.' There is 'no do-over and no redress' once the election has passed." Richardson v. Trump, 496 F. Supp. 3d 165, 188 (D.D.C. 2020) (quoting Cardona v. Oakland Unified Sch. Dist., 785 F. Supp. 837, 840 (N.D. Cal. 1992). This Court should not allow for a process that allows voting rights to be abridged.

Accordingly, the stay granted in the amended Order to Show Cause should be vacated, and the Preservation Order of October 25th should be allowed to stand and maintain the status quo until this matter is argued and concluded.

Please advise as to how we might be heard on this matter and make the appropriate submissions.

We thank the Court for all of its courtesies and its attention to this important case.

Very truly yours,

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