

NEW YORK STATE SUPREME COURT
ORANGE COUNTY

IN THE MATTER OF

DOREY HOULE

Petitioner,

- against -

NEW YORK STATE BOARD OF ELECTIONS, et al

Respondents.

Case No: EF006424-2022

RJI No:

VERIFIED ANSWER

Respondents DOUGLAS KELLNER and ANDREW J. SPANO,¹ in their official capacities as Commissioners of the New York State Board of Election, as and for their Verified Answer to the Petition and Complaint in the above-entitled proceeding, respectfully allege as follows:

1. Admits ¶ 1, 3, 4, 6 and 93.

¹ See e.g. *Elgin v Smith*, 10 AD 3d 483 (4th Dept 2004) (holding permitting Answer to be filed by only one commissioner of a split board where commissioners disagree); *Marsh v Hale*, 2019 NY Slip Op 50903 (Sup. Ct. Cattaraugus County) (holding [a] single Commissioner from a split Respondent Board of Elections may properly appear..."); *Cahill v Kellner*, 121 A.D.3d 1160 (Third Dept 2014) (State Board appeared on appeal by separate counsel for the Democratic and Republican commissioners, respectively, in a case commenced against commissioners "constituting the New York State Board of Elections") *Bothwell v Bernstein*, 2019 NY Slip Op 50966 (Sup. Ct. Cattaraugus County) (holding [t]he Board, and the Commissioners thereof, have a distinct interest in compliance with the mechanics of the of and the statutory mandate as to content under the provisions of the Election Law....Any case where such statutory requirements are at issue is of legal interest to a Board and to the individual Commissioners thereof. When properly included as a party, a board of elections or an individual commissioner thereof, has the right to participate in an Election Law court proceeding..."); *Matter of Connolly v Chenot*, 275 AD 2d 583 (Third Depart. 2003) (observing "we reject petitioners' assertion that [Commissioner] Wade was without authority to bring the underlying motion to dismiss.").

2. Deny ¶ 2, 5, 7, 9, 10, 11, 14, 15, 17, 18, 19, 20, 21, 29, 30, 31, 50, 52, 53, 54, 55, 57, 58, 59, 60, 61, 62, 63, 64, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 77, 83, 86, 87, 88, 90, 92, 95, 97, 98, 99, 100, 101, 102.

3. Deny knowledge or information sufficient to form a belief or deny requirement to answer as the paragraph contains characterization of the law or no allegation of fact, as to ¶ 8, 12, 13, 16, 22, 23, 24, 25, 26, 27, 28, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 51, 56, 65, 76, 78, 79, 80, 81, 82, 84, 85, 94, 96, 103, 104, 105, 106, 107, 108.

4. Any allegation of the Petition not expressly listed in paragraphs 1, 2 or 3 of this Answer is deemed denied.

5. Paragraphs 1, 2, 3 and 4 herein are incorporated in each of the Objections in Point of Law that follow.

**OBJECTION ONE IN POINT OF LAW:
(Petitioners' Claims With Respect to the
Application of Election Law 9-209 and Election Law 16-106)**

6. Any challenge to the Constitutionality of Election Law 9-209 and Election Law 16-106, as amended by Chapter 673 of the Laws of 2021 ("Canvass Law"), is time barred by laches.

7. The Canvass Law was signed into law on December 22, 2021.

8. The Canvass Law was used at the June and August primaries and at seven Special Elections held since January 2022 and was applicable to the rolling canvass of absentee and other ballots occurring since September.

9. Boards of Elections have sent notices to stakeholders informing them of the canvass schedule for 2022.

10. The petitioner was well aware of, or can be charged with notice of, the statutory changes at issue and the New York State Political Calendar located at <https://www.elections.ny.gov/NYSBOE/law/2022PoliticalCalendar.pdf>

11. The plaintiff's actions and special proceedings should be dismissed on the basis of laches.

**OBJECTION TWO IN POINT OF LAW:
(Court Lacks Jurisdiction Over Any Article 16 Claims Attacking Statutory
Provisions of Election Law)**

12. The Court has no power to alter the statutory requirements of the Election Law for the reasons held in *Gross v Albany County Board of Elections*, 3 N.Y.3d 251 (2004):

We have previously recognized in the context of the Election Law that where, as here, the Legislature "erects a rigid framework of regulation, detailing . . . specific particulars," there is no invitation for the courts to exercise flexibility in statutory interpretation (*Matter of Higby v Mahoney*, 48 NY2d 15, 20 n 2 [1979]). Rather, when elective processes are at issue, "the role of the

legislative branch must be recognized as paramount" (id. at 21).

**OBJECTION THREE IN POINT OF LAW:
(Failure to State A Cause of Action)**

13. Petitioners have plead no cognizable injury that is not purely speculative and such speculative injury is supported by no plead facts. Until the canvass of the instant election is complete there is no basis for a special proceeding pursuant to the Election Law.

**OBJECTION FOUR IN POINT OF LAW
(Constitutional Presumption In Favor of Statute)**

14. "A strong presumption of validity attaches to statutes and that the burden of proving invalidity is upon those who challenge their constitutionality to establish this beyond a reasonable doubt," *People v Scott*, 26 NY 2d 286 (1970).

15. Petitioners have not shown beyond a reasonable doubt or clearly and convincingly that the challenged statutes or conduct of any officials are unconstitutional.

**OBJECTION FIVE IN POINT OF LAW
(Constitutional Claims Barred By Failure to Give Notice to
Attorney General)**

16. Petitioner has failed to provide notice of any constitutional claims against state statutes to the Attorney General, barring the consideration of these claims, pursuant to Executive Law 71.

WHEREFORE, the instant petition should be dismissed.

Dated: November 16, 2022
Albany, New York

Brian L. Quail, Esq.
Co-Counsel
New York State Board of Elections



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TO: Counsel for Petitioners
Counsel for Objector-Respondents
Courtesy Copy to Court

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VERIFICATION

STATE OF NEW YORK)
COUNTY OF ALBANY) ss.:

BRIAN L. QUAIL, an attorney admitted to practice in New York State, states under penalty of perjury:

I am Co-Counsel of the New York State Board of Elections, and I represent the commissioners making this pleading.


I have been assigned to defend this proceeding and I am acquainted therewith.

I have read the foregoing Verified Answer with Objections in Point of Law and know the contents thereof, and the same is true to my knowledge based on my review of documents and discussions with agents and employees of the New York State Board of Elections.

This Verification is authorized by NYCRR § 6205.1.

DATED: November 16, 2022
Albany, New York

Affirmed:



Brian L. Quail