

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ALBANY

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ELISE STEFANIK, NICOLE MALLIOTAKIS,
NICHOLAS LANGWORTHY, CLAUDIA TENNEY,
ANDREW GOODELL, MICHAEL SIGLER, PETER
KING, GAIL TEAL, DOUGLAS COLETY, BRENT
BOGARDUS, MARK E. SMITH, THOMAS A.
NICHOLS, MARY LOU A. MONAHAN, ROBERT F.
HOLDEN, CARLA KERR STEARNS, JERRY
FISHMAN, NEW YORK REPUBLICAN STATE
COMMITTEE, CONSERVATIVE PARTY OF NEW
YORK STATE, NATIONAL REPUBLICAN
CONGRESSIONAL COMMITTEE, REPUBLICAN
NATIONAL COMMITTEE,

Index No. 908840-23

Hon. Christina L. Ryba

Plaintiffs,

-against-

KATHY HOCHUL, in her official capacity as Governor of
New York; NEW YORK STATE BOARD OF
ELECTIONS; PETER S. KOSINSKI, in his official
capacity as Co-Chair of the New York State Board of
Elections; DOUGLAS A. KELLNER, in his official
capacity as Co-Chair of the New York State Board of
Elections; and THE STATE OF NEW YORK,

Defendants,

and

DCCC, KIRSTEN GILLIBRAND, YVETTE CLARKE,
GRACE MENG, JOSEPH MORELLE, RITCHIE
TORRES, JANICE STRAUSS, GEOFF STRAUSS, RIMA
LISCUM, BARBARA WALSH, MICHAEL COLOMBO,
and YVETTE VASQUEZ,

Intervenor-Defendants.

**INTERVENOR-DEFENDANTS' RESPONSE TO PLAINTIFFS' STATEMENT
OF MATERIAL FACTS**

Pursuant to CPLR 3212 and Uniform Rule 202.8-g(b), Intervenor-Defendants respond to Plaintiffs' Statement of Material Facts in support of Plaintiffs' Cross-Motion for Summary Judgment as follows:

The Non-Citizen Voting Law¹

1. On June 6, 2023, the Legislature passed a bill entitled the New York Early Mail Voter Act (the "Mail-Voting Law"). 2023 NY Senate-Assembly Bill S7394, A7632, <https://perma.cc/QL4T-HGDZ>.

Response: Disputed. The Legislature passed the New York Early Mail Voter Act, 2023 NY Senate-Assembly Bill S7394, A7632, on June 9, 2023.

2. On September 20, 2023, Governor Hochul signed the bill as Chapter 481 of the Laws of 2023 of the State of New York. Ex. R.²

Response: Undisputed.

3. The Mail-Voting Law purports to authorize all "registered voter[s]" to apply "to vote early by mail" in "any election." Ex. R, at 2 (N.Y. Election Law § 8-700).

Response: Disputed as to the word "purports." Undisputed that the Early Mail Voter Act authorizes all "registered voter[s]" to apply "to vote early by mail" in "any election." N.Y. Elec. Law § 8-700.

4. The Mail-Voting Law requires the board of elections to mail a ballot to "every registered voter otherwise eligible for such a ballot, who requests such an early mail ballot." *Id.* at

¹ Intervenor Defendants maintain Plaintiffs' headings but note that this litigation and filing concern the Early Mail Voter Act, not a Non-Citizen Voting Law.

² "Ex." Refers to exhibits to the Affirmation of Michael Hawrylchak ("Hawrylchak Aff."), dated November 13, 2023.

2 (§ 8-700(2)(d)) (emphasis added) [sic]. The board must mail requested ballots “as soon as practicable.” *Id.* at 5 (§ 8-704).

Response: This is an assertion of law to which no response is required, and the cited law speaks for itself. To the extent a response is required, undisputed insofar as Paragraph 4 contains accurate partial quotations from N.Y. Election Law § 8-700 *et seq.*

5. Throughout its provisions, the Mail-Voting Law uses identical or nearly identical language to the existing law governing absentee voting. Voters may apply for a mail ballot by providing their basic information to the election board. *Id.* at 2–3 (§ 8-700); cf. N.Y. Election Law § 8-400 (same application and info for absentees). They may do so “at any time until the day before such election.” *Id.* at 2 (§ 8-700(2)(a)); cf. N.Y. Election Law § 8-400 (same for absentees). If they qualify—as “every registered voter” does, *id.* at 2 (§ 8-700(2)(d))—the board “shall, as soon as practicable, mail ... an early mail ballot or set of ballots and an envelope therefor.” *Id.* at 5 (§ 8-704); cf. N.Y. Election Law § 8-406 (same for absentees). The board must provide “a domestic-postage paid return envelope” with every ballot application and with every ballot itself. *Id.* at 2, 5 (§ 8-700(2)(3), §8-704(2)); cf. N.Y. Election Law § 8-406 (same for absentees). The voter then submits the ballot by the same procedures—by delivering it in person or mailing it in the provided nesting envelopes by Election Day. *See id.* at 6 (§ 8-708); cf. N.Y. Election Law § 8-410 (same for absentees).

Response: This is an assertion and characterization of law to which no response is required, and the cited laws speak for themselves. Disputed that there exists any provision of New York State Election Law numbered 8-700(2)(3). Further disputed that N.Y. Election Law § 8-406 states that the board “shall, as soon as practicable, mail ... an early mail ballot or

set of ballots and an envelope therefor” to absentee voters. The remainder of the claims in this paragraph are undisputed.

6. Throughout the rest of the Election Code, the Mail-Voting Law amends dozens of existing statutory provisions to include the words “early mail” where they now currently say “absentee,” making the two processes identical for all intents and purposes. *Id.* at 12–25, 33, 37–38. It even provides that any “challenge to an absentee ballot may not be made on the basis that the voter should have applied for an early mail ballot.” *Id.* at 18 (§ 8-506). In other words, even if there were a difference between the preexisting absentee rules and the new early-mail rules, any registered voter can now use either set of rules without being challenged. The bill also extends the same ballot rules to village elections, school district elections, and special town elections. *Id.* at 10–12, 26–37.

Response: This is an assertion and characterization of law to which no response is required, and the cited laws speak for themselves. To the extent a response is required, it is undisputed that the Early Mail Voter Act amends existing statutory provisions to include the words “early mail” and that the law provides that any “challenge to an absentee ballot may not be made on the basis that the voter should have applied for an early mail ballot.” It is further undisputed that the bill extends the same rules to village elections, school board elections, and special town elections. Disputed that the early mail voting process and absentee voting process are identical for all intents and purposes.

The Lawsuit

7. On September 20, 2023, the same day the Mail-Voting Law was signed, Plaintiffs filed their complaint in this action, alleging that the Mail-Voting Law is void as violative of the

New York Constitution. Ex. S. On the same day, Plaintiffs also moved for a preliminary injunction against the implementation and enforcement of the Mail-Voting Law. Dkt. 3.

Response: Undisputed.

8. On October 11, 2023, Defendants Peter S. Kosinski and Douglas A. Kellner each filed an Answer. Exs. T, U.

Response: Undisputed but incomplete. Douglas A. Kellner filed an Answer on October 11, 2023, together with Andrew J. Spano.

9. On October 11, 2023, Intervenor-Defendants filed a motion to dismiss. Dkt. 69.

Response: Undisputed.

10. On October 16, 2023, State Defendants filed a motion to dismiss. Dkt. 73.

Response: Undisputed.

11. On October 13, 2023, oral argument was held on Plaintiffs' motion for preliminary injunction. *See* Ex. V. The preliminary injunction motion is still pending.

Response: Undisputed.

Plaintiffs

12. Plaintiff Nicholas Langworthy is a Member of the U.S. House of Representatives for New York's 23rd Congressional District. Mr. Langworthy is a candidate for Congress in the 2024 General Election. Mr. Langworthy voted against the Authorizing No-Excuse Absentee Ballot Voting proposed constitutional amendment ballot proposition. Mr. Langworthy is a resident of Erie County, and a registered voter and taxpayer in such county. Ex. P ¶ 1.

Response: Undisputed that Plaintiff Nicholas Langworthy is a Member of the U.S. House of Representatives for New York's 23rd Congressional District and appears to be a candidate for Congress in the 2024 General Election. Disputed that Mr. Langworthy voted

against the Authorizing No Excuse Absentee Ballot proposed constitutional amendment ballot proposition or that he is a resident of and registered taxpayer and voter in Erie County, as there is no record evidence supporting these propositions.

13. Plaintiff Andrew Goodell is a Member of the New York State Assembly for Assembly District 150. Mr. Goodell is a candidate for re-election in the 2024 General Election. Mr. Goodell voted against the Mail-Voting Law and against the Authorizing No-Excuse Absentee Ballot Voting proposed constitutional amendment ballot proposition. Mr. Goodell is a resident of Chautauqua County, and a registered voter and taxpayer in such county. Ex. N ¶¶ 1–2.

Response: Undisputed that Plaintiff Andrew Goodell is Member of the New York State Assembly for Assembly District 150 and that he appears to be a candidate for re-election in the 2024 General Election. Disputed that Mr. Goodell voted against the Authorizing No Excuse Absentee Ballot proposed constitutional amendment ballot proposition, as there is no record evidence supporting this proposition. The remainder of the claims in this paragraph are disputed to the extent they are not established by the record evidence.

14. Plaintiff Michael Sigler is a Member of the Tompkins County Legislature for its Sixth District. Mr. Sigler is also the Chairman of the Tompkins County Republican Committee and a candidate for the New York State Senate for the 52nd District. Mr. Sigler voted against the Authorizing No-Excuse Absentee Ballot Voting proposed constitutional amendment ballot proposition. Mr. Sigler is a resident of Tompkins County, and a registered voter and taxpayer in such county. Ex. M ¶ 1.

Response: Undisputed that Plaintiff Michael Sigler is a Member of the Tompkins County Legislature for its Sixth District, Chairman of the Tompkins County Republican Committee, and appears to be a candidate for the New York State Senate for the 52nd

District. Disputed that Mr. Sigler voted against the Authorizing No Excuse Absentee Ballot proposed constitutional amendment ballot proposition, as there is no record evidence supporting this proposition. The remainder of the claims in this paragraph are disputed to the extent they are not established by the record evidence.

15. Plaintiff Peter King is a resident of Nassau County, and a registered voter and taxpayer in such county. Mr. King was a member of the U.S. House of Representatives from 1993 to 2021, representing New York's 3rd and later 2nd Congressional District. Mr. King also served as a Town Board member from the town of Hempstead and as Nassau County Comptroller. Mr. King voted against the Authorizing No-Excuse Absentee Ballot Voting proposed constitutional amendment ballot proposition. Ex. C ¶ 1, 4.

Response: Undisputed that Plaintiff Peter King was a member of the U.S. House of Representatives from 1993 to 2021, representing New York's 3rd and later 2nd Congressional District, and that he served as a Town Board member from the town of Hempstead and as Nassau County Comptroller. The remainder of the claims in this paragraph are disputed to the extent they are not established by the record evidence.

16. Plaintiff Gail Teal is a County Board of Elections Commissioner in Hamilton County. Ms. Teal voted against the Authorizing No-Excuse Absentee Ballot Voting proposed constitutional amendment ballot proposition. Ms. Teal is a resident of Hamilton County, and a registered voter and taxpayer in such county. Ex. E ¶¶ 1-2.

Response: Undisputed that Plaintiff Gail Teal is a County Board of Elections Commissioner in Hamilton County. The remainder of the claims in this paragraph are disputed to the extent they are not established by the record evidence.

17. Plaintiff Douglas Colety is a County Board of Elections Commissioner in Westchester County. Mr. Colety is also the Chairman of the Westchester Republican County Committee. Mr. Colety voted against the Authorizing No-Excuse Absentee Ballot Voting proposed constitutional amendment ballot proposition. Mr. Colety is a resident of Westchester County, and a registered voter and taxpayer in such county. Ex. H, at 1-2.

Response: Undisputed that Plaintiff Douglas Colety is a County Board of Elections Commissioner in Westchester County and Chairman of the Westchester Republican County Committee. The remainder of the claims in this paragraph are disputed to the extent they are not established by the record evidence.

18. Plaintiff Brent Bogardus is a County Board of Elections Commissioner in Greene County. Mr. Bogardus is also the Chairman of the Greene County Republican Committee. Mr. Bogardus voted against the Authorizing No-Excuse Absentee Ballot Voting proposed constitutional amendment ballot proposition. Mr. Bogardus is a resident of Greene County, and a registered voter and taxpayer in such county. Ex. G ¶¶ 1-2.

Response: Undisputed that Plaintiff Brent Bogardus is a County Board of Elections Commissioner in Greene County. The remainder of the claims in this paragraph are disputed to the extent they are not established by the record evidence.

19. Plaintiff Mark E. Smith is a County Board of Elections Commissioner in Broome County. Mr. Smith voted against the Authorizing No-Excuse Absentee Ballot Voting proposed constitutional amendment ballot proposition. Mr. Smith is a resident of Broome County, and a registered voter and taxpayer in such county. Ex. L ¶¶ 1-2.

Response: Undisputed that Plaintiff Mark E. Smith is a County Board of Elections Commissioner in Broome County. The remainder of the claims in this paragraph are disputed to the extent they are not established by the record evidence.

20. Plaintiff Thomas A. Nichols is a County Board of Elections Commissioner in St. Lawrence County. Mr. Nichols voted against the Authorizing No-Excuse Absentee Ballot Voting proposed constitutional amendment ballot proposition. Mr. Nichols is a resident of St. Lawrence County, and a registered voter and taxpayer in such county. Ex. O ¶¶ 1–2.

Response: Undisputed that Plaintiff Thomas A. Nichols is a County Board of Elections Commissioner in St. Lawrence County. The remainder of the claims in this paragraph are disputed to the extent they are not established by the record evidence.

21. Plaintiff Mary Lou A. Monahan is a County Board of Elections Commissioner in Chenango County. Ms. Monahan voted against the Authorizing No-Excuse Absentee Ballot Voting proposed constitutional amendment ballot proposition. Ms. Monahan is a resident of Chenango County, and a registered voter and taxpayer in such county. Ex. F ¶¶ 1–2.

Response: Undisputed that Plaintiff Mary Lou A. Monahan is a County Board of Elections Commissioner in Chenango County. The remainder of the claims in this paragraph are disputed to the extent they are not established by the record evidence.

22. Plaintiff Robert F. Holden is a member of the New York City Council representing the 30th District. Mr. Holden is a resident of Queens County, Queens Borough, and a registered voter and taxpayer in such county. Ex. I ¶¶ 1.

Response: Undisputed that Robert F. Holden is a member of the New York City Council representing the 30th District. The remainder of the claims in this paragraph are disputed to the extent they are not established by the record evidence.

23. Plaintiff Carla Kerr Stearns is a resident of New York County, Manhattan Borough, and a registered voter and taxpayer in such county. Ms. Stearns voted against the Authorizing No-Excuse Absentee Ballot Voting proposed constitutional amendment ballot proposition. Ex. J ¶¶ 1, 4.

Response: Disputed, to the extent the claims in this paragraph are not established by the record evidence.

24. Plaintiff Jerry Fishman is a resident of Kings County, Brooklyn Borough, and a registered voter and taxpayer in such county. Mr. Fishman voted against the Authorizing No-Excuse Absentee Ballot Voting proposed constitutional amendment ballot proposition. Ex. K ¶¶ 1, 4.

Response: Disputed, to the extent the claims in this paragraph are not established by the record evidence.

25. Plaintiff New York Republican State Committee is a New York State political committee, as defined by New York State Election Law § 2-102, that manages the New York State Republican Party's business at the state level, supports Republican candidates for public office at all levels in New York State elections, coordinates fundraising and election strategy, and develops and promotes the state Republican platform. The New York Republican State Committee engages in various activities to help elect Republicans in New York. Ex. A ¶¶ 4-6.

Response: Undisputed that Plaintiff New York Republican State Committee is a New York State political committee as defined by New York State Election Law § 2-102. The remainder of the claims in this paragraph are disputed to the extent they are not established by the record evidence.

26. Plaintiff Republican National Committee is a national political committee, as defined by 52 U.S.C. § 30101, that manages the Republican Party's business at the national level, supports Republican candidates for public office at all levels, coordinates fundraising and election strategy, and develops and promotes the national Republican platform. The Republican National Committee engages in various activities to help elect Republicans in New York to federal, state, and local offices. Such activities include voter outreach and mobilization programs that will be significantly affected by the Mail-Voting Law. Ex. D ¶¶ 4-6.

Response: Undisputed that Plaintiff Republican National Committee is a national political committee as defined by 52 U.S.C. § 30101. The remainder of the claims in this paragraph are disputed to the extent they are not established by the record evidence.

27. Plaintiff Conservative Party of New York State is a New York State political committee, as defined by New York State Election Law § 2-102, that manages the Conservative Party's business at the state level, supports Conservative candidates for public office at all levels in New York State elections, coordinates fundraising and election strategy, and develops and promotes the state Conservative platform. The Conservative Party of New York State engages in various activities to help elect Conservatives in New York. Ex. B ¶¶ 4-6.

Response: Undisputed that Plaintiff Conservative Party of New York State is a New York State political committee as defined by New York State Election Law § 2-102. The remainder of the claims in this paragraph are disputed to the extent they are not established by the record evidence.

28. Plaintiff NRCC (formerly the National Republican Congressional Committee) supports the election of Republicans to the U.S. House of Representatives, including in New York, by providing direct financial contributions, technical and political guidance, and by making

independent expenditures to advance political campaigns. The NRCC operates voter outreach and mobilization programs in New York that will be significantly affected by the Mail-Voting Law.

Ex. Q ¶¶ 4-5.

Response: Undisputed that Plaintiff NRCC supports the election of Republicans to the U.S. House of Representatives. The remainder of the claims in this paragraph are disputed to the extent they are not established by the record evidence.

Impact on Election Personnel

29. Plaintiff Commissioners of the county boards of elections will be directly responsible for implementing the Mail-Voting Law, including many new election administration requirements. Ex. E ¶ 3; Ex. F ¶ 3; Ex. G ¶ 3; Ex. H, at 2; Ex. L ¶ 3; Ex. O ¶ 3.

Response: Undisputed.

30. The Mail-Voting Law will impose substantial new administrative burdens on election personnel, including Plaintiff county election commissioners, who will have to process the many thousands of additional mail-in ballots that will be submitted by voters who are neither absent from their residence upon the occurrence of the relevant election, nor ill or physically disabled at that time. Ex. E ¶ 4, 6-7; Ex. F ¶ 4, 6-7; Ex. G ¶ 4, 6-7; Ex. H, at 2-3; Ex. L ¶ 4, 6-7; Ex. O ¶¶ 4, 6, 8-10.

Response: Undisputed that the Early Mail Voter Act will impose new requirements on election personnel. The remainder of the claims in this paragraph are disputed to the extent they are not established by the record evidence.

31. The Mail-Voting Law will impose substantial new financial burdens on the county boards of elections because it requires them to provide postage paid return envelopes along with mail-in ballot applications without providing them with the funding necessary to fulfill that

obligation. The county boards of elections will also bear the labor and other costs associated with processing, tabulating, and cross-checking many thousands of unconstitutional mail-in ballots. Ex. E ¶¶ 5–7; Ex. F ¶¶ 5–7; Ex. G ¶¶ 5–7; Ex. H, at 2–3; Ex. L ¶¶ 5–7; Ex. O ¶¶ 56³, 8–10.

Response: Undisputed that the Early Mail Voter Act requires boards of elections to provide postage paid return envelopes along with early ballot applications. N.Y. Elec. Law § 8-700(2)(e). The remainder of the claims in this paragraph are disputed to the extent they are not established by the record evidence.

32. The Mail-Voting Law will place the Commissioner Plaintiffs in an untenable position, as it will require them to perform acts that violate the New York Constitution or to refrain from actions compelled by New York statutes. Ex. E ¶ 8; Ex. F ¶ 8; Ex. G ¶ 8; Ex. H, at 3; Ex. L ¶ 8; Ex. O ¶ 11.

Response: This is an assertion of law to which no response is required. To the extent a response is required, Intervenors dispute these claims for the reasons stated in their Opposition to Plaintiffs' Motion for Preliminary Injunction and Memorandum of Law in Support of Intervenors' Motion to Dismiss.

Impact on Voters and Taxpayers

33. Expenses of the boards of election are assessed to the counties, allocated to the cities and towns, and ultimately borne by the taxpayers thereof, including the individual Plaintiffs in this action. Ex. C ¶ 2; Ex. J ¶ 2; Ex. K ¶ 2.

Response: Disputed, to the extent these claims are not established by the record evidence.

³ As Exhibit O has 11 paragraphs, Intervenors assume that Plaintiffs intended to cite to Ex. O ¶¶ 5–6.

34. Voters who voted against the Authorizing No-Excuse Absentee Ballot Voting ballot proposition resulting in the rejection of the proposed constitutional amendment, including individual Plaintiffs here, had their votes effectively nullified by the passage of the Mail-Voting Law. Ex. C ¶ 4; Ex. J ¶ 4; Ex. K ¶ 4.

Response: Undisputed that some voters, including some Plaintiffs, voted against the Authorizing No-Excuse Absentee Ballot Voting ballot proposition. The assertion that the passage of the Early Mail Voter Act nullified any votes is a legal conclusion to which no response is required. To the extent a response is required, Intervenors dispute these claims for the reasons stated in their Opposition to Plaintiffs' Motion for Preliminary Injunction and Memorandum of Law in Support of Intervenors' Motion to Dismiss.

35. If an election goes forward under the Mail-Voting Law, Voter Plaintiffs will have their votes diluted by the many thousands of constitutionally invalid ballots cast by mail in violation of the requirements of Article II, Section 2. Ex. C ¶ 3; Ex. J ¶ 3; Ex. K ¶ 3.

Response: This is an assertion of law to which no response is required. To the extent a response is required, Intervenors dispute these claims for the reasons stated in their Opposition to Plaintiffs' Motion for Preliminary Injunction and Memorandum of Law in Support of Intervenors' Motion to Dismiss.

Impact on Candidates

36. The Mail-Voting Law will impose significant burdens on Candidate Plaintiffs. Candidate Plaintiffs' voter outreach and mobilization plans are designed to encourage voters to cast their ballot in-person on Election Day because the vast majority of voters do not satisfy the New York Constitution's "excuse" requirement to be eligible for absentee voting. The Mail-Voting Law will require these candidates to devote significant resources to operate additional and separate

voter outreach and mobilization programs directed towards universal mail-voting in addition to their in-person voter outreach and mobilization programs. The strategies and operations associated with a mail-voting outreach and mobilization program differ greatly from those associated with an in-person voting program. For example, a mail-voting outreach and mobilization program requires more frequent contact with voters to ensure they apply for and return a mail ballot. The Mail-Voting Law will also materially affect the competitive environment in which Candidate Plaintiffs campaign for public office and their likelihood of future victory. Ex. A ¶ 13, Ex. B ¶ 13; Ex. D ¶ 13; Ex. I ¶¶ 8–11; Ex. M ¶¶ 9–13; Ex. N ¶¶ 12–15⁴; Ex. P ¶¶ 8–12; Ex. Q ¶ 13.

Response: Disputed, to the extent the claims in this paragraph are not established by the record evidence.

Impact on Political Parties

37. The Mail-Voting Law will impose burdens on the New York Republican State Committee, the Conservative Party of New York State, the Republican National Committee, and the NRCC (“Organizational Plaintiffs”). These Organizational Plaintiffs work to support their parties’ candidates for public office at all levels, including by coordinating fundraising and election strategies. Ex. A ¶ 5; Ex. B ¶ 5; Ex. D ¶ 6 Ex. Q ¶¶ 5–6.

Response: Disputed, to the extent the claims in this paragraph are not established by the record evidence.

38. Organizational Plaintiffs’ voter outreach and mobilization programs are designed to encourage voters to cast their ballot in-person on Election Day because the vast majority of voters do not satisfy the New York Constitution’s “excuse” requirement to be eligible for absentee

⁴ Paragraph 36 of Plaintiffs’ Statement of Material facts cites Ex. N ¶¶ 12–15, but this appears to be error, as the last paragraph in Exhibit N is Paragraph 12.

voting. The Mail-Voting Law will require Organizational Plaintiffs to devote significant resources to operate additional and separate voter outreach and mobilization programs direct towards universal mail-voting in addition to their in-person voter outreach and mobilization programs. The strategies and operations associated with a mail-voting outreach and mobilization program differ greatly from those associated with an in-person voting program. For example, a mail-voting outreach and mobilization program requires more frequent contact with voters to ensure they apply for and return a mail ballot. The Mail-Voting Law will also materially affect the competitive environment in which candidates supported by Organizational Plaintiffs campaign for public office and their likelihood of future victory. Ex. A ¶¶ 8-12; Ex. B ¶¶ 8-12; Ex. D ¶¶ 8-11; Ex. Q ¶¶ 9-11.

Response: Disputed, to the extent the claims in this paragraph are not established by the record evidence.

39. For the national Organizational Plaintiffs, operating a voter outreach and mobilization program for universal mail-voting will require them to devote more financial and logistical resources to get-out-the-vote activities in New York State at the expense of activities in other states. They will also have to begin their get-out-the-vote efforts much earlier in the election cycle than under pre-existing law. They will have to hire additional staff and increase the amount of funding allocated to support the New York State Republican Committee and Republican candidates in the state. They will have to conduct an exhaustive voter education campaign to contact voters and explain how the new mail-voting system works – a particularly challenging and time-intensive activity given that mail-voting procedures are more complex than the traditional rules for voting in-person. This education program will have to encompass the mail-voting application procedures and the act of mail-voting itself, each with its own set of deadlines and

rules. The national Organizational Plaintiffs will also have to significantly expand their “ballot-curing” operations in the state to notify and encourage mail-voters to take additional actions to correct any errors or omissions which would prevent their ballots from being counted. Ex. D ¶¶ 9, 12; Ex. Q ¶¶ 11–12.

Response: Disputed, to the extent the claims in this paragraph are not established by the record evidence.

40. These national Organizational Plaintiffs have already begun their budgeting and operational planning for the 2024 election cycle. The Mail-Voting Law will require them to adjust their existing operational plans and dedicate more resources to New York than they otherwise would have in response to the significant changes to its electoral process. Ex. D ¶ 12.

Response: Disputed, to the extent the claims in this paragraph are not established by the record evidence.

Date: December 7, 2023

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