SUPREME COURT OF THE STATE OF NEW YORK
SARATOGA COUNTY

_____X

In the matter of
RICH AMEDURE,
GARTH SNIDE, ROBERT SMULLEN,
EDWARD COX,
THE NEW YORK STATE REPUBLICAN PARTY,
GERARD KASSAR,
THE NEW YORK STATE CONSERVATIVE PARTY,
JOSEPH WHALEN,
THE SARATOGA COUNTY REPUBLICAN PARTY,
RALPH M. MOHR, ERIK HAIGHT & JOHN QUIGLEY,

Petitioners / Plaintiffs,

-against- **INDEX NO. 2023-2399**

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 / Defendants.

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PETITIONERS-PLAINTIFFS' MEMORANDUM OF LAW
IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION

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INTRODUCTION

This matter is a hybrid proceeding brought under Article Sixteen of the Election Law, Article 78 of the CPLR and seeks a Declaratory Judgment under CPLR 3001 determining certain Laws of the State of New York to be unconstitutional as to the 2024 election cycle (Chapter 763, Laws of 2021). Plaintiff – Petitioners further seek a Preliminary Injunction declaring Chapter 763 of the Laws of 2021 unconstitutional and offer this Memorandum in support of said motion.

I. PETITIONERS HAVE SHOWN A LIKELIHOOD OF SUCCESS ON THE MERITS

The preliminary injunction standard requires a likelihood of success on the merits, irreparable injury to the plaintiff in the absence of injunctive relief, balance of hardships or equities favoring the moving party, and the requested relief not being outweighed by public policy considerations. (See Kuttner v. Cuomo, 147 A.D.2d 215 (3d Dep't 1989), aff'd, 75 N.Y.2d 596 [1990]).

For over 200 years, since Marbury v. Madison, courts have recognized that "where there is a legal right, there is also a legal remedy by suit or action at law, whenever that right is invaded." (5 U.S. 137, 153 [1803]). The Petitioners maintain that Chapter 763, *inter alia*, violates the constitutionally protected right of

substantive and procedural Due Process, violates the doctrine of Separation of Powers and abridges the Petitioners rights to a legal remedy in the face precluding judicial redress of a flawed administrative review.

This Supreme Court held in 2022 that:

> "Chapter 763 conflicts with Article 16 of the Election Law as it deprives this or any other court of jurisdiction over certain Election Law Matters stating that 'in no event may a court order a ballot that has been counted to be uncounted." Election Law §§ 9-209(7)(j), 9-209(8)(e). As it is written, Chapter 763 abrogates both the right of an individual to Seek judicial intervention of a contested "qualified" ballot before it is opened and counted and the right of the Court to judicially review same prior to canvassing. Election Law §§ 9-209(5) limits poll watchers to "observing, without objection." The making of an objection is a pre-requisite to litigating the validity of a ballot and preclusion in the first instance prevents an objection from being preserved for judicial review. As had been the long-standing practice, a partisan split on the validity of a ballot is no accompanied by a three-day preservation of the questioned ballot for judicial review. Pursuant to Chapter 763, in the event of a split objection on the validity of a ballot, the ballot is opened and counted. As per the plain language of Chapter 763 once the ballot is "counted" it cannot be "uncounted" and is thus precluded from judicial review for confirmation or rejection of validity. Therefore, Chapter 763, Laws of 2021, actually and effectively pre-determines the validity of any of the various ballots which may be contested pursuant to the provision of § 16-112 Election Law thus divesting the Court of its jurisdiction. This inability to Seek judicial intervention at the most important stage of the electoral process (i.e. the opening and canvassing of ballots) deprives any potential objectant from exercising their constitutional due process right in preserving their objections at the administrative level for review by the courts. Statutory preclusion of all judicial review of the decisions rendered by an administrative agency in every circumstance would constitute a grant of unlimited and potentially arbitrary power too great for the law to countenance. Matter of DeGuzman v. New York State Civil Service Commission, 129 A.D.3d 1189 (3rd Dept., 2015); See Matter of Pan Am. World Airways v. New

> York State Human Rights Appeal Bd., 61 N.Y.2d 542 (1984); Matter of Baer v. Nyquist, 34 N.Y.2d 291 (1974). Thus, even when proscribed by statute, judicial review is mandated when constitutional rights (such as voting) are implicated by an administrative decision or "when the agency has acted illegally, unconstitutionally, or in excess of its jurisdiction." Deguzman, See also, Matter of New York City Dept. of Envtl. Protection v. New York City Civ. Serv. Commn., 78 N.Y.2d 318 (1991). By proscribing judicial review and pre-determining the validity of ballots, as set forth in Election Law § 9-209(8)(e), the legislature effectively usurps the role of the judiciary. Further, by eliminating judicial review, Chapter 763 also effectively permits one commissioner to determine and approve the qualification of a voter and the validity of a ballot despite the constitutional requirement of dual approval of matters relating to voter qualification as set forth in N.Y. Constitution, Article II, Section 8: All laws creating, regulating or affecting boards or officers charged with the duty of qualifying voters, or of distributing ballots to voters, or of receiving, recording or counting votes at elections, shall secure equal representation of the two political parties." (Matter of Amedure v. State of New York, 77 Misc. 3d 629, 643-644 [2022]).

As evidenced by the above portion of the 2022 Decision, Order and Judgment, this Court has squarely addressed the constitutionality of Chapter 763. (Matter of Amedure v. State of New York, 77 Misc. 3d 629 [2022]). The Respondents have failed to establish a compelling interest in the unconstitutional invasion on core political free speech and the exercise of due process rights.

The declaration that Chapter 763 is unconstitutional is still the law of this Courthouse. On appeal, the Appellate Division dismissed the petition, but the matter's dismissal rested on *laches* (timeliness) as opposed to the underlying merits. (210 A.D.3d 1134 [3d Dep't 2022]). The Appellate Court failed to answer

the constitution question(s) before it, namely the constitutionality of Chapter 763 of the Laws of 2021. Plaintiff – Petitioners subsequently commenced this action more than one year before the 2024 general election, seeking, *inter alia,* a judgement declaring Chapter 763 of the Laws of 2021 unconstitutional as to the 2024 election cycle.

II. PETITIONERS ARE IRREPARABLY HARMED BY CHAPTER 763 IN THE ABSENCE OF AN INJUNCTION

Petitioners remain of the unwavering position that Chapter 763 alters the procedure that has been followed for canvassing ballots for nearly 100 years. Under Chapter 763, litigants are stripped of their day in court, as the statute precludes judicial review of administrative determinations. In adopting this law, the Legislature has usurped the role of the Judiciary, to the detriment of your petitioners.

The very essence of civil liberty certainly consists in the right of every individual to claim the protection of the laws, whenever he receives an injury. Marbury v. Madison, 5 U.S. 137, 153 [1803]). One of the first duties of government is to afford that protection. (Id).

As the Appellate Court noted in 2022, under Chapter 763's new procedure:

> "[A]fter an initial inspection of the ballot envelope is undertaken—to determine whether there is a name on the ballot envelope and, if so,

> whether the name is that of a registered voter, and that the ballot was timely received and properly sealed (*see* Election Law § 9-209[2][a])— the ballot is thereafter presumed valid unless both poll clerks object to its validity (*see* Election Law § 9- 209[2][g]; [3][e])." Matter of Amedure v. State of N.Y., 210 A.D.3d 1134, 1137 [3rd Dept. 2022).

Accordingly, among the challenges to the offending chapter are, *inter alia*, a) the express and implicit prohibition of Judicial review of administrative determinations affecting constitutional rights; b) the elimination of a voter's right to appear in person at the polls and "change their mind" casting a ballot which would override the prior absentee ballot cast by the voter; c) the elimination of the Constitutionally mandated bi-partisan application of election laws by giving a single commissioner the power to override his / her counterpart (requiring a ballot to be counted if a single commissioner votes to validate it), see Graziano v. Albany County, 3 N.Y.3d 475 (2004), citing to Article II, §8 NYS Constitution; d) prohibiting poll watchers from objecting to the qualifications of voters and prohibiting commissioners from acting on objections; and e) depriving a candidate, political committee or poll watcher from making a record at the administrative level capable of being reviewed in Court.

The fact that no ballot shall be "uncounted" and that a split of the commissioners on the canvassing of a ballot requires it to be opened and counted presents injury to commissioners, poll watchers, chairpersons and candidates alike.

By statutorily prescribing that no ballot shall be "uncounted", otherwise invalid ballots will be counted along with legal votes. This policy results in vote dilution and abridges the free speech/association rights of voters. It further violates the First Amendment's protection of free association, by requiring elections commissioners to canvass ballots that they have determined to be invalid, but that will nonetheless be counted if the commissioners split on the determination. Albany's system of one party rule has now invaded the canvassing process, such that the determination of one commissioner now mandates that the vote be counted, regardless of any objections.

Moreover, injunctive relief will not unduly prejudice the Respondents, whereas the continual application of this unconstitutional statute will supplant the rights of the Petitioners guaranteed to them by the Constitution.

III. BALANCE OF EQUITIES FAVORS GRANTING A PREMILINARY INJUNCTION

The balance of the equities herein must include maintaining the public's confidence in the election process. Accuracy counts. Instant gratification is not the answer.

Chapter 763's unconstitutional edicts cause injury to the Petitioners that outweighs any inconvenience to the Respondents. The concept of preserving the

status quo ante must be contemplated in conjunction with preventing any prejudice to the parties to the litigation. Granting a preliminary injunction prevents qualified voters from being disenfranchised while restoring the opportunity for judicial review of administrative decisions by the Boards of Elections.

On the other hand, without a preliminary injunction, ballots will be rammed through the canvass process with no meaningful review of voter qualifications, the legality of particular ballots, or preservation of ballots for Court review (the three (3) day preservation provision was repealed by Chapter 763, Laws of 2021).

Should this Court decline to enjoin the statute, there will be no way to screen out the ballots of persons who are voting illegally. There will be no way to screen out the ballots of persons who died before the day of election. The special ballot of a poll worker who fails to come to work (and is now not eligible for a special ballot), would nonetheless be canvassed. Absentee a preliminary injunction, the Chapter will continue to create a privacy issue as it compromises the sanctity and secrecy of absentee ballots. The rolling canvass of ballots will result in county Boards of Elections counting the bulk of absentee ballots before election day. The secrecy of the ballot is especially compromised in election districts with relatively few votes, where it would thereby be likely that one can identify both the voter and the vote.

Boards have developed procedures designed to maintain the secrecy of the ballot, to deny advantage to any political party, to identify and prevent fraud prior to the canvassing of the ballot, and to maintain public confidence in the integrity of the election results; it is respectfully submitted the current unconstitutional procedure of canvassing ballots being challenged herein does not attempt to accomplish nor serve any of these goals. Moreover, should votes continue to be canvassed prior to election day, the removal of the ballot from the ballot envelope (required by Chapter 763) would serve to hinder or even defeat the prosecution of any person voting illegally in contravention of Article 17 Election Law.

Here, it must be considered that the *status quo ante* is the law as it has existed for nearly a century wherein the Courts actually had the power to review the administrative determinations of the Board of Elections on the qualifications of voters to cast ballots (see, Matter of Gross v. Albany County Bd. of Elections, 10 AD3d 476, 479 [3d Dept 2004], affd 3 NY2d 251 [2004]; see also Stewart v. Chatauqua County Board of Elections, 14 N.Y.3d 115 [2015]; Voccio v. Kennedy, Niagara County Index No. E176438/2021; Tenney v. Oswego Co. Board of Elections, 71 Misc.3d 385 [Sup. Ct., Oswego Co, 2021]; Cairo & Jacobs v. Nassau County Board of Elections, Index No. 612124/2020, or to determine the validity of particular ballots, see Brilliant v. Gamache, 25 A.D.3d 605 [2d Dept., 2006]; see also Ragusa v. Board of Elections, 57 A.D.3d 807 [2d Dept., 2008]).

In 2022, despite the fact that a case challenging the witness requirements for independent nominating petitions was commenced after the first day to circulate petitions, the United States District Court for the Eastern District of New York nonetheless granted a preliminary injunction - with statewide application – and ordered that independent nominating petitions may be witnessed by out-of-state residents and nonregistered persons. (Schmidt v Kosinski, 1:22-cv-02210 [EDNY 2022]).

In Schmidt, respondents interposed the defense of *laches* in opposing the motion for preliminary injunctive relief. The federal Court noted that "Although this is the second time plaintiffs have manufactured a timing crisis, defendants have failed to adequately demonstrate that the imposition of the proposed injunction will prejudice them or candidates currently seeking ballot access. First, since Free Libertarian Party, Inc. v. Spano, 314 F. Supp. 3d 444 (E.D.N.Y. 2018), the State has been on notice that the constitutionality of Section 6-140(1)(b) was in doubt. Spano merely agreed with numerous, earlier out-of-circuit cases and followed the Second Circuit's reasoning in Lerman to conclude that the statute is unconstitutional." (Schmidt v. Kosinski, 602 F. Supp. 3d 339, 344 [E.D.N.Y. 2022]).

Here, Respondents have been on notice that the constitutionality of Chapter 763 has been in doubt for more than a year now, dating back to September 2022.

Nevertheless, they have failed to adequately demonstrate that the imposition of the proposed injunction will prejudice them or candidates seeking ballot access, at least not to any extent that outweighs the harm caused to the Petitioners by the offending statute. Any perceived prejudice by the granting of a preliminary injunction is outweighed by prejudice that exists in the trampling of constitutionally protected rights.

IV. DECLARING CHAPTER 763 UNCONSTITUTIONAL REQUIRES REVISED CANVASSING PROCEDURES FOR EARLY VOTE BY MAIL BALLOTS

On October 5, 2023, at oral argument, Your Honor inquired with each party as to how the challenge herein may relate to or how a ruling thereon may affect the canvassing of Early Vote by Mail, as recently authorized by Chapter 481 of the Laws of 2023 (S.7394-A/A.7632-A).

The Early Vote by Mail statute incorporates by reference Chapter 763 of the Laws of 2021. It provides that with respect to the canvassing of Early Mail Votes: "subdivision 8 and subdivision 9 of section 9-209 of the election law, as added by chapter 763 of the laws of 2021, are amended to read as follows: Canvass of early mail, absentee, military and special ballots, and ballots cast in affidavit envelopes." (S.7394-A/A.7632-A at p.20, l. 43-51).

Chapter 481 then amends the Election Law by creating a new § 8-710 entitled "Early mail ballots; deadline for receipt, and delivery to polling place." Under that section, the Chapter provides that "Early mail ballots received by the board of elections shall be retained at the board of elections and cast and canvassed pursuant to the provisions of section 9-209 of this chapter." (S.7394-A/A. 7632-A at p.7, l. 24-26).

Based on the foregoing, should this Court grant the relief requested by the Petitioners, the method for canvassing Early Vote by Mail ballots must be altered. Petitioners respectfully submit that should the offending statute be stricken, then the procedure for canvassing this new class of ballots must revert back to the pre-Chapter 763 canvassing procedures outlined Election Law § 9-209 prior to its amendment by Chapter 763 of the Laws of 2021.

V. RECENT CASE LAW JUSTIFIES PETITIONERS' CHALLENGE TO THE CONSTITUTIONALITY OF CHAPTER 763

Despite Respondent AG's assertions, Matter of Hughes v. Delaware Co. Bd. of Elections, is extremely limited in its application. By the terms of the Appellate Division's decision, the case was determined to be a matter relating to challenges to voter registrations, not to the canvassing of ballots. The Court held, *inter alia*, "Given our conclusion that petitioners are challenging the voter registrations of the

challenged voters, petitioners were required to name, as necessary parties, the voters whose registrations were being challenged …" (Hughes, supra, at p. 1252).

The Third Department's decision stands for the rule that improper registration of a voter is not one of the explicit grounds used to deem an absentee ballot invalid upon the review by the election officials conducting the canvass. (Hughes supra, see also Mondello v. Nassau Board of Elections, 6 AD3d 13 [2nd Dept., 2004], citing to Delgado v. Sunderland, 97 NY2d 420 [2002]). In Hughes, parties did not challenge the provisions of Chapter 763. Rather the facts were limited to whether one can raise objections to the canvassing of absentee ballots in a village election on the grounds of invalid registration of the voter (where registration challenges were pending at the Board of Elections). Nonetheless, in expounding upon the limitations imposed by Chapter 763, the Hughes Court noted:

> "In view of the statutory scheme, the only opportunity for an objection to be lodged during the post-election review of an absentee ballot is ***after such ballot has been deemed invalid*** following a review under Election Law § 9-209 (8) (e), which presupposes an initial review under Election Law § 9-209 (2). As noted, the improper registration of a voter is not one of the explicit grounds used to [*1256] deem an absentee ballot invalid upon the initial review. (Matter of Hughes, at pp. 1255-56 *emphasis* added).

The Hughes Court went on to note "There is likewise no explicit authority within Election Law § 9-209 permitting a court to either conduct that review or make that determination in the first instance." (Id. at 1256). Certainly, the bar to

review of the validity of a voter registration established by Mondello, supra. and Delgado, supra. was left undisturbed by the Hughes Court. (but see, Stewart v. Chataqua County Board of Elections, 14 NY3d 110 [2010][where the qualifications of a voter to vote in a particular election was determined to be challengeable under the then existing provisions of law]).

Hughes only highlights the problematic issues with Chapter 763 – it divests the Supreme Court of its jurisdiction in certain Election Law proceedings, in contravention of Article VI, Section 7 of the State Constitution. (The supreme court shall have general original jurisdiction in law and equity and the appellate jurisdiction herein provided). The Courts are deprived of their right under the Constitution to review determinations as to the qualifications of a voter to vote in a particular election, see Stewart, supra., and the final determination as to voter qualifications is delegated to a single commissioner of the Board of Elections.

Chapter 763 again reared its ugly head in a recent primary election in Queens County. In Chen v. Pai, 2023 N.Y. Misc. LEXIS 12388, the petitioner asked "… to have the Court rule on the casting and canvassing of improper votes, or the refusal to cast and canvas proper votes, and other protested and challenged ballots of whatever kind, as well as fraud in connection with absentee ballots and other ballots" because of alleged fraud including "… votes were cast by absentee ballots by persons who signed the absentee ballot envelope but were not, in fact,

the duly enrolled voter whose name they signed. Voting by such imposters is unlawful and fraudulent". (NYSCEF, Index No. 713743/2023, Doc. 1).

In Chen v. Pai, supra, the Petitioner was unable to present any "challenged ballots" see Election Law § 16 – 106(1) to the Court. This was because the unconstitutional Chapter Law that is the subject of this proceeding prohibits a poll watcher from making challenges ("Nothing in this section prohibits a representative of a candidate, political party, or independent body entitled to have watchers present at the polls in any election district in the board's jurisdiction from ***observing, without objection, the review of ballot envelopes***" § 9 – 209(5)" emphasis added.). The Court concluded, "A thorough review of the allegations set forth in the petition has demonstrated that petitioner has failed to sufficiently detail the number of incidents of voter fraud alleged" (2023 N.Y. Misc. LEXIS 12388; NYSCEF Index No. 713743/2023, Doc. 30). Chapter 763's deprivation of a participatory administrative process (the canvass) actually served to prevent the aggrieved candidate from having any opportunity to object to any allegedly fraudulent ballots. Because he could not challenge ballots, he could not maintain an action pursuant to Election Law §16 – 106 which provides "The post-election refusal to cast: (a) challenged ballots, blank ballots, or void ballots; (b) absentee, military, special, or federal write-in ballots; (c) emergency ballots; and (d) ballots voted in affidavit envelopes may be contested in a proceeding

instituted in the supreme or county court, by any candidate or the chairman of any party committee …". (Election Law § 16 – 106).

In short, the removal of the right to challenge at the administrative hearing (the canvass) precludes the creation of a record for the Courts to review. The mandate that a ballot envelope be burst, and the ballot co-mingled with all others, even where the Commissioners are split on validity, provides further assurance that there will be no judicial review of determinations on the validity of ballots. Finally, Chapter 763's prohibition of Court Orders which "uncount" any ballot would sound a death knell for the Constitution's delegation of power to the Judiciary to oversee the administrative determinations made in the election process.

In the relatively short time that this statute has been effective, a disturbing pattern has emerged. First Hughes, then Pai – the plenary jurisdiction of the Supreme Court has been curtailed by Chapter 763 and its preclusion of judicial review of administrative determinations. This was done by removing the administrative process from the usual adversarial ambit of litigation, and even voiding, via the statute, the Constitutional guarantee of bipartisanship in determinations made by Boards of Elections.

Counsel herein had a front-row seat as both of these cases unfolded. While we assert that there was actually no fraud in the Pai case, we nonetheless recognize that the petitioner in that case was precluded by the statute from making an

administrative record of "challenged ballots". The provisions of Chapter 763 made it impossible for the petitioner to contest matters administratively and to then plead the case with required specificity.

This law will continue to plague elections and shake public confidence in the electoral process. This process prioritizes the expedient tallying of ballots, even where the count is based on partisan administrative determinations that relegate poll watchers to poll spectators – merely authorizing one observe the review of absentee ballots (affidavit ballots, military ballots, special ballots, etc.) during canvassing "without objection" (Election Law § 9-209 [5]). Any person or person choosing to affect the results of an election via a fraudulent harvesting of absentee ballots has an invitation – Chapter 763, Laws of 2021 – to flood the ballot boxes with illegal absentees, which cannot be objected to and will be swept into the count.

Respondents point to the recent history of elections in certain counties where there were few if any split votes at the Boards of Elections. This is an invitation to this Court to run down the proverbial "rabbit hole". Contests over ballots routinely occur where there is a hotly contested and close race. Not surprisingly, these close contests are ones that lend themselves to fraud and improper practices. Also not surprisingly, these are the races that are found to have teams of poll watchers appear at the Board of Elections to make objections during the canvass (at least

prior to 2022's effective date of Chapter 763). Finally, the "tight races" are the ones that bring in teams of lawyers and end up on the Courts' Dockets.

Put succinctly, the Respondents' claims that most determinations of the Boards of Elections on ballots are unanimous are true, but meaningless here. First, one must consider that the population of Election Commissioners are very well aware that they no longer have the power to have a ballot set aside for Court review by "splitting" with their counterpart. Why cast a dissenting vote if it is rendered meaningless by the law? Secondly, the Respondents neglect to acknowledge that it is always the close races where "contested ballots" are outcome determinative that close review and scrutiny are brought to bear. Thus, this Court must reject any arguments based upon generalizations predicated on the vast majority of elections which are not decided by small margins making "contested ballots" relevant.

This Court correctly took issue with Chapter 763 when declaring it unconstitutional last year. (Amedure, supra). This Court has not been alone in calling into question the provisions of this chapter. In 2022, in the Matter of Shiroff v. Mannion, 77 Misc. 3d 1203(A), the trial Court opined:

> "In 2021, the New York State Legislature amended the process by which absentee, military, special and affidavit ballots ("paper ballots") are canvassed under Election Law § 9-209, as well as the procedure

> by which those canvasses can be challenged under Article 16 of the Election Law (Laws 2021, Chapter 763) ….
>
> However, the authority of the Courts in an Election Law proceeding is strictly limited, and the only relief that may be awarded is that which has been expressly authorized by statutory provision (Jacobs v Biamonte, 38 AD3d 777, 778, 833 N.Y.S.2d 532 [2d Dept 2007]). ***The Courts cannot intervene in the actual canvassing of ballots by the Boards of Elections, and do not have the authority to modify the statutory procedures governing that canvassing or its timing***" (Shiroff v. Mannion, supra [*emph.* added]).

What is most poignant in this ruling is that the trial Judge was the same Judge who decided Tenney v. Oswego County Board of Elections. (70 Misc3d 680; 71 Misc.3d 385; 71 Misc.3d 421; 71 Misc.3d 400; 2020 N.Y. Misc. LEXIS 1105). Should Tenney have been decided today, Congresswoman Claudia Tenney would not have upset her incumbent opponent. Over 100 improperly invalidated ballots would not have been discovered but for the litigation process.

The trial Judge in Shiroff, supra, observed that the Legislature had seen what happened in Tenney, supra, and wanted to avoid it happening again. Respondents will urge you to take that as meaning that the Legislature did not wish to have an extended canvass / litigation. The truth is that one party government did not wish to have their incumbent unseated due to ballots that were determined to be valid or invalid in a courtroom. Quick results are desired. Accurate results can be sacrificed for political expediency.

Counsel is apprised of a fresh crop of occurrences that further illustrate the pernicious nature of the Chapter. This information is still maturing as local boards of elections go through the process of canvassing and recanvassing the votes cast at the November 7, 2023 General Election. It is Plaintiff-Petitioners' intent once the votes have been canvassed and the results have been certified to present these illustrative events to this Court. While we believe the Court has more than sufficient evidence before it to rule on the questions presented because this statute is still relatively new, the problems that it creates continue to appear for the first time. Contrary to the assertion of some Respondents (see NYSCEF Doc 74, p.13), the parade of horribles that we speak of continues to manifest itself every time there is an election conducted under his statute.

Accuracy counts. Instant gratification is not the answer. We need to assure the public that the results are true, even if it takes some time to scrutinize the ballots, and give the candidates due process and an opportunity for judicial review. This is why the Respondents must be enjoined from enforcing the provisions Chapter 763.

CONCLUSION

For the all the reasons above, Petitioners-Plaintiffs respectfully request that this Court enter an Order for the relief sought in the annexed Petition and Order to Show Cause, including a Preliminary Injunction declaring Chapter 763 of the Laws of 2021 unconstitutional, and grant such and other relief as the Court deems just and proper under the circumstances.

Dated: November 15, 2023

Respectfully Submitted,

JC s/_____

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CERTIFICATION OF WORD COUNT

I hereby certify pursuant to 22 New York Codes, Rules and Regulations § 202.8-b, the total number of words in this brief, inclusive of point headings and footnotes and exclusive of pages containing the table of contents, table of citations, proof of service and this Statement is 4,668.

Dated: November 15, 2023

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