

STATE OF NEW YORK  
SUPREME COURT                      COUNTY OF SARATOGA

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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,

**AFFIRMATION**

Index No.: 2023-2399

*Petitioners/Plaintiffs,*

v.

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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Jennifer J. Corcoran, an attorney admitted to practice in the State of New York, affirms the following under penalty of perjury pursuant to CPLR § 2106:

1. I am an attorney licensed to practice law in the State of New York and am an Assistant Attorney General, of counsel to Letitia James, New York State Attorney General, counsel for Respondents/Defendants the State of New York and Governor Kathy Hochul

(“Respondents”).

2. I make this Affirmation in opposition to Petitioners’/Plaintiffs’ (Petitioners’) application pursuant to Election Law Article 16 and/or for a preliminary injunction, and in support of Respondents’ Motion to Dismiss the Petition/Complaint (“Petition”).

3. Attached hereto as **Exhibit A** is a copy of the New York State Senate Introducer’s Memorandum in Support of Senate Bill S1027 (2021) and associated legislative history.

4. Attached hereto as **Exhibit B** is a copy of the New York State Senate Introducer’s Memorandum in Support of Senate Bill S7565B (2022) and associated legislative history.

5. Attached hereto as **Exhibit C** is a copy of the Majority and Minority Reports of the Joint Legislative Committee to Make a Study of the Election Law and Related Statutes (Mar. 1, 1954)

6. Attached hereto as **Exhibit D** is a copy of the transcript of the Assembly debate on Assembly Bill A08432-A (Jan. 19, 2022)

Dated: Albany, New York  
September 18, 2023

*Jennifer J. Corcoran*  
\_\_\_\_\_  
JENNIFER J. CORCORAN

# Exhibit A

RETRIEVED FROM DEMOCRACYDOCKET.COM

**S1027-A** GIANARIS Same as [A 7931](#) Carroll

Election Law

TITLE....Relates to the canvassing of absentee, military and special ballots and ballots cast in affidavit envelopes; repealer

**This bill is not active in the current session.**

01/06/21 REFERRED TO ELECTIONS  
 01/11/21 REPORTED AND COMMITTED TO RULES  
 01/11/21 ORDERED TO THIRD READING CAL.8  
 01/11/21 PASSED SENATE  
 01/11/21 DELIVERED TO ASSEMBLY  
 01/11/21 referred to election law  
 06/01/21 RECALLED FROM ASSEMBLY  
 06/01/21 returned to senate  
 06/01/21 VOTE RECONSIDERED - RESTORED TO THIRD READING  
 06/01/21 AMENDED ON THIRD READING (T) 1027A  
 06/09/21 REPASSED SENATE  
 06/09/21 RETURNED TO ASSEMBLY  
 06/09/21 referred to election law  
 06/10/21 substituted for a7931  
 06/10/21 ordered to third reading rules cal.737  
 06/10/21 passed assembly  
 06/10/21 returned to senate  
 12/10/21 DELIVERED TO GOVERNOR  
 12/22/21 SIGNED CHAP.763  
 12/22/21 APPROVAL MEMO.124

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GIANARIS, BAILEY, BIAGGI, BRESLIN, BROUK, COMRIE, GAUGHRAN, HINCHEY, HOYLMAN, JACKSON, KAPLAN, KAVANAGH, KENNEDY, MANNION, MAY, MAYER, PARKER, REICHLIN-MELNICK, RIVERA, SANDERS, SAVINO, SERRANO, STAVISKY

Rpld &amp; add §9-209, amd §§9-211, 7-122, 8-302, 16-106, 17-126 &amp; 17-130, El L

Relates to the canvassing of absentee, military and special ballots and ballots cast in affidavit envelopes.

EFF. DATE 01/01/2022 (SEE TABLE)

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[06/10/21](#) S1027-A Assembly Vote Yes: 115 No : 34

[06/09/21](#) S1027-A Senate Vote Aye: 43 Nay: 20

[01/11/21](#) S1027 Senate Vote Aye: 43 Nay: 20

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[Go to Top of Page](#)**Floor Votes:**

06/10/21 S1027-A Assembly Vote Yes: 115 No : 34

<b>Yes</b> Abbate	<b>Yes</b> Abinanti	<b>Yes</b> Anderson	<b>No</b> Angelino
<b>Yes</b> Ashby	<b>Yes</b> Aubry	<b>No</b> Barclay	<b>Yes</b> Barnwell
<b>Yes</b> Barrett	<b>Yes</b> Barron	<b>Yes</b> Benedetto	<b>Yes</b> Bichotte Hermelyn
<b>No</b> Blankenbush	<b>No</b> Brabenec	<b>Yes</b> Braunstein	<b>Yes</b> Bronson
<b>Yes</b> Brown	<b>Yes</b> Burdick	<b>Yes</b> Burgos	<b>Yes</b> Burke

<b>Yes</b>	Buttenschon	<b>No</b>	Byrne	<b>No</b>	Byrnes	<b>Yes</b>	Cahill
<b>Yes</b>	Carroll	<b>Yes</b>	Clark	<b>Yes</b>	Colton	<b>Yes</b>	Conrad
<b>Yes</b>	Cook	<b>Yes</b>	Cruz	<b>Yes</b>	Cusick	<b>Yes</b>	Cymbrowitz
<b>Yes</b>	Darling	<b>Yes</b>	Davila	<b>Yes</b>	De La Rosa	<b>Yes</b>	DeStefano
<b>Yes</b>	Dickens	<b>Yes</b>	Dilan	<b>Yes</b>	Dinowitz	<b>No</b>	DiPietro
<b>Yes</b>	Durso	<b>Yes</b>	Eichenstein	<b>Yes</b>	Englebright	<b>Yes</b>	Epstein
<b>Yes</b>	Fahy	<b>Yes</b>	Fall	<b>Yes</b>	Fernandez	<b>No</b>	Fitzpatrick
<b>Yes</b>	Forrest	<b>No</b>	Friend	<b>Yes</b>	Frontus	<b>Yes</b>	Galef
<b>Yes</b>	Gallagher	<b>No</b>	Gallahan	<b>Yes</b>	Gandolfo	<b>No</b>	Giglio JA
<b>No</b>	Giglio JM	<b>Yes</b>	Glick	<b>Yes</b>	Gonzalez-Rojas	<b>No</b>	Goodell
<b>Yes</b>	Gottfried	<b>Yes</b>	Griffin	<b>Yes</b>	Gunther A	<b>No</b>	Hawley
<b>Yes</b>	Hevesi	<b>Yes</b>	Hunter	<b>Yes</b>	Hyndman	<b>Yes</b>	Jackson
<b>Yes</b>	Jacobson	<b>Yes</b>	Jean-Pierre	<b>No</b>	Jensen	<b>Yes</b>	Jones
<b>Yes</b>	Joyner	<b>Yes</b>	Kelles	<b>Yes</b>	Kim	<b>No</b>	Lalor
<b>Yes</b>	Lavine	<b>Yes</b>	Lawler	<b>No</b>	Lemondes	<b>Yes</b>	Lunsford
<b>Yes</b>	Lupardo	<b>Yes</b>	Magnarelli	<b>Yes</b>	Mamdani	<b>No</b>	Manktelow
<b>Yes</b>	McDonald	<b>No</b>	McDonough	<b>Yes</b>	McMahon	<b>Yes</b>	Meeks
<b>No</b>	Mikulin	<b>No</b>	Miller B	<b>Yes</b>	Miller M	<b>Yes</b>	Mitaynes
<b>No</b>	Montesano	<b>No</b>	Morinello	<b>Yes</b>	Niou	<b>ER</b>	Nolan
<b>No</b>	Norris	<b>Yes</b>	O'Donnell	<b>Yes</b>	Otis	<b>No</b>	Palmesano
<b>Yes</b>	Paulin	<b>Yes</b>	Peoples-Stokes	<b>Yes</b>	Perry	<b>Yes</b>	Pheffer Amato
<b>Yes</b>	Pichardo	<b>Yes</b>	Pretlow	<b>Yes</b>	Quart	<b>Yes</b>	Ra
<b>Yes</b>	Rajkumar	<b>Yes</b>	Ramos	<b>No</b>	Reilly	<b>Yes</b>	Reyes
<b>Yes</b>	Richardson	<b>Yes</b>	Rivera J	<b>Yes</b>	Rivera JD	<b>Yes</b>	Rodriguez
<b>Yes</b>	Rosenthal D	<b>Yes</b>	Rosenthal L	<b>Yes</b>	Rozic	<b>No</b>	Salka
<b>Yes</b>	Santabarbara	<b>Yes</b>	Sayegh	<b>No</b>	Schmitt	<b>Yes</b>	Seawright
<b>Yes</b>	Septimo	<b>Yes</b>	Sillitti	<b>Yes</b>	Simon	<b>No</b>	Simpson
<b>Yes</b>	Smith	<b>No</b>	Smullen	<b>Yes</b>	Solages	<b>Yes</b>	Steck
<b>Yes</b>	Stern	<b>Yes</b>	Stirpe	<b>No</b>	Tague	<b>No</b>	Tannousis
<b>Yes</b>	Taylor	<b>Yes</b>	Thiele	<b>Yes</b>	Vanel	<b>No</b>	Walczyk
<b>Yes</b>	Walker	<b>Yes</b>	Waliace	<b>No</b>	Walsh	<b>Yes</b>	Weinstein
<b>Yes</b>	Weprin	<b>Yes</b>	Williams	<b>Yes</b>	Woerner	<b>Yes</b>	Zebrowski K
<b>Yes</b>	Zinerman	<b>Yes</b>	Mr. Speaker				

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### Floor Votes:

06/09/21 S1027-A Senate Vote Aye: 43 Nay: 20

<b>Aye</b>	Addabbo	<b>Nay</b>	Akshar	<b>Aye</b>	Bailey	<b>Aye</b>	Benjamin
<b>Aye</b>	Biaggi	<b>Nay</b>	Borrello	<b>Nay</b>	Boyle	<b>Aye</b>	Breslin
<b>Aye</b>	Brisport	<b>Aye</b>	Brooks	<b>Aye</b>	Brouk	<b>Aye</b>	Comrie
<b>Aye</b>	Cooney	<b>Aye</b>	Felder	<b>Nay</b>	Gallivan	<b>Aye</b>	Gaughran
<b>Aye</b>	Gianaris	<b>Aye</b>	Gounardes	<b>Nay</b>	Griffo	<b>Aye</b>	Harckham
<b>Nay</b>	Helming	<b>Aye</b>	Hinchey	<b>Aye</b>	Hoylman	<b>Aye</b>	Jackson
<b>Nay</b>	Jordan	<b>Aye</b>	Kaminsky	<b>Aye</b>	Kaplan	<b>Aye</b>	Kavanagh
<b>Aye</b>	Kennedy	<b>Aye</b>	Krueger	<b>Nay</b>	Lanza	<b>Aye</b>	Liu

<b>Aye</b> Mannion	<b>Nay</b> Martucci	<b>Nay</b> Mattera	<b>Aye</b> May
<b>Aye</b> Mayer	<b>Aye</b> Myrie	<b>Nay</b> Oberacker	<b>Nay</b> O'Mara
<b>Nay</b> Ortt	<b>Nay</b> Palumbo	<b>Aye</b> Parker	<b>Aye</b> Persaud
<b>Aye</b> Ramos	<b>Nay</b> Rath	<b>Aye</b> Reichlin-Melnick	<b>Nay</b> Ritchie
<b>Aye</b> Rivera	<b>Aye</b> Ryan	<b>Aye</b> Salazar	<b>Aye</b> Sanders
<b>Aye</b> Savino	<b>Aye</b> Sepulveda	<b>Nay</b> Serino	<b>Aye</b> Serrano
<b>Aye</b> Skoufis	<b>Aye</b> Stavisky	<b>Nay</b> Stec	<b>Aye</b> Stewart-Cousins
<b>Nay</b> Tedisco	<b>Aye</b> Thomas	<b>Nay</b> Weik	

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### Floor Votes:

01/11/21 S1027 Senate Vote Aye: 43 Nay: 20

<b>Aye</b> Addabbo	<b>Nay</b> Akshar	<b>Aye</b> Bailey	<b>Aye</b> Benjamin
<b>Aye</b> Biaggi	<b>Nay</b> Borrello	<b>Nay</b> Boyle	<b>Aye</b> Breslin
<b>Aye</b> Brisport	<b>Aye</b> Brooks	<b>Aye</b> Brouk	<b>Aye</b> Comrie
<b>Aye</b> Cooney	<b>Aye</b> Felder	<b>Nay</b> Gallivan	<b>Aye</b> Gaughran
<b>Aye</b> Gianaris	<b>Aye</b> Gounardes	<b>Nay</b> Griffo	<b>Aye</b> Harckham
<b>Nay</b> Helming	<b>Aye</b> Hinchey	<b>Aye</b> Hoylman	<b>Aye</b> Jackson
<b>Nay</b> Jordan	<b>Aye</b> Kaminsky	<b>Aye</b> Kaplan	<b>Aye</b> Kavanagh
<b>Aye</b> Kennedy	<b>Aye</b> Krueger	<b>Nay</b> Lanza	<b>Aye</b> Liu
<b>Aye</b> Mannion	<b>Nay</b> Martucci	<b>Nay</b> Mattera	<b>Aye</b> May
<b>Aye</b> Mayer	<b>Aye</b> Myrie	<b>Nay</b> Oberacker	<b>Nay</b> O'Mara
<b>Nay</b> Ortt	<b>Nay</b> Palumbo	<b>Aye</b> Parker	<b>Aye</b> Persaud
<b>Aye</b> Ramos	<b>Nay</b> Rath	<b>Aye</b> Reichlin-Melnick	<b>Nay</b> Ritchie
<b>Aye</b> Rivera	<b>Aye</b> Ryan	<b>Aye</b> Salazar	<b>Aye</b> Sanders
<b>Aye</b> Savino	<b>Aye</b> Sepulveda	<b>Nay</b> Serino	<b>Aye</b> Serrano
<b>Aye</b> Skoufis	<b>Aye</b> Stavisky	<b>Nay</b> Stec	<b>Aye</b> Stewart-Cousins
<b>Nay</b> Tedisco	<b>Aye</b> Thomas	<b>Nay</b> Weik	

## LAWS OF NEW YORK, 2021

## CHAPTER 763

AN ACT to amend the election law, in relation to the canvassing of absentee, military and special ballots and ballots cast in affidavit envelopes; and to repeal certain provisions of such law related thereto

Became a law December 22, 2021, with the approval of the Governor.  
Passed by a majority vote, three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Section 9-209 of the election law is REPEALED and a new section 9-209 is added to read as follows:

§ 9-209. Canvass of absentee, military and special ballots, and ballots cast in affidavit envelopes. Before completing the canvass of votes cast in any primary, general, special, or other election at which voters are required to sign their registration poll records before voting, the board of elections shall proceed in the manner hereinafter prescribed to review, cast and canvass any absentee, military, special presidential, special federal or other special ballots and any ballots cast in affidavit envelopes. Each such ballot shall be retained in the original envelope containing the voter's affidavit and signature, in which it is delivered to the board of elections until such time as it is to be reviewed, in order to be cast and canvassed.

1. Central board of canvassers. Within four days of the receipt of an absentee, military or special ballot, the board of elections shall designate itself or such of its employees as it shall deem appropriate as a set of poll clerks to review such ballot envelopes. The board may designate additional sets of poll clerks and if it designates more than one such set shall apportion among all such sets the election districts from which such ballots have been received, provided that when reviewing ballots, all ballots from a single election district shall be assigned to a single set of clerks, and that each such set shall be divided equally between representatives of the two major political parties. Each such set of clerks shall be deemed a central board of canvassers for purposes of this section.

2. Review of absentee, military and special ballot envelopes. Within four days of the receipt of an absentee, military or special ballot before the election, and within one day of receipt on or after the election, each central board of canvassers shall examine the ballot affirmation envelopes as nearly as practicable in the following manner:

(a) If a person whose name is on a ballot envelope as a voter is not on a registration poll record, the computer-generated list of registered voters or the list of special presidential voters, or if there is no name on the ballot envelope, or if the ballot envelope was not timely postmarked or received, or if the ballot envelope is completely unsealed, such ballot envelope shall be set aside unopened for review pursuant to subdivision eight of this section with a relevant notation indicated on the ballot envelope notwithstanding a split among the

EXPLANATION--Matter in *italics* is new; matter in brackets [-] is old law to be omitted.

central board of canvassers as to the invalidity of the ballot; provided, however, if the ballot envelope is completely unsealed, such voter shall receive notice pursuant to paragraph (h) of subdivision three of this section.

(b) If there is more than one timely ballot envelope executed by the same voter, the one bearing the later date of execution shall be accepted and the other rejected. If it cannot be determined which ballot envelope bears the later date, then all such ballot envelopes shall be rejected. When the board of elections has issued a second ballot it shall set aside the first ballot unopened to provide the voter time to return the second ballot. Notwithstanding the foregoing, if a ballot envelope for a voter was previously reviewed and opened, then the subsequently received ballot envelope shall be set aside unopened.

(c) If such person is found to be registered, the central board of canvassers shall compare the signature, if any, on each ballot envelope with the signature, if any, on the registration poll record, the computer-generated list of registered voters, or the list of special presidential voters, of the person of the same name who registered from the same address. If the signatures are found to correspond, such central board of canvassers shall certify thereto in a manner provided by the state board of elections.

(d) If such person is found to be registered and has requested a ballot, the ballot envelope shall be opened, the ballot or ballots withdrawn, unfolded, stacked face down and deposited in a secure ballot box or envelope. Upon such processing of the ballot, the voter's record shall be updated with a notation that indicates that the voter has already voted in such election. The board of elections shall adopt procedures, consistent with regulations of the state board of elections, to prevent voters from voting more than once and to secure ballots and prevent public release of election results prior to election day. Such procedures shall be filed with the state board of elections at least ninety days before they shall be effective.

(e) In the case of a primary election, the ballot shall be deposited in the box only if the ballot is of the party with which the voter is enrolled according to the entry on the back of his or her registration poll record or in the computer-generated registration list; if not, the ballot shall be rejected without inspection or unfolding and shall be returned to the ballot envelope which shall be endorsed "not enrolled".

(f) If the central board of canvassers determines that a person was entitled to vote at such election it shall prepare such ballot to be stacked face down and deposited in a secure ballot box or envelope consistent with paragraph (d) of this subdivision if such board finds that ministerial error by the board of elections or any of its employees caused such ballot envelope not to be valid on its face.

(g) If the central board of canvassers splits as to whether a ballot is valid, it shall prepare such ballot to be cast and canvassed pursuant to this subdivision.

(h) As each ballot envelope is opened, if one or more of the different kinds of ballots to be voted at the election are not found therein, the central board of canvassers, shall make a memorandum showing what ballot or ballots are missing. If a ballot envelope shall contain more than one ballot for the same offices, all the ballots in such ballot envelope shall be rejected. When the review of such ballots shall have been completed, the central board of canvassers shall ascertain the number of such ballots of each kind which have been deposited in the ballot box by deducting from the number of ballot envelopes opened with the number of



missing ballots, and shall make a return thereof. The number of voters' ballots deposited in the ballot box shall be added to the number of other ballots deposited in the ballot box, in order to determine the number of all ballots of each kind to be accounted for in the ballot box.

3. Curing ballots. (a) At the time a ballot affirmation envelope is reviewed pursuant to subdivision two of this section, the board of elections shall determine whether it has a curable defect.

(b) A curable defect includes instances where the ballot envelope: (i) is unsigned; (ii) has a signature that does not correspond to the registration signature; (iii) has no required witness to a mark; (iv) is returned without a ballot affirmation envelope in the return envelope; (v) has a ballot affirmation envelope that is signed by the person that has provided assistance to the voter but is not signed or marked by the voter; or (vi) contains the signature of someone other than the voter and not of the voter.

(c) The board shall indicate the issue that must be cured on the ballot envelope and, within one day of such determination, send to the voter's address indicated in the registration records and, if different, the mailing address indicated on the ballot application, a notice explaining the reason for such rejection and the procedure to cure the rejection. The board shall also contact the voter by either electronic mail or telephone, if such information is available to the board in the voter's registration information, in order to notify the voter of the deficiency and the opportunity and the process to cure the deficiency.

(d) The voter may cure the aforesaid defects by filing a duly signed affirmation attesting to the same information required by the ballot affirmation envelope and attesting that the signer of the affirmation is the same person who submitted such ballot envelope. The board shall include a form of such affirmation with the notice to the voter. The affirmation shall be in a form prescribed by the state board of elections.

(e) Such cure affirmation shall be filed with the board no later than seven business days after the board's mailing of such curable rejection notice or the day before the election, whichever is later. Provided the board determines that such affirmation addresses the curable defect, the rejected ballot shall be reinstated and prepared for canvassing pursuant to subdivision two of this section. If the board of elections is split as to the sufficiency of the cure affirmation, such envelope shall be prepared for canvassing pursuant to paragraph (d) of subdivision two of this section.

(f) If the ballot envelope contains one or more curable defects that have not been timely cured, the ballot envelope shall be set aside for review pursuant to subdivision eight of this section.

(g) Ballot envelopes are not invalid and do not require a cure if: (i) a ballot envelope is undated or has the wrong date, provided it is post-marked on or prior to election day or is otherwise received timely by the board of elections; (ii) the voter signed or marked the ballot affirmation envelope at a place on the envelope other than the designated signature line; (iii) a voter used a combination of ink (of any color) or pencil to complete the ballot envelope; (iv) papers found in the ballot envelope with the ballot are materials from the board of elections, such as instructions or an application sent by the board of elections; (v) an extrinsic mark or tear on the ballot envelope appears to be there as a result of the ordinary course of mailing or transmit-

tal; or (vi) the ballot envelope is partially unsealed but there is no ability to access the ballot.

(h) When the board of elections invalidates a ballot affirmation envelope and the defect is not curable, the ballot envelope shall be set aside for review pursuant to subdivision eight of this section and the board shall notify the voter by mail, sent within three business days of such rejection, and by either electronic mail or telephone, if such information is available to the board in the voter's registration information, and notify the voter of other options for voting, and, if time permits, provide the voter with a new ballot.

(i) If a ballot affirmation envelope is received by the board of elections prior to the election and is found to be completely unsealed and thus invalid, the board shall notify the voter by mail, sent within three business days of such determination, and by either electronic mail or telephone, if such information is available to the board in the voter's registration information, and notify the voter of other options for voting, and, if time permits, provide the voter with a new ballot.

4. Review of federal write-in absentee ballots. (a) Such central board of canvassers shall review any federal write-in absentee ballots validly cast by an absentee voter, a military voter or a special federal voter for the offices of president and vice-president, United States senator and representative in congress. Such central board of canvassers shall also review any federal write-in absentee ballots validly cast by a military voter for all questions or proposals, public offices or party positions for which a military voter is otherwise eligible to vote as provided in section 10-104 of this chapter.

(b) Federal write-in absentee ballots shall be deemed valid only if: (i) an application for an absentee, military or special federal ballot was received from the absentee, military or special federal voter; (ii) the federal write-in absentee ballot was submitted from inside or outside the United States by a military voter or was submitted from outside the United States by a special federal voter; (iii) such ballot is received by the board of elections not later than thirteen days following the day of election or seven days after a primary election; and (iv) the absentee, military or special federal ballot which was sent to the voter is not received by the board of elections by the thirteenth day following the day of a general or special election or the seventh day after a primary election.

(c) If such a federal write-in absentee ballot is received after election day, the envelope in which it is received must contain: (i) a cancellation mark of the United States postal service or a foreign country's postal service; (ii) a dated endorsement of receipt by another agency of the United States government; or (iii) if cast by a military voter, the signature and date of the voter and one witness thereto with a date which is ascertained to be not later than the day of the election.

(d) If such a federal write-in absentee ballot contains the name of a person or persons in the space provided for a vote for any office, such ballot shall be counted as a vote for such person or persons. A vote for a person who is the candidate of a party or independent body either for president or vice-president shall be deemed to be a vote for both the candidates of such party or independent body for such offices. If such a ballot contains the name of a party or independent body in the space provided for a vote for any office, such ballot shall be deemed to be a vote for the candidate or candidates, if any, of such party or independent body for such office. In the case of the offices of president and

vice-president a vote cast for a candidate, either directly or by writing in the name of a party or independent body, shall also be deemed to be votes for the electors supporting such candidate. Any abbreviation, misspelling or other minor variation in the form of the name of a candidate or a party or independent body shall be disregarded in determining the validity of the ballot, if the voter's intention can be ascertained.

5. 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 required by subdivisions two, three and four of this section.

6. Casting and canvassing of absentee, military and special ballots. (a) The following provisions shall apply to the casting and canvassing of all valid ballots received before, on or after election day and reviewed and prepared pursuant to subdivision two of this section, and all other provisions of this chapter with respect to casting and canvassing such ballots which are not inconsistent with this subdivision shall be applicable to such ballots.

(b) The day before the first day of early voting, the central board of canvassers shall scan all valid ballots previously reviewed and prepared pursuant to this section as nearly as practicable in the following manner:

(i) Such ballots may be separated into sections before being placed in the counting machine and scanned;

(ii) Upon completion of the scanning of such valid ballots, the scanners used for such purpose shall be secured, and no tabulation of the results shall occur until one hour before the close of the polls on election day. Any ballots scanned during this period shall be secured in the same manner as voted ballots cast during early voting or on election day. The board of elections shall adopt procedures to prevent the public release of election results prior to the close of polls on election day and such procedures shall be consistent with the regulations of the state board of elections and shall be filed with the state board of elections at least ninety days before they shall be effective;

(iii) Any valid ballots that cannot be cast on a scanner shall be held inviolate and unexamined and shall be duly secured until after the close of polls on election day when such ballots shall be examined and canvassed in a manner consistent with subdivision two of section 9-110 of this article.

(c) After the close of the polls on the last day of early voting, the central board of canvassers shall scan all valid ballots received and prepared pursuant to this section, and not previously scanned on the day before the first day of early voting, in the same manner as provided in paragraph (b) of this subdivision using the same or different scanners.

(d) In casting and canvassing such ballots, the board shall take all measures necessary to ensure the privacy of voters.

(e) The board of elections may begin to obtain tabulated results for all ballots previously scanned, as required by this subdivision, one hour before the scheduled close of polls on election day; provided, however, no unofficial tabulations of election results shall be publicly announced or released in any manner until after the close of polls on election day at which time such tabulations shall be added into the election night vote totals.

(f) Upon completing the casting and canvassing of any remaining valid ballots as hereinabove provided for any election district, the central

board of canvassers shall thereupon, as nearly as practicable in the manner provided in this article for absentee, military and special ballots, verify the number of ballots so cast, tally the votes so cast, add such tally to the previous tally of all votes cast in such election district, and record the result.

(g) The record of the vote counted by each scanner and manually for each candidate and for and against each ballot proposal, printed by election district, shall be preserved in the same manner and for the same period as the returns of canvass for the election.

7. Post-election review and canvassing of affidavit ballots. (a) Within four business days of the election, the board of elections shall review all affidavit ballots cast in the election. If the central board of canvassers determines that a person was entitled to vote at such election it shall cast and canvass such affidavit ballot; provided, however, if the board of elections receives one or more timely absentee ballots from a voter who also cast an affidavit ballot at a poll site, the last such timely absentee ballot received shall be canvassed and the affidavit ballot shall be set aside unopened; and provided further, if a voter was issued an absentee ballot and votes in person via an affidavit ballot and the board does not receive such absentee ballot, the affidavit ballot shall be canvassed if the voter is otherwise qualified to vote in such election.

(b) Affidavit ballots are valid when cast at a polling site permitted by law by qualified voters: (i) who moved within the state after registering; (ii) who are in inactive status; (iii) whose registration was incorrectly transferred to another address even though they did not move; (iv) whose registration poll records were missing on the day of such election; (v) who have not had their identity previously verified; (vi) whose registration poll records did not show them to be enrolled in the party in which they are enrolled; and (vii) who are incorrectly identified as having already voted.

(c) Affidavit ballots are valid to the extent that ministerial error by the board of elections or any of its employees caused such ballot envelope not to be valid on its face.

(d) If the central board of canvassers determines that a person was entitled to vote at such election, the board shall cast and canvass such affidavit ballot if such board finds that the voter appeared at the correct polling place, regardless of the fact that the voter may have appeared in the incorrect election district and regardless of whether the voter's name was in the registration poll record.

(e) If the central board of canvassers finds that a voter submitted a voter registration application through the electronic voter registration transmittal system pursuant to title eight of article five of this chapter and signed the affidavit ballot, the board shall cast and canvass such affidavit ballot if the voter is otherwise qualified to vote in such election.

(f) If the central board of canvassers determines that a person was entitled to vote at such election, the board shall cast and canvass such affidavit ballot if such board finds that the voter substantially complied with the requirements of this chapter. For purposes of this paragraph, "substantially complied" shall mean the board can determine the voter's eligibility based on the statement of the affiant or records of the board.

(g) If the central board of canvassers finds that the statewide voter registration list supplies sufficient information to identify a voter, failure by the voter to include on the affidavit ballot envelope the

address where such voter was previously registered shall not be a fatal defect and the board shall cast and canvass such affidavit ballot.

(h) If the central board of canvassers finds that the voter registered or pre-registered to vote for the first time pursuant to title nine of article five of this chapter at least twenty-five days before a primary, appeared at such primary election, and indicated on the affidavit ballot envelope the intent to enroll in such party, the affidavit ballot shall be cast and canvassed if the voter is otherwise qualified to vote in such election.

(i) When the central board of canvassers determines that an affidavit ballot is invalid due to a missing signature on the affidavit ballot envelope, or because the signature on the affidavit ballot envelope does not correspond to the registration signature, such ballots shall be subject to the cure procedure in subdivision three of this section.

(j) At the meeting required pursuant to paragraph (a) of subdivision eight of this section, each candidate, political party, and independent body shall be entitled to object to the board of elections' determination that an affidavit ballot is invalid. Such ballots shall not be counted absent an order of the court. In no event may a court order a ballot that has been counted to be uncounted.

(k) The board of elections shall enter information into the ballot tracking system, as defined in section 8-414 of this chapter, to allow a voter who cast a ballot in an affidavit envelope to determine if the vote was counted.

8. Post-election review of invalid absentee, military and special ballots. (a) Within four business days of the election, the board of elections shall designate itself or such of its employees to act as a central board of canvassers as provided in subdivision one of this section and meet to review absentee, military and special ballots determined to be invalid pursuant to paragraph (a) of subdivision two of this section, ballot envelopes that were returned to the board as undeliverable, and ballot envelopes containing one or more curable defects that have not been timely cured.

(b) At least five days prior to the time fixed for such meeting, the board shall send notice by first class mail to each candidate, political party, and independent body entitled to have had watchers present at the polls in any election district in the board's jurisdiction. Such notice shall state the time and place fixed by the board for such post-election review.

(c) Each such candidate, political party, and independent body shall be entitled to appoint such number of watchers to attend upon each central board of canvassers as the candidate, political party, or independent body was entitled to appoint at the election in any election district for which the central board of canvassers is designated to act.

(d) Upon assembling at the time and place fixed for such meeting, each central board of canvassers shall review the ballot envelopes determined to be invalid and set aside in the review required by subdivision two of this section, ballot envelopes that were returned as undeliverable, and ballot envelopes containing one or more curable defects that have not been timely cured.

(e) Each such candidate, political party, and independent body shall be entitled to object to the board of elections' determination that a ballot is invalid. Such ballots shall not be counted absent an order of the court. In no event may a court order a ballot that has been counted to be uncounted.

9. State board of elections; powers and duties for canvassing of absentee, military, special and affidavit ballots. The state board of elections shall promulgate rules and regulations necessary for the implementation of the provisions of this section. Such rules and regulations shall include, but not be limited to, provisions to (a) ensure an efficient and fair review process that respects the privacy of the voter, (b) ensure the security of the central count scanners used before election day, and (c) ensure that ballots cast as provided in this section are canvassed and counted as if cast on election day.

§ 2. Section 9-211 of the election law, as amended by chapter 515 of the laws of 2015, subdivision 1 as amended by chapter 5 of the laws of 2019, is amended to read as follows:

§ 9-211. Audit of voter verifiable audit records. 1. Within fifteen days after each general or special election, within thirteen days after every primary election, and within seven days after every village election conducted by the board of elections, the board of elections or a bipartisan committee appointed by such board shall audit the voter verifiable audit records from three percent of voting machines or systems within the jurisdiction of such board. Such audits may be performed manually or via the use of any automated tool authorized for such use by the state board of elections which is independent from the voting system it is being used to audit. Voting machines or systems shall be selected for audit through a random, manual process. At least five days prior to the time fixed for such selection process, the board of elections shall send notice by first class mail to each candidate, political party and independent body entitled to have had watchers present at the polls in any election district in such board's jurisdiction. Such notice shall state the time and place fixed for such random selection process. The audit shall be conducted in the same manner, to the extent applicable, as a canvass of paper ballots. Each candidate, political party or independent body entitled to appoint watchers to attend at a polling place shall be entitled to appoint such number of watchers to observe the audit.

2. Within three days of any election, the board of elections or a bipartisan committee appointed by such board shall audit the central count ballot scanners by auditing the ballots from three percent of election districts that were tabulated by such scanners within the jurisdiction of such board by that time. All provisions of this section shall otherwise apply to such audit. To the extent additional ballots are tabulated through central count ballot scanners after the initial audit, three percent of election districts shall thereafter be audited as to the additional ballots tabulated. The certification of the canvass shall not await the completion of such additional audit; provided, however, if upon the completion of such additional audit the criteria are met for the results of the audit to replace the canvass then the board of canvassers shall forthwith reconvene and adjust the canvass as required.

3. The audit tallies for each voting machine or system shall be compared to the tallies recorded by such voting machine or system, and a report shall be made of such comparison which shall be filed in the office of the state board of elections.

~~[3.]~~ 4. The state board of elections shall, in accordance with subdivision four of section 3-100 of this chapter, promulgate regulations establishing a uniform statewide standard to be used by boards of elections to determine when a discrepancy between the audit tallies and the voting machine or system tallies shall require a further voter veri-

fiable record audit of additional voting machines or systems or a complete audit of all machines or systems within the jurisdiction of a board of elections. Any board of elections shall be empowered to order that any such audit shall be conducted whenever any such discrepancy exists.

[4.] 5. If a complete audit shall be conducted, the results of such audit shall be used by the canvassing board in making the statement of canvass and determinations of persons elected and propositions rejected or approved. The results of a partial voter verifiable record audit shall not be used in lieu of voting machine or system tallies.

[5.] 6. Notwithstanding subdivision four of this section, if a voting machine or system is found to have failed to record votes in a manner indicating an operational failure, the board of canvassers shall use the voter verifiable audit records to determine the votes cast on such machine or system, provided such records were not also impaired by the operational failure of the voting machine or system.

§ 3. Subdivision 5 of section 7-122 of the election law, as amended by chapter 411 of the laws of 2019, is amended to read as follows:

5. There shall also be a place for two board of elections staff members or inspectors of opposite political parties to indicate, by placing their initials thereon, that they have checked and marked the voter's poll record and a box labeled "BOE use only" for notations required when the board of elections reviews affirmation ballot envelopes pursuant to section 9-209 of this chapter.

§ 4. Subdivision 2-a of section 8-302 of the election law is renumbered subdivision 2-b and a new subdivision 2-a is added to read as follows:

2-a. If a voter's name appears in the ledger or computer generated registration list with a notation indicating that the board of elections has issued the voter an absentee, military or special ballot, such voter shall not be permitted to vote on a voting machine at an early voting site or on election day but may vote by affidavit ballot.

§ 5. Subdivisions 1, 4 and 5 of section 16-106 of the election law, subdivision 1 as amended by chapter 659 of the laws of 1994, subdivision 5 as amended by chapter 359 of the laws of 1989, are amended to read as follows:

1. The [~~casting or canvassing or~~] post-election refusal to cast: (a) challenged ballots, blank ballots, or void [~~or canvass~~] ballots; (b) absentee, military, special [~~federal~~], or federal write-in [~~or~~] ballots; (c) emergency ballots; and (d) ballots voted in affidavit envelopes [~~by persons whose registration poll records were not in the ledger or whose names were not on the computer generated registration list on the day of election or voters in inactive status, voters who moved to a new address in the city or county or after they registered or voters who claimed to be enrolled in a party other than that shown on their registration poll record or on the computer generated registration list and the original applications for a military, special federal, federal write-in, emergency or absentee voter's ballot~~] may be contested in a proceeding instituted in the supreme or county court, by any candidate or the chairman of any party committee, and by any voter with respect to the refusal to cast such voter's ballot, against the board of canvassers of the returns from such district, if any, and otherwise against the board of inspectors of election of such district. If the court determines that the person who cast such ballot was entitled to vote at such election, it shall order such ballot to be cast and canvassed, including if the court

finds that ministerial error by the board of elections or any of its employees caused such ballot envelope not to be valid on its face.

4. The court shall ensure the strict and uniform application of the election law and shall not permit or require the altering of the schedule or procedures in section 9-209 of this chapter but may direct a recanvass or the correction of an error, or the performance of any duty imposed by ~~[law]~~ this chapter on such a state, county, city, town or village board of inspectors, or canvassers.

5. In the event procedural irregularities or other facts arising during the election suggest a change or altering of the canvass schedule, as provided for in section 9-209 of this chapter, may be warranted, a candidate may seek an order for temporary or preliminary injunctive relief or an impound order halting or altering the canvassing schedule of absentee, military, special or affidavit ballots. Upon any such application, the board or boards of elections have a right to be heard. To obtain such relief, the petitioner must meet the criteria in article sixty-three of the civil practice law and rules and show by clear and convincing evidence, that, because of procedural irregularities or other facts arising during the election, the petitioner will be irreparably harmed absent such relief. For the purposes of this section, allegations that opinion polls show that an election is close is insufficient to show irreparable harm to a petitioner by clear and convincing evidence.

6. A proceeding under subdivisions one and three of this section must be instituted within twenty days and under subdivision two, within thirty days after the election or alleged erroneous statement or determination was made, or the time when the board shall have acted in the particulars as to which it is claimed to have failed to perform its duty, except that such a proceeding with respect to a village election must be instituted within ten days after such election, statement, determination or action.

§ 6. Subdivision 4 of section 17-126 of the election law is amended to read as follows:

4. Before the closing of the polls, unfolds a ballot that a voter has prepared for voting, except as provided in section 9-209 of this chapter, is guilty of a misdemeanor.

§ 7. Subdivisions 18, 20 and 21 of section 17-130 of the election law are amended to read as follows:

18. Not being lawfully authorized, makes or has in his possession a key to a voting ~~[maching]~~ machine which has been adopted and will be used in elections; or,

20. Intentionally opens ~~[an absentee]~~ a voter's ballot envelope or examines the contents thereof after the receipt of the envelope by the board of elections and before the close of the polls at the election except as provided in section 9-209 of this chapter; or,

21. ~~[Wilfully]~~ Willfully disobeys any lawful command of the board of inspectors, or any member thereof; or,

§ 8. This act shall take effect January 1, 2022 and shall apply to elections held on or after such date; provided, however, that paragraph (h) of subdivision 7 of section 9-209 of the election law, as added by section one of this act, shall take effect January 1, 2023.



The Legislature of the STATE OF NEW YORK **ss:**

Pursuant to the authority vested in us by section 70-b of the Public Officers Law, we hereby jointly certify that this slip copy of this session law was printed under our direction and, in accordance with such section, is entitled to be read into evidence.

ANDREA STEWART-COUSINS

**Temporary President of the Senate**

CARL E. HEASTIE

**Speaker of the Assembly**

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**NEW YORK STATE SENATE  
INTRODUCER'S MEMORANDUM IN SUPPORT  
submitted in accordance with Senate Rule VI. Sec 1**

**BILL NUMBER:** S1027A

REVISED 06/08/2021

**SPONSOR:** GIANARIS

**TITLE OF BILL:**

An act to amend the election law, in relation to the canvassing of absentee, military and special ballots and ballots cast in affidavit envelopes; and to repeal certain provisions of such law related thereto

**PURPOSE:**

This bill amends the Election Law to change the process for canvassing absentee, military, special and affidavit ballots in order to obtain the results of an election in a more expedited manner and to assure that every valid vote by a qualified voter is counted. It also amends various other sections of the Election Law to conform to the new canvassing process.

**SUMMARY OF PROVISIONS:**

Section one repeals section 9-209 of the election law and replaces it with a new section 9-209. This section sets forth specific processes for the canvassing of absentee, special, military and affidavit ballots. These processes include the timeframe during which ballots shall be reviewed and the way in which they shall be reviewed. When ballots (not including affidavit ballots) are received, they will be reviewed within 4 days and will be assigned to 1 of 3 statutorily defined categories: valid, defective but curable, and invalid. If the ballot is deemed valid, the ballot is processed by opening the envelope, unfolding the ballot and stacking the ballot face down in a secure box or envelope. The statute specifically defines what type of defect does not need to be cured for the ballot to be valid. If the commissioners or their designees "split" on the question of validity, a presumption of validity applies in favor of the voter and the ballot is processed for canvassing. Valid ballots will be scanned on the day before the first day of early voting and again on the last day of early voting. Results will be tabulated beginning at 8:00 p.m. on election night. If the ballot has a defect that is curable, as defined in the statute, the voter gets notice and a chance to cure the defect. If the ballot is invalid, as defined in the statute, the ballot is set aside for post-election review by the board and the candidates. The post-election reviews of ballots shall occur within four business days of the election.

Post-election review and canvassing of affidavit ballots shall also occur within four business days of the election and the statute makes clear when affidavit ballots should be counted despite minor technical defects on the affidavit ballot envelope. The board would canvass the valid affidavit ballots. It would also give an affidavit ballot voter an opportunity to cure any question regarding the voter's signature on the envelope. Voters will be able to verify whether their affidavit ballot was counted with the tracking system established for absentee, military and special ballots. Within 4 days of the election, the board would meet

to review all invalid absentee, military, special and affidavit ballots with the candidates, who would then have the option of seeking a court order directing the opening of additional ballots. In such a proceeding, the court would be unable to change the process outlined in the new statute and may only change the schedule if a candidate shows by clear and convincing evidence that because of procedural irregularities or

other facts he or she will be irreparably harmed absent such relief. No ballot already counted could be uncounted by a court.

Section two amends Election Law § 9-211 to require that a central count ballot scanner be audited with ballots from 3 percent of election districts within 3 days of the election and that a similar supplemental audit be done of all ballots received after the initial audit.

Section three amends Election Law § 7-122 to require a box labeled "BOE use only" on affirmation ballot envelopes for use in the review of ballot envelopes pursuant to section 9-209.

Section four amends Election Law § 8-302 to provide that if a voter's name appears on the registration list with a notation indicating the board of elections has issued an absentee, military or special ballot, the voter may not vote on a voting machine but may vote by affidavit ballot.

Section five amends Election Law § 16-106 to authorize a challenge to the board of election's refusal to cast a ballot in the supreme or county court and to prohibit such court from changing the process or schedule contained in Election Law § 9-209.

Section six amends Election Law § 17-126 to create an exception to a potential misdemeanor charge for unfolding a ballot before the closing of the polls when processing a ballot pursuant to Election Law § 9-209.

Section seven amends Election Law § 17-130 to create an exception to a potential misdemeanor charge for unfolding a ballot before the closing of the polls when processing a ballot pursuant to Election Law § 9-209.

Section eight is the effective date.

#### EXISTING LAW:

#### JUSTIFICATION:

During the 2020 election, when vastly more absentee ballots were used by voters because of the COVID-19 pandemic, the election results were significantly delayed in many races due to the current canvassing process and schedule. The law passed last year will once again allow voters to cite COVID-19 as a reason to use an absentee ballot in this year's election.

The purpose of the bill is to speed up the counting of absentee, military, special and affidavit ballots to prevent the long delay in election results that occurred in the 2020 election and to obtain election results earlier than the current law requires. To do so, the bill would require the boards of elections to review absentee, military and special ballots on a rolling basis as they are received prior to, during and after the election.

In order to promote quicker election results, the enacted law would also require all central count ballot scanners to be audited within 3 days of the election and it would prohibit a court from changing the process for canvassing ballots, a common occurrence during litigation that delays

election results. Any scheduling changes would require a clear and convincing showing by a candidate.

A second purpose of the bill is to remove the minor technical mistakes that voters make, which currently can render ballots invalid, so that every qualified voter's ballot is counted. It does so by defining, in statute, what renders a ballot invalid, defective but curable, or valid and not needing a cure. If the board of elections commissioners or their designees "split" on the question of validity, a presumption of validity applies in favor of the voter and the ballot is processed for canvassing.

This bill continues the extensive reform of the election law that has occurred over the last two years to make a more liberalized use of absentee ballots by voters feasible in the future without unduly delaying election results.

#### **LEGISLATIVE HISTORY:**

Died in Rules/Died in Election Law (Assembly)

#### **FISCAL IMPLICATIONS:**

None

#### **LOCAL FISCAL IMPLICATIONS:**

None

#### **EFFECTIVE DATE:**

This act shall take effect January 1, 2022 and shall apply to elections held on or after such date; provided, however, that paragraph (h) of subdivision 7 of section 9-209 of the election law, shall take effect January 1, 2023.

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# Exhibit B

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**S7565-B** BIAGGI Same as [A 8432-A](#) Dinowitz

ON FILE: 01/06/22 Election Law

TITLE....Provides for absentee voting in village elections and extends provisions relating to absentee voting

12/03/21 REFERRED TO RULES  
 01/04/22 AMEND AND RECOMMIT TO RULES  
 01/04/22 PRINT NUMBER 7565A  
 01/05/22 REFERRED TO ELECTIONS  
 01/06/22 AMEND AND RECOMMIT TO ELECTIONS  
 01/06/22 PRINT NUMBER 7565B  
 01/10/22 REPORTED AND COMMITTED TO RULES  
 01/10/22 ORDERED TO THIRD READING CAL.10  
 01/10/22 PASSED SENATE  
 01/10/22 DELIVERED TO ASSEMBLY  
 01/10/22 referred to election law  
 01/19/22 substituted for a8432a  
 01/19/22 ordered to third reading rules cal.6  
 01/19/22 passed assembly  
 01/19/22 returned to senate  
 01/21/22 DELIVERED TO GOVERNOR  
 01/21/22 SIGNED CHAP.2

## BIAGGI, BROUK, LIU, MAY

Amd §2, Chap 139 of 2020; amd §§15-120 &amp; 15-122, E1 L

Permits voting by absentee ballot where there is a risk of contracting or spreading a disease that may cause illness to the voter or to other members of the public.

EFF. DATE 01/21/2022 (SEE TABLE)

01/19/22 S7565-B Assembly Vote Yes: 100 No : 45

01/10/22 S7565-B Senate Vote Aye: 42 Nay: 21

[Go to Top of Page](#)**Floor Votes:**

01/19/22 S7565-B Assembly Vote Yes: 100 No : 45

<b>Yes</b> Abbate	<b>Yes</b> Abinanti	<b>Yes</b> Anderson	<b>No</b> Angelino
<b>No</b> Ashby	<b>Yes</b> Aubry	<b>No</b> Barclay	<b>Yes</b> Barnwell
<b>Yes</b> Barrett	<b>Yes</b> Benedetto	<b>Yes</b> Bichotte Hermelyn	<b>No</b> Blankenbush
<b>No</b> Brabenec	<b>Yes</b> Braunstein	<b>Yes</b> Bronson	<b>No</b> Brown
<b>Yes</b> Burdick	<b>Yes</b> Burgos	<b>Yes</b> Burke	<b>No</b> Buttenschon
<b>No</b> Byrne	<b>No</b> Byrnes	<b>Yes</b> Cahill	<b>Yes</b> Carroll
<b>Yes</b> Clark	<b>Yes</b> Colton	<b>Yes</b> Conrad	<b>Yes</b> Cook
<b>Yes</b> Cruz	<b>Yes</b> Cusick	<b>Yes</b> Cymbrowitz	<b>Yes</b> Darling
<b>Yes</b> Davila	<b>No</b> DeStefano	<b>Yes</b> Dickens	<b>Yes</b> Dilan
<b>Yes</b> Dinowitz	<b>No</b> DiPietro	<b>No</b> Durso	<b>No</b> Eichenstein
<b>Yes</b> Englebright	<b>Yes</b> Epstein	<b>Yes</b> Fahy	<b>Yes</b> Fall

<b>Yes</b>	Fernandez	<b>No</b>	Fitzpatrick	<b>Yes</b>	Forrest	<b>No</b>	Friend
<b>Yes</b>	Frontus	<b>Yes</b>	Galef	<b>Yes</b>	Gallagher	<b>No</b>	Gallahan
<b>No</b>	Gandolfo	<b>No</b>	Giglio JA	<b>No</b>	Giglio JM	<b>Yes</b>	Glick
<b>Yes</b>	Gonzalez-Rojas	<b>No</b>	Goodell	<b>Yes</b>	Gottfried	<b>Yes</b>	Griffin
<b>Yes</b>	Gunther A	<b>No</b>	Hawley	<b>Yes</b>	Hevesi	<b>Yes</b>	Hunter
<b>Yes</b>	Hyndman	<b>Yes</b>	Jackson	<b>Yes</b>	Jacobson	<b>Yes</b>	Jean-Pierre
<b>No</b>	Jensen	<b>Yes</b>	Jones	<b>Yes</b>	Joyner	<b>Yes</b>	Kelles
<b>Yes</b>	Kim	<b>No</b>	Lalor	<b>Yes</b>	Lavine	<b>No</b>	Lawler
<b>No</b>	Lemondes	<b>Yes</b>	Lunsford	<b>Yes</b>	Lupardo	<b>Yes</b>	Magnarelli
<b>Yes</b>	Mamdani	<b>No</b>	Manktelow	<b>Yes</b>	McDonald	<b>No</b>	McDonough
<b>Yes</b>	McMahon	<b>Yes</b>	Meeks	<b>No</b>	Mikulin	<b>No</b>	Miller B
<b>No</b>	Miller M	<b>Yes</b>	Mitaynes	<b>No</b>	Montesano	<b>No</b>	Morinello
<b>Yes</b>	Niou	<b>Yes</b>	Nolan	<b>No</b>	Norris	<b>Yes</b>	O'Donnell
<b>Yes</b>	Otis	<b>No</b>	Palmesano	<b>Yes</b>	Paulin	<b>Yes</b>	Peoples-Stokes
<b>Yes</b>	Perry	<b>Yes</b>	Pheffer Amato	<b>Yes</b>	Pretlow	<b>Yes</b>	Quart
<b>No</b>	Ra	<b>Yes</b>	Rajkumar	<b>Yes</b>	Ramos	<b>No</b>	Reilly
<b>Yes</b>	Reyes	<b>Yes</b>	Richardson	<b>ER</b>	Rivera J	<b>Yes</b>	Rivera JD
<b>Yes</b>	Rosenthal D	<b>Yes</b>	Rosenthal L	<b>Yes</b>	Rozic	<b>No</b>	Salka
<b>Yes</b>	Santabarbara	<b>Yes</b>	Sayegh	<b>No</b>	Schmitt	<b>Yes</b>	Seawright
<b>ER</b>	Septimo	<b>Yes</b>	Sillitti	<b>Yes</b>	Simon	<b>No</b>	Simpson
<b>No</b>	Smith	<b>No</b>	Smullen	<b>Yes</b>	Solages	<b>Yes</b>	Steck
<b>Yes</b>	Stern	<b>Yes</b>	Stirpe	<b>No</b>	Tague	<b>No</b>	Tannousis
<b>Yes</b>	Tapia	<b>Yes</b>	Taylor	<b>Yes</b>	Thiele	<b>Yes</b>	Vanel
<b>No</b>	Walczyk	<b>Yes</b>	Walker	<b>Yes</b>	Wallace	<b>No</b>	Walsh
<b>Yes</b>	Weinstein	<b>Yes</b>	Weprin	<b>Yes</b>	Williams	<b>Yes</b>	Woerner
<b>Yes</b>	Zebrowski K	<b>Yes</b>	Zinerman	<b>Yes</b>	Mr. Speaker		

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### Floor Votes:

01/10/22 S7565-B Senate Vote Aye: 42 Nay: 21

<b>Aye</b>	Addabbo	<b>Nay</b>	Akshar	<b>Aye</b>	Bailey	<b>Aye</b>	Biaggi
<b>Nay</b>	Borrello	<b>Nay</b>	Boyle	<b>Aye</b>	Breslin	<b>Aye</b>	Brisport
<b>Aye</b>	Brooks	<b>Aye</b>	Brouk	<b>Aye</b>	Cleare	<b>Aye</b>	Comrie
<b>Aye</b>	Cooney	<b>Nay</b>	Felder	<b>Nay</b>	Gallivan	<b>Aye</b>	Gaughran
<b>Aye</b>	Gianaris	<b>Aye</b>	Gounardes	<b>Nay</b>	Griffo	<b>Aye</b>	Harckham
<b>Nay</b>	Helming	<b>Aye</b>	Hinchey	<b>Aye</b>	Hoylman	<b>Aye</b>	Jackson
<b>Nay</b>	Jordan	<b>Aye</b>	Kaminsky	<b>Aye</b>	Kaplan	<b>Aye</b>	Kavanagh
<b>Aye</b>	Kennedy	<b>Aye</b>	Krueger	<b>Nay</b>	Lanza	<b>Aye</b>	Liu
<b>Aye</b>	Mannion	<b>Nay</b>	Martucci	<b>Nay</b>	Mattera	<b>Aye</b>	May
<b>Aye</b>	Mayer	<b>Aye</b>	Myrie	<b>Nay</b>	Oberacker	<b>Nay</b>	O'Mara
<b>Nay</b>	Ortt	<b>Nay</b>	Palumbo	<b>Aye</b>	Parker	<b>Aye</b>	Persaud
<b>Aye</b>	Ramos	<b>Nay</b>	Rath	<b>Aye</b>	Reichlin-Melnick	<b>Nay</b>	Ritchie
<b>Aye</b>	Rivera	<b>Aye</b>	Ryan	<b>Aye</b>	Salazar	<b>Aye</b>	Sanders
<b>Aye</b>	Savino	<b>Aye</b>	Sepulveda	<b>Nay</b>	Serino	<b>Aye</b>	Serrano

**Aye** Skoufis

**Aye** Stavisky

**Nay** Stec

**Aye** Stewart-  
Cousins

**Nay** Tedisco

**Aye** Thomas

**Nay** Weik

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## STATE OF NEW YORK

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7565--B

2021-2022 Regular Sessions

### IN SENATE

December 3, 2021

Introduced by Sens. BIAGGI, BROUK -- read twice and ordered printed, and when printed to be committed to the Committee on Rules -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- recommitted to the Committee on Elections in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the election law, in relation to absentee voting in village elections; to amend chapter 139 of the laws of 2020 amending the election law relating to absentee voting, in relation to the effectiveness thereof; and providing for the repeal of certain provisions upon expiration thereof

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

- 1 Section 1. Section 2 of chapter 139 of the laws of 2020 amending the  
2 election law relating to absentee voting, is amended to read as follows:  
3 § 2. This act shall take effect immediately and shall expire and be  
4 deemed repealed [~~January 1~~ December 31, 2022.  
5 § 2. Subdivision 1 of section 15-120 of the election law, as amended  
6 by chapter 289 of the laws of 2014, paragraph (c) as amended by chapter  
7 322 of the laws of 2021, is amended to read as follows:  
8 1. A qualified voter of a village may vote as an absentee voter under  
9 this section if during all the hours of voting on the day of a general  
10 or special village election he or she will be:  
11 (a) absent from the county of his or her residence; or  
12 (b) unable to appear at the polling place because of illness or phys-  
13 ical disability, or duties related to the primary care of one or more  
14 individuals who are ill or physically disabled, or because he or she  
15 will be or is a patient in a hospital, provided that, for purposes of  
16 this paragraph, "illness" shall include, but not be limited to,  
17 instances where a voter is unable to appear personally at the polling

EXPLANATION--Matter in italics (underscored) is new; matter in brackets  
[-] is old law to be omitted.

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S. 7565--B

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1 place of the election district in which they are a qualified voter  
2 because there is a risk of contracting or spreading a disease that may  
3 cause illness to the voter or to other members of the public; or

4 (c) an incarcerated individual or patient of a veteran's adminis-  
5 tration hospital; or

6 (d) absent from his or her voting residence because he or she is  
7 detained in jail awaiting action by a grand jury or awaiting trial, or  
8 confined in jail or prison after a conviction for an offense other than  
9 a felony, provided that he or she is qualified to vote in the election  
10 district of his or her residence.

11 § 3. Subdivision 1 of section 15-122 of the election law is amended to  
12 read as follows:

13 1. A qualified elector of a village, who, on the occurrence of any  
14 general or special village election, may be within the county of his  
15 residence but unable to appear personally at the polling place in the  
16 village of his residence because of illness, physical disability or  
17 confinement either at home or in a hospital or institution, other than a  
18 mental institution may vote as an absentee voter under this section,  
19 provided that, for purposes of this subdivision, "illness" shall  
20 include, but not be limited to, instances where a voter is unable to  
21 appear personally at the polling place of the election district in which  
22 they are a qualified voter because there is a risk of contracting or  
23 spreading a disease that may cause illness to the voter or to other  
24 members of the public.

25 § 4. This act shall take effect immediately and shall be deemed to  
26 have been in full force and effect on and after December 31, 2021;  
27 provided however that the provisions of sections two and three of this  
28 act shall expire and be deemed repealed December 31, 2022.

**NEW YORK STATE SENATE  
INTRODUCER'S MEMORANDUM IN SUPPORT  
submitted in accordance with Senate Rule VI. Sec 1**

**BILL NUMBER:** S7565B

**SPONSOR:** BIAGGI

**TITLE OF BILL:**

An act to amend the election law, in relation to absentee voting in village elections; to amend chapter 139 of the laws of 2020 amending the election law relating to absentee voting, in relation to the effectiveness thereof; and providing for the repeal of certain provisions upon expiration thereof

**PURPOSE OR GENERAL IDEA OF BILL:**

To allow voters who are concerned about voting in-person due to the ongoing COVID-19 pandemic to request an absentee ballot through December 31, 2022.

**SUMMARY OF SPECIFIC PROVISIONS:**

Section 1 amends section 2 of chapter 139 of the laws of 2020 amending the election law relating to absentee voting, to extend the effective date to December 31, 2022.

Section 2 amends subdivision 1 of section 15-120 of the election law to allow voters to vote via absentee ballot in village elections by selecting temporary illness due to a risk of spreading or contracting a disease that may cause illness to the public.

Section 3 amends subdivision 1 of section 15-122 of the election law to allow voters to vote via absentee ballot in village elections by selecting temporary illness due to a risk of spreading or contracting a disease that may cause illness to the public.

Section 4 sets forth the effective date.

**JUSTIFICATION:**

Currently, New York's law only allows an individual to request an absentee ballot if they a) will be absent from their county of residence or New York City on the day of the election, b) are unable to appear at the polling place due to illness, physical disability, or care-taking responsibilities for someone who is ill or disabled, c) are a resident or patient at a veteran health administration hospital, or d) are currently being held in jail. These restrictive criteria do not accommodate people who are concerned about the risk voting in-person would pose to their own or other's health.

Individuals, especially those who are high-risk, should be given the tools to take extra precautions to navigate the coronavirus pandemic. According to the CDC, older people and people with existing health conditions, like heart disease, lung disease, or diabetes, are at great-

er risk of serious illness if they contract COVID-19. High-risk individuals who are trying to limit their potential exposure or other's exposure to the virus should not have to decide between protecting their health or exercising their civic duty. Similarly, individuals who are preventively quarantined should still be able to participate in our elections. This bill amends the definition of illness to include instances where a voter is unable to appear personally at their polling

place because there is a risk of contracting or spreading a disease that may cause illness to the voter or to other members of the public.

This legislation was originally passed in 2020 and intended to remain in effect until January 1, 2022. Unfortunately, the COVID-19 pandemic still poses significant risks to the health of New Yorkers. Accordingly, this bill would extend this measure through December 31, 2022 so that New Yorkers can continue to participate in our elections without compromising their health and safety. Additionally, this legislation expands this protection to cover village elections.

**PRIOR LEGISLATIVE HISTORY:**

New bill.

**FISCAL IMPLICATIONS:**

None.

**EFFECTIVE DATE:**

Immediately and shall expire and be deemed repealed December 31, 2022.

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# Exhibit C

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STATE OF NEW YORK

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MAJORITY AND MINORITY REPORTS  
OF THE  
JOINT LEGISLATIVE COMMITTEE  
TO MAKE A STUDY OF THE  
ELECTION LAW AND RELATED STATUTES



ALBANY  
WILLIAMS PRESS, INC.  
1954

STATE OF NEW YORK

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MAJORITY AND MINORITY REPORTS  
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WILLIAMS PRESS, INC.  
1954

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## MAJORITY REPORT

### *To the Legislature:*

This Committee was created by a joint resolution of the Legislature in the Legislative Session of 1953. The purpose of the Committee was to investigate and make a detailed study of the provisions of the Election Law of the State of New York and other statutes relating to the elective franchise; to examine into the provisions contained in such laws for the purpose of revising and amending the same, as well as to bring up to date such provisions in accordance with modern needs, and to afford to the people a maximum exercise of the elective franchise and a maximum expression of their choice of candidates for public office and party position.

The Committee, consisting of Senators Henry Neddo, Frank S. McCullough and Joseph R. Marro and Assemblymen J. Eugene Goddard, Robert G. Main and Anthony J. Travia met on June 26, 1953, and elected Assemblyman J. Eugene Goddard as Chairman, Senator Henry Neddo as Vice-Chairman and Assemblyman Anthony J. Travia as Secretary. The Committee appointed Louis J. Lefkowitz as counsel, Jacob Markowitz as minority counsel, William D. Meisser as consultant and Alexander Hamilton as assistant consultant. Thereafter, Jacob Markowitz, upon his election as a justice of the Supreme Court in the First Judicial District, resigned as minority counsel and in his place, William J. Calise was appointed. On February 1, 1954, Abraham Schuman was appointed as assistant counsel.

On April 2, 1953, in a memorandum issued by Governor Dewey approving certain bills amending the Election Law, the Governor, in referring to this Committee, stated, "To augment the salutary changes provided by these bills, the Legislature has created a Joint Legislative Committee to study the Election Law. One of the first tasks of the Committee will be the preparation of legislation to permit any municipality to establish a system of permanent personal registration at its own option."

At the first meeting of the Committee it was decided that it should proceed with the following objectives:

1. Preparation of a bill establishing a system of permanent personal registration on an optional basis.
2. Consideration of amendments to the Election Law and other statutes affecting the elective franchise for the purpose of improving election and party procedures and to remove unnecessary technicalities from the Election Law.
3. Consideration of new laws to serve the convenience of the voter and to meet current needs.

Your Committee concluded at this meeting that laws can provide only the means of achieving good government; that the vigorous support, active interest and informed participation by the people in party affairs and at the polls are necessary to bring about good

party officers, improved party organization and more effective laws to afford a maximum exercise by the people of the elective franchise.

Your Committee thereafter communicated with Boards of Election, Boards of Supervisors, town and village officials and representatives of party organizations and civic groups. These groups were requested to submit recommendations for amendments or additions to the Election Law or any other laws relating to the conduct of elections. They were particularly requested to give the Committee the benefit of their views with respect to the practical administration and operation of such laws. The suggestions received from these sources cover many sections of the Election Law and related statutes. Considerable time was required to study these communications in order that all suggestions receive proper consideration. Your Committee is much indebted to these various agencies for the valuable suggestions that were submitted.

Members of the Staff of the Committee conferred with a representative of the Election and Law Bureau of the Office of the Secretary of State. Several proposals were received from this representative for the more efficient administration of the Election Law.

Members of the Committee and Staff also conferred on several occasions with representatives of the Division for Servicemen's Voting concerning the administration of the War Ballot Law and discussed proposed amendments to this law so as to afford a maximum means to members of the armed forces and their families to obtain and vote a military ballot.

Members of the Staff of the Committee conferred with members of the Board of Elections of the City of New York and of the counties outside thereof and also with other groups interested in the elective processes. In view of their extensive experience, they were able to and did offer constructive proposals for the more efficient conduct of elections.

On June 30 and July 1, 1953, the Chairman and counsel to the Committee attended the annual convention of the Election Commissioners' Association of the State of New York which was held at Lake George, N. Y. At that time your Chairman outlined the purpose of the Committee and its objectives and expressed his desire to have the members of this Association cooperate with the Committee. At this convention counsel to the Committee explained to the membership of the Association in detail the amendments to the Election Law and other laws affecting the elective franchise which had passed at the 1953 Session of the Legislature. The views of the membership of the Association were submitted with respect to proposed legislation for the 1954 Session. Your Committee particularly desires to express its appreciation for the constructive suggestions made by this representative group of the Election Commissioners in this State. They are more thoroughly familiar with the practical operation of the provisions of the Election Law than any other group of citizens. Their suggestions for the simplification of this law deserve the utmost consideration.

A general discussion followed with respect to administration problems affecting Boards of Election throughout the State and suggestions were adopted to solve these problems.

## LEGISLATION INTRODUCED AND PENDING

Of the many proposals recommended to the Committee by the various agencies and groups herein mentioned, as well as those proposed by the Committee and its counsel, your Committee has selected only those for action at this session of the Legislature which it believes require immediate consideration, leaving for further consideration and recommendation other matters requiring additional study. The legislation recommended for enactment at this session is designed to repeal obsolete provisions of the law; clarify existing provisions thereof; improve election and party procedures and the conduct of primary and general elections; revise the form of and simplify the procedure relating to designating and independent nominating petitions so as to eliminate unnecessary technicalities; propose a system of permanent personal registration on an optional basis. A summary of the legislation sponsored by your Committee or by a majority thereof, is found in the Appendix herein.

Your Committee and its Staff have also given careful consideration to other legislation pertaining to the elective franchise introduced by members of the Legislature who are not members of this Committee.

## PUBLIC HEARINGS

Two public hearings on a proposed optional system of permanent personal registration and other changes in the Election Law were held by this Committee.

Civic, industrial, labor and political organizations were invited to have their representatives attend hearings to be held in New York City and Albany. Notices of the hearings were published in the *New York Law Journal* and notices of the hearings were also released to daily newspapers throughout the State inviting public attendance at such hearings by organizations or anyone who might be interested in a discussion of such subjects and other matters pertaining to the elective franchise.

## HEARING IN NEW YORK CITY

On October 19, 1953, a hearing was held at the Association of the Bar of the City of New York. The entire Committee and its Staff attended the hearing. The appearances were as follows:

George H. Hallett, Jr. and Richard S. Childs, representing Citizens Union of the City of New York; Mrs. F. L. Bradfute and Mrs. William J. Kelly, representing New York League of Women Voters; William A. Mills, representing the Empire State Chamber of Commerce; I. D. Robbins, representing New York Federation of Labor; Carl J. Noe and Joseph E. Morahan, Deputy Commissioners of the Board of Elections of Westchester County; Stanislaus J. Dean, President, Election Commissioners' Association of the State of New York; Angela R. Parisi, Vice-Chairman, Democratic State Committee; David A. DeWahl and Simeon Goldstein, representing New York Young Republican Club; John S. Stillman, representing New York Young Democratic Club; Walter M. Weis, representing

the City Club of New York; John R. Titus, representing Associated Railroads of New York; Hon. Hulan E. Jack, Democratic County Committee of New York; Warren L. Schur and Theodore Kupferman, representing Election Reform Committee, Inc.; Richard A. Wels, representing Affiliated Young Democrats, Inc.; Louis F. Donato, Allied Printing Trades Council; Richard Lane, representing Lexington Democratic Club; Bentley Kassal, representing Americans for Democratic Action; Joseph Zavatt, representing Nassau County Republican Committee; John Clark and Max K. Lerner, representing themselves.

### HEARING IN ALBANY

A hearing was held on November 16, 1953, at the State Capitol in Albany. The entire Committee and its Staff attended the hearing. The appearances at this hearing were as follows: James J. Donnelly, representing The Liberal Party; Thomas Walsh, representing the C. I. O.; John J. Roberts, representing Empire State Chamber of Commerce; Joseph R. Shaw, Associated Industries of New York State; James Macauley, representing the A. F. of L. Empire Typographical Conference; Mrs. Margo Gayle, New York County Democratic Executive Committee; Mrs. Stanley Mayersohn and Mrs. F. L. Bradfute, representing the New York League of Women Voters and Mrs. Gertrude Moore, representing the Democratic State Committee.

At both hearings the various speakers expressed the views of their organizations, or, where the speaker did not represent any organization, he presented his own individual views. There was a very interesting discussion and exchange of information and proposals for amendments to the Election Law. Your Committee is very grateful to those who participated in the hearings and acknowledges that very helpful assistance was given to the Committee.

### ATTENDANCE AT ELECTION COMMISSIONERS CONVENTION

On February 9, 1954, your Committee and its Staff met with the membership of the Election Commissioners' Association of the State of New York at its mid-winter convention held in Albany. At this meeting most of the bills introduced by the Committee at the 1954 session of the Legislature, as well as non-Committee bills affecting the Election Law and related constitutional amendments, were discussed and considered. Of prime importance was the lengthy consideration of the proposed legislation to establish a system of permanent personal registration on an optional basis. The Association is vitally interested in this subject and the proper administration of this legislation is of paramount importance to this group of administrators of the Election Law. Various local problems affecting the administration of the Election Law were also brought up for discussion at this meeting and your Committee and its Staff offered suggestions in an effort to be of assistance to the Election Commissioners in connection with such problems.

**BILL TO ESTABLISH A SYSTEM OF PERMANENT PERSONAL REGISTRATION WHICH MAY BE ADOPTED ON AN OPTIONAL BASIS BY THE CITY OF NEW YORK OR BY ANY COUNTY OUTSIDE SUCH CITY**

In 1938 the people of the State of New York approved an amendment to the Constitution which authorized the Legislature to provide a system of permanent personal registration. During the fifteen years that have passed since that action, a considerable amount of research has been conducted by interested parties; numerous bills providing for various plans of permanent personal registration have been introduced into the Legislature; and the issue has been vigorously debated, publicly, and in legislative committees. To date, enabling legislation has not yet been enacted.

Your Committee, after its organization, corresponded on several occasions with election and registration officials of all of the states and more than seventy-five of the larger cities in these states, where a system of permanent personal registration is in effect, requesting copies of statutes, reports, data and forms used in such states and cities; also asking for their views on the administration of the law in effect in such states and cities and for their experiences in regard to fraudulent registration under their respective systems.

A detailed and exacting study was made of the different systems of permanent personal registration in effect in such states and cities, including such important questions as to the information to be recorded on registration cards, registration lists, police and other checks, cancellation of registration for failure to vote, transfer of registration, investigation and cancellation of prior registration, the use of a serial number for registrants, and many other complicated administrative problems which go together to make up the composite picture of establishing a system of permanent personal registration.

The Staff studied the previous bills introduced in the New York State Legislature and also the reports filed by previous committees on this subject.

Considerable time was required in the study of the registration cards and other forms. Forms used by cities or counties in other states were examined as a basis for the form of the registration card to be prepared for use in the proposed system in this State. Much time was spent in consultation with representatives of Remington Rand Company, Inc. and International Business Machines Corp. in connection with the proposed form of registration card, the indices and equipment necessary for the administration of such a system. Considerable correspondence was also had with the Post Index Company of Jamestown, N. Y., Remington Rand Company and International Business Machines Corporation, manufacturers and distributors, concerning the cost of registration cards, registration equipment and the many items involved in setting up a system such as proposed by your Committee.

The Committee and its Staff held sessions on many occasions for the purpose of planning proposed legislation setting up an optional system of permanent personal registration.

Counsel to the Committee visited the offices of the Board of Elections in New York City, Westchester County and Nassau County and consulted with election commissioners for the purpose of comparing the administration of the present law with the administration details and problems under an optional system of permanent personal registration. In addition, the Staff corresponded with election officials of other counties for the same purpose.

At the request of the Committee and its Staff, William D. Meisser, Commissioner of Elections, Nassau County and Consultant to your Committee, visited the cities of Columbus, Ohio; Kansas City, Missouri; St. Louis, Missouri; Harrisburg, Pennsylvania; Milwaukee, Wisconsin and Detroit, Michigan, where a system of permanent personal registration has been and is in effect. Commissioner Meisser visited the offices of the various Boards of Election and registration boards in such cities and inspected their records and equipment. He also consulted the election officials in such cities regarding the administration of their systems. Commissioner Meisser procured forms of registration cards, data and other relevant forms and also pertinent information as to the cost of equipment. Commissioner Meisser prepared a detailed report covering questions of initial registration, transfer of registration, cancellation of registration, registration boards, absentee ballots, registration lists and procedure of voting. All of these reports and data were considered by the Staff and members of your Committee prior to the preparation of the Committee's bill.

As indicated in another portion of this report, public hearings were held by this Committee to which representatives of civic organizations, political parties, boards of election and industrial groups were invited to attend. Among other things, the subject of an optional system of permanent personal registration was discussed at great length.

On December 28 and 29, 1953, the Committee and its Staff met in New York City for the purpose of discussing at length provisions of the proposed bill and at such time also reviewed the minutes of the public hearings conducted by the Committee.

After the aforesaid exhaustive study of statutes of other states and cities, and experiences with the law in such states and cities, and after consideration of voluminous data, examination of bills previously introduced in the New York State Legislature and reports of legislative committees on this subject, the Staff of your Committee prepared a bill establishing a system of permanent personal registration in the City of New York and the counties of the State on an optional basis by local action. The bill will permit an expression of home rule on the subject and the majority of the Committee believes it is in the public interest that it authorize the adoption of such a system by local governments which desire to utilize it and can afford its costs.

The bill is very simple and easy to administer. A new article sets forth the applicable provisions for a system of permanent personal registration, wherever adopted. As few amendments as possible to provisions of the existing Election Law have been made in

order to avoid confusion in the localities which do not adopt the system and will still operate under the present law. Many sections of the present law pertaining to subjects other than registration will still be applicable where the system is adopted and therefore reference to existing sections of the statute in the new article will make the system more simple to administer than if there were a repetition verbatim of many of the existing sections in the new article.

The bill contains adequate safeguards and investigative and reporting procedures covering all the checks against fraudulent practices recommended in the report of Dr. Robert F. Ray which was submitted to Governor Dewey on January 31, 1952. His report was a comprehensive and scientific study of permanent personal registration and was conducted at the request of Governor Dewey. This survey reflected his research in the cities of Chicago, Los Angeles, San Francisco, Detroit, Cleveland, Philadelphia, Boston, New York and other sections of the country all of which cities, except New York, employed then and presently employ a system of permanent personal registration.

The bill sponsored by a majority of the Committee affords the individual citizen maximum opportunity to exercise the privilege of the franchise. It is obvious that no registration law can be a "cure-all" but it is believed that the bill proposed by a majority of the Committee establishes an effective and satisfactory system of registration.

#### FUTURE WORK OF COMMITTEE

While your Committee has recommended many changes in the Election Law, nevertheless, a substantial amount of its work still remains to be completed.

Your Committee will continue during the present session to study all proposed amendments to the Election Law and other laws pertaining to the elective franchise. The Committee desires to hold further hearings in various parts of the State with local representatives of agencies interested in the administration and enforcement of the Election Law in order to discuss ways and means of eliminating unnecessary details, promote greater simplicity and uniformity in the forms and reports required, eliminate unnecessary expense in such matters and receive suggestions for proposed amendments to the law.

Your Committee also is of the opinion that it can be of assistance to those counties which adopt a system of permanent personal registration, the officials of which, after their experience with such a system, will be in a position to recommend possible changes to improve the administration of the system.

#### CONCLUSION

A major portion of the legislative proposals recommended by the Committee are for the improvement of election and party procedures. They are designed to encourage a more active participation by voters in elections and party affairs.

The Committee is proud of the fact that its recommendations represent progress and achievement from the standpoint of improved Election Law machinery. It has approached the problems affecting the elective franchise in a manner designed to eliminate technicalities and to bring about a maximum exercise of the elective franchise by voters.

Having in mind one of the purposes of this Committee is to bring up to date the provisions of the Election Law of the State of New York and other related statutes in accordance with modern needs, the Committee believes that the tasks assigned to it cannot be completely performed at this session. If this session of the Legislature enacts the Committee bill to establish a system of permanent personal registration on an optional basis, your Committee feels that it will have accomplished a great deal.

Your Committee respectfully suggests that it be continued with all of its powers and duties for another year. All of the officials, groups and civic representatives charged with the administration of the Election Law, who have appeared before your Committee, have urged that the work of this Committee be continued. The following excerpt from a resolution adopted by the Election Commissioners' Association of the State of New York, dated February 9, 1954, to Hon. Thomas E. Dewey and the legislative leaders follows:

"WHEREAS, The Election Commissioners' Association of the State of New York is now in session at the 38th annual winter meeting at the DeWitt Clinton, Albany, New York, and \* \* \*

"To the members of the Joint Legislative Committee we extend our sincere thanks for the manner in which they have conducted their public hearings on permanent personal registration and for their efforts in proposing legislation that may improve our present system and we recommend to the Legislature of this State and the Governor the continuance of the bi-partisan legislative committee on election matters."

All of which is respectfully submitted,

J. EUGENE GODDARD, *Chairman*  
HENRY NEDDO, *Vice-Chairman*  
ROBERT G. MAIN  
FRANK S. McCULLOUGH

Albany, New York, March 1, 1954



## APPENDIX

BILLS SPONSORED BY THE COMMITTEE OR  
BY A MAJORITY OF THE COMMITTEE

(All sections refer to the Election Law unless otherwise indicated.)

Sees. 15, 108 and 136: S. Int. 2485, S. Pr. 2650, by Marro; A. Int. 2830 A. Pr. 3445, by Main.

*Re Section 15:*

Section 15 is being amended so as to create subdivisions 1 and 2 out of the existing unnumbered paragraphs.

The purpose of new subdivision 3 of section 15 is to provide for the direct election of district leaders within any county in the city of New York.

The organization and control of political parties is governed by the Election Law except to the extent that it is left to party rules. One of the matters now left to the rules is the method of selecting district leaders and co-leaders, but there is no statutory authority to provide for their election at the polls unless they are made to coincide with State committeemen, as in the Democratic Party in Brooklyn. The names of candidates for leadership do not appear on the primary ballot. At the present time it is necessary for the enrolled voters to determine which of the county committeemen candidates whom they wish to support in their election district are pledged to a particular candidate for leader.

This is a permissive provision and provides that if the rules of the county committee shall so provide, one district leader and one associate district leader shall be elected at primary elections for each Assembly district, or part of an Assembly district, as may be designated in such rules for the purpose. In New York County, there are district leaders in both of the major parties for entire Assembly districts, and in some cases for parts of Assembly districts. The bill further provides that the district leader or associate district leader shall be of opposite sexes, shall be enrolled voters of the party residing within the district and shall be elected at the same primary election and for the same term as members of the county committee.

The bill further provides (a) that the said district leader or associate district leader shall perform such duties, powers and functions as the rules of the county committee may prescribe; (b) vacancies in such positions shall be filled by the members of the county committee within the Assembly district or part thereof as the case may be; (c) district leaders and associate district leaders shall not be members or vote in meetings of the county committee or any sub-committee thereof unless also duly elected to membership thereon.

*Re Section 108, subdivisions 3 and 5:*

Subdivisions 3 and 5 prescribe presently the form of the primary ballot and are being amended as to language to make provision for the party positions of Assembly district leader and associate Assem-

bly district leader provided for in new subdivision 3 of section 15 herein.

*Re Section 136, subdivision 2:*

This subdivision is being amended so as to make provision as to the number of signatures required to designate a candidate for Assembly district leader or associate Assembly district leader; it is proposed that the number of signatures as is now required for candidates for the position of delegate to a State convention or judicial district convention or member of the State committee shall also apply to the party position of Assembly district leader or associate Assembly district leader.

Sec. 17, sub. 3: S. Int. 2554, S. Pr. 2719, by Neddo; A. Int. 2920, A. Pr. 3044, by Travia.

The statute now provides that when vacancies exist in the county committee by reason of an *increase* of the number of election districts within the county, occasioned by a change of the boundaries or the *formation* of one or more election districts, the county committee, *upon its organization* after the election of its members, may determine the districts which the members so elected shall represent for the remainder of their terms.

Under the present language of the statute, questions have arisen as to whether the county committee may also act under the following circumstances:

- (a) *at any time after its organization*
- (b) when there is a *decrease* of the number of election districts
- (c) when there is an *abolition* of the election districts

In order to remove all doubt, the amendments are being proposed. There will be changes in the boundaries, as well as an increase and decrease of election districts in many counties as a result of the recent reapportionment act requiring changes of existing Assembly district lines.

Secs. 79, 187, 291 and 294: S. Int. 223, S. Pr. 223, by Neddo; A. Int. 241, A. Pr. 241, by Travia.

*Re Section 79:*

This amendment authorizes the board of elections to increase the amount that may be charged for a ward pamphlet containing the list of registered voters from 10¢ to \$1.00 a copy and for an Assembly district pamphlet from 25¢ to \$1.50 a copy. It is to be noted that the amount of the charge is permissive and not mandatory. The amounts now in the law were fixed many years ago (in 1922 or prior thereto). The cost of printing such pamphlets has increased considerably, primarily due to the short period of time in which they must be produced, thereby making it necessary to pay the printers overtime. Boards of election have indicated that

the proposed increase in the amounts will be consistent with present day costs for material and labor in preparing and printing such pamphlets.

*Re Section 187:*

Two very minor amendments are being made to this section. In subdivision 1 the word "fall" is being substituted for the word "full" to correct an obvious error.

There are now two subdivisions "2;" the law is being amended so that the second subdivision "2" is made subdivision "3" and the subsequent subdivisions are likewise being changed to conform.

*Re Sections 291 and 294:*

These sections are being amended to conform to changes made in the Federal law, U. S. C. Title 3, Chapter 1, sections 6 and 11 in relation to the furnishing of lists of electors. Formerly such lists were sent to the Secretary of State of the United States. However, due to changes in the Federal law mentioned above, such lists are now required to be sent to the Administrator of General Services of the United States.

Sec. 102-a: S. Int. 1384, S. Pr. 1466, by Marro; A. Int. 1549, A. Pr. 1590, by Goddard.

This amendment suspends until July 1, 1955, provisions of the Election Law specifying the weight and quality of paper upon which official ballots must be printed. A similar provision was enacted throughout World War II as a war-time measure and up to and including the 1953 Legislative Session.

The boards of election have indicated that the type of paper required by law is still difficult to obtain.

Secs. 105, 120 and 248: S. Int. 2723, S. Pr. 3190, by Rules; A. Int. 3161, A. Pr. 3700, by Rules.

At the general election in 1953, the people approved a constitutional amendment providing for the joint election of governor and lieutenant-governor by the casting by each voter of a single vote applicable to both offices (Article IV, Section 1). This bill implements such constitutional amendment.

*Re Section 105:*

The form of paper ballot when used on Election Day in the event the machine breaks down is being amended to show the offices of governor and lieutenant-governor in one section. Appropriate language is being inserted to carry out the purpose of the constitutional amendment.

*Re Section 120:*

The form of absentee ballot is being amended to show the offices of governor and lieutenant-governor in one column.

*Re Section 248:*

The form of ballot on the voting machine is being amended to show the candidates for governor and lieutenant-governor in one column. Appropriate language is being added to carry out the purpose of the aforesaid constitutional amendment by providing that the voting machines shall be so adjusted that the candidates for governor and lieutenant-governor appear in one column and that the casting of a single vote shall be applicable to both such offices.

Secs. 135 and 138: S. Int. 2693, S. Pr. 3328, by McCullough; A. Int. 2763, A. Pr. 3803, by Goddard.

The purpose of these amendments is to simplify the procedure for obtaining valid designating and independent nominating petitions and to eliminate provisions in the existing law which have caused the invalidation of petitions due to technicalities and strict judicial construction.

*Re Section 135:**Subs. 1 and 2:*

There are several minor amendments in these subdivisions as to language and punctuation.

*Sub. 3:*

In lieu of an authenticating affidavit by the subscribing witness as to the signatures on the petition, there is being substituted a "statement of witness." It is provided that such "statement of witness" shall be accepted for all purposes as the equivalent of an affidavit, and if false shall subject the witness to the same penalties as if he had been duly sworn. This amendment will eliminate the invalidation of many petitions due to faulty jurats, failure to fill in the date of swearing, failure to appear before a notary public, etc.

*Re Section 138:**Subs. 1 and 6:*

In the past, many independent petitions have been invalidated on the ground that the signers of the petition failed to register for the ensuing election as provided by the existing provisions of subdivision 4 of this section. This provision is being eliminated and there is being substituted in subdivision 6 of this bill a provision that the signer of an independent petition in order to be qualified to sign same must be registered at the time of the last preceding general election.

The election district of the signer's residence *at such preceding election* is required to be filled in on the petition as proposed in subdivision 1, instead of the election district effective on the first day of local registration as presently required in subdivision 1, and the reason for such change is as follows: election districts are never

changed from the previous general election throughout the period when independent petitions are signed. Very often, such election districts are changed, effective on October 1, which is subsequent to the period of signing independent petitions. October 1 is usually the approximate date when local registration either has commenced or is about to commence. Many signatures on independent petitions are usually therefore invalidated when there has been a change in a signer's election district, effective at the ensuing local registration, and such change is not known to the signers or circulators of the petition. They usually fill in the old election district which, if it has been changed, is fatal because section 138, first paragraph now prescribes that the election district of the signer to be filled in the petition shall be the election district effective on the first day of local registration.

*New sub. 2:*

The form and contents of the independent petition are being changed and set forth at length so as to conform to all of the proposed amendments.

*New sub. 3:*

A "statement of witness" is being substituted for an affidavit of a subscribing witness and also it is proposed that such statement shall be accepted for all purposes as the equivalent of an affidavit. This will carry out the same amendment as is proposed in this bill to section 135.

There has been some doubt in the past as to whether the election district or the Assembly district of the subscribing witness's present residence was required to be stated in the affidavit (now becoming a statement of witness). In order to avoid such confusion, it is provided that the election district or the Assembly district wherein the witness presently resides need not be set forth in the statement of the witness. Such information serves no useful purpose and is unnecessary.

*New sub. 4:*

The matter in subdivision 4 is contained in the present subdivision 3.

*New subs. 5 and 6:*

The matter in subdivisions 5 and 6 is substantially the same as in present subdivision 4 except: (a) it is proposed that an independent petition must be signed by voters numbering five per centum of the total number of votes cast for governor within the political unit involved instead of seven per centum, as now required; (b) see explanation on previous pages under subdivisions 1 and 6 of section 138 for an explanation of the proposed amendment in subdivision 6.

*New sub. 7:*

The matter contained in this subdivision is the same as now appears in present subdivision 4 at the end thereof.

*New Section 138-a:*

Very often signers of petitions do not sign their full name as required by statute and the courts have held that the signatures are therefore invalid. This new section provides that the use of titles, initials or customary abbreviations of given names by the signers of designating or independent nominating petitions shall not invalidate such signatures provided that the identity of the signer as a registered voter can readily be established by reference to the signature on the petition and that of a person whose name appears in the register of voters for the last preceding general election.

The proposed amendments to sections 135 and 138 will result in more valid designating and independent petitions and particularly ease present restrictions against independent petitions.

Sec. 153, new sub. 5: S. Int. 2722, S. Pr. 2951, by Rules; A. Int. 3162, A. Pr. 3366, by Rules.

Under the existing provisions of section 153, subdivision 3 of the Election Law, the meetings for personal registration in the year 1954 in New York City and Westchester County would be from October 4th to the 9th, inclusive. This year the Jewish Holiday of Day of Atonement (Yom Kippur) is on October 7. This holiday begins at sundown on October 6. Inasmuch as many inspectors of the Jewish faith will be unavailable to serve in the evening on October 6th, as well as on October 7th, and also many voters of Jewish faith will be unable to register on these days, it is proposed to change the registration days this year so that same do not conflict with the aforesaid holiday. The proposed registration days will be as follows:

Thursday, September 30  
 Friday, October 1  
 Monday, October 4  
 Tuesday, October 5  
 Friday, October 8  
 Saturday, October 9

The registration hours on weekdays and on Saturday will be the same as now provided by law.

It should be noted that in the past, bills to accomplish the same purpose were enacted into law: Chapter 71, Laws of 1951; Chapter 275, Laws of 1948; Chapter 397, Laws of 1943; Chapter 496, Laws of 1940. In the years 1951, 1943 and 1940 the registration days were split so that some of the days of registration were in one week and the other days of registration were in the following week.

The bill also repeals existing subdivision 5 of section 153 which fixed the times for meetings of personal registration for *the year 1951* in the city of New York and the county of Westchester. This provision is now obsolete.

Sec. 157-a: S. Int. 195, S. Pr. 195, by McCullough; A. Int. 340, A. Pr. 340, by Main.

This section pertains to the removal of names from registers in non-personal registration election districts of persons who have failed to vote at a general election during a four-year period.

Several minor amendments are being made for clarity. Also, the words "Register of Voters" are being substituted because the substituted words are the proper term. There is no such term as a "voting list."

The law at the present time prescribes September 15, and also September 20 as the last date on which the application for continuance of the name on the register shall be received. This was an obvious error and is being corrected by changing the dates to read September 15. The boards of election have requested the earlier date, namely September 15, in order to give them more time before the first day of local registration to make a necessary entry in the register after receiving an application for the continuance of the name on the register.

It is proposed that this act shall take effect May 1, 1954 because all of the boards of election affected by this provision of law have already printed their forms and have been mailing them out since January 1, 1954.

Sec. 176: S. Int. 194, S. Pr. 194, by McCullough; A. Int. 198, A. Pr. 198, by Goddard.

On many occasions during the period of local registration, a voter is registered, through no fault of his own, in the wrong election district.

The law at the present time permits the board of elections, upon the application of the voter in person, to strike the voter's name from the register of the district in which he was wrongly registered and to direct that he be registered in the proper election district.

The purpose of the amendment is to permit an application for such correction to be made also by the inspectors of election in the district where such voter was wrongly registered or by the central registration board having jurisdiction with respect to such district in case the registration was by such registration board.

Very often the voter who is wrongly registered is unaware of same. Inasmuch as the error was made in the first instance by the inspectors of election or the central registration board who registered the voter in the wrong election district, it seems that the same inspectors or central registration board should also have the right to apply to the board of elections to correct the wrong registration.

A similar bill passed both houses in 1953 (S. Int. 745, S. Pr. 778) but the bill was vetoed by the Governor because it failed to contain a provision directing the board to give notice to the voter whose registration had been transferred to the proper election district. The present bill makes a provision for such notice and also requires the board to inform the voter of the location of the polling place of the new election district.

Secs. 330, sub. 2 and 331, sub. 1: S. Int. 268, S. Pr. 268, by Marro; A. Int. 199, A. Pr. 199, by Goddard.

*Re Section 330, sub. 2:*

There is no provision at the present time which specifies within what period of time following a *convention*, a proceeding must be instituted to contest a nomination made at a *convention*. The present provision only refers to a proceeding with respect to a nomination made at a primary election. The words "or convention" are being added.

A similar bill carrying out the above amendment passed both houses in 1953. The bill, however, was vetoed by the Governor because the words "or convention" were omitted in one instance at the end of the first sentence.

*Re Section 331, sub. 1:*

A registration board sometimes unlawfully refuses to register a qualified voter. This section permits an application to be made to the court to compel the registration of such a voter. At the present time, the court is required to order the board of inspectors to reconvene for the purpose of registering such a voter *on the second Saturday before Election Day*. The underlined matter is being deleted and there is being substituted therefor "at a time specified in such order." Many boards of election have indicated that the courts often do not enter their order until subsequent to the second Saturday before Election Day. The proposed amendment will permit the court to reconvene on the second Saturday before Election Day.

Another proposed amendment requires that the board of elections shall be a necessary party in any proceeding to compel the registration of a voter or to cancel the registration of a voter and the board shall receive such notice of the proceeding as the court, justice or judge shall direct.

Article II, Secs. 2 and 5 of the Constitution: A. Int. 2881, A. Pr. 3005, by Rabin; A. Int. 2909, A. Pr. 3033, by Mrs. Ten Eyck; S. Int. 2627, S. Pr. 2793, by Van Lare.

The purpose of this concurrent resolution is to combine the two separate proposals adopted last year with reference to absentee registration and voting by the sick and disabled.

*Re Article II, sec. 2:*

This amendment will permit qualified voters who may be unable to appear personally at the polling place on Election Day because of illness or physical disability, to apply for an absentee ballot.

At the present time *such* qualified voters have no way of obtaining an absentee ballot because the Constitution restricts the right to apply for an absentee ballot to those voters whose duties, occupation or business require them to be elsewhere on Election Day. This amendment will afford to many persons an opportunity to exercise their right to vote who at the present time, through no fault of their own, are unable to do so.



*Re Article II, sec. 5:*

The proposed amendment will permit certain voters *now* required to apply in person for registration to do so without appearing in person. The voters who will benefit by this proposed amendment are those unable to appear personally for registration because of illness or physical disability *and* those whose duties, occupation or business require them to be outside of the State of New York. The amendment will also apply to a member of the family of such voters who accompany them provided such member is a qualified voter, a resident of the same election district and also if such member is outside the county of such election district.

Many persons living in personal registration election districts are disfranchised each year because of illness or physical disability or because their duties, occupation or business require them to be outside the State of New York at the time of registration. These persons are unable to appear personally for registration. The effect of this amendment will be to provide a means of registration for such persons without having to appear personally.

NOTE.—The method and proof required of such voters will be determined by the Legislature, if and when the amendments are approved and become effective.

An act to amend the election law to provide for the establishment of a system of permanent personal registration on an optional basis: S. Int. 1735, S. Pr. 2970, by McCullough; A. Int. 2080, A. Pr. 3377, by Goddard.

This bill adds a new Article 15 to the Election Law and amends various provisions of the present sections of such law to provide a system for the permanent personal registration of voters which, under the terms of the bill, may be adopted on an optional basis by the City of New York or by any county outside such city. A more detailed discussion of the provisions of the bill is contained in the earlier part of this report.

NOTE.—After the filing of the report hereinbefore set forth, another bill was introduced by the Committee, A. Int. 3269, A. Pr. 3781 by Rules. The bill provides for a mandatory house to house canvass the first year after permanent personal registration goes into effect and every two years thereafter. The provision prohibiting inspectors of election from serving as canvassers in the house to house check was also eliminated. This bill was enacted into law by the Governor and became Chapter 532.

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## MINORITY REPORT

### *To the Legislature:*

The members of the Joint Committee to Study the Election Law were unanimous in the conviction that the State's systems of registration for voting need overhauling. Even the majority report reveals that the problem "required immediate consideration."

The minority members of the Committee proposed a true and comprehensive overhaul of the registration machinery in the entire State.

We urge a system of mandatory state-wide permanent personal registration, whereby a voter anywhere in the State would register in person but once, then remain registered so long as he or she did not move his or her residence, did not commit a felony, and voted at least once in four years. We now respectfully urge that this type of legislation be adopted by the Legislature and have jointly introduced identical measures, the Marro-Travia Bill (Senate Pr. 2028 and Assembly Pr. 2173).

This bill provides for a state-wide uniform system of PPR to supplant both systems now in effect:

(a) the one in cities and villages of more than 5,000 population and in incorporated areas, where the voter is required to re-register every year in order to vote, this being called "annual personal registration," and

(b) The one in non-incorporated areas, the so-called "non-personal annual" type of registration where the voter need never appear in person to register or to stay registered from year to year.

Such non-personal registration is no more suited to the demands of the twentieth century than the cobblestone streets that were in vogue at the time of its inception. So lax and poorly designed is this ancient remnant in our Election Law that the integrity of the State's elections has been seriously jeopardized by it for years. It permits of listing of voters by proxy, and so careless has been its application in many areas of the State that names of "registered and qualified voters" have remained on the registration lists for years after the voters had actually moved or even had died. Such method provides virtually no safeguards.

There is no police check as to whether the registrant whose name is put on the list by proxy actually exists, no mail check of any sort to ascertain his residence in the area, indeed no identification whatsoever as to personal appearance, former voting place or employment and no signature asked of the voter for comparison with his handwriting when he signs for his ballot on Election Day. Even when operated most scrupulously and efficiently, such system is but thinly protected against fraud; and when operated carelessly, malodorous situations can arise and have.

The minority members of the committee are unequivocally opposed to local option as an approach to our State's registration tangle. Its net effect is discriminatory. Citizens in one part of the State will not have registration conveniences that citizens in other parts will enjoy.

The demonstration value of a so-called "pilot run" of PPR in some counties of the State has been touted as of great value in winning support for PPR in other counties. We regard this as an evasion of the basic problem. Since PPR is in use in 41 states we already have before us 41 demonstrations of how PPR works. Since these states embrace such cities as Chicago, San Francisco, Philadelphia, towns and even tiny hamlets, and areas from the suburban to the strictly rural type, they are more demonstrative of how PPR works under circumstances of all sorts than would be a "pilot run" in one county in New York State. Indeed, the PPR measure which we have introduced is based on studies of PPR as it operates in all sorts of communities throughout the country, and has extracted the best from these systems.

The bill sponsored by the majority members, the McCullough-Goddard bill, is not a true permanent personal registration bill. It does not assure to a single individual in the State the convenience and benefits of permanent personal registration. We emphasize the fact that even if such bill is passed, PPR would still not be the law in the State. It merely provides that each city and county then has the option of enacting PPR for itself.

The McCullough-Goddard bill is so weighted with expensive and unnecessary duplications, that it is sure to be unattractive to any city or county. The effect of the bill would be to stifle and destroy the putting into effect and operation of PPR; a system which the majority members agree is necessary.

The requirement of house to house canvass by two inspectors and a mail check twice each year, all to be paid by the locality, in addition to a police check of transfers and removals, is too expensive and would in effect, be a deterrent to adoption of the plan by any county or city. The provision for a two-year purge instead of every four years will result in additional expense to the locality.

The freezing of the number of election districts on the basis of the present annual registration districts is an unnecessary saddling of an expense, when many of such districts could be consolidated for the sake of cutting down unnecessary costs.

The Marro-Travia bill, sponsored by the minority members of the committee, provides for an economic, efficient and orderly system of true state-wide permanent personal registration which will meet the mandate of the people expressed at the polls in 1938, and is in basic accord with the great majority of the individuals and representatives of groups who testified at the public hearings held by the committee.

Respectfully submitted,

JOSEPH R. MARRO,  
ANTHONY J. TRAVIA

Albany, New York, March 3, 1954.

# Exhibit D

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what it is. If somebody says no, I don't care if you're the former President it still means no. And if you do it anyway, that's rape.

So I commend the sponsor for her work on this and I'm pleased to vote in the affirmative for it again.

ACTING SPEAKER AUBRY: Mrs. Peoples-Stokes in the affirmative.

Mr. Goodell.

MR. GOODELL: Thank you, Mr. Speaker. Please record the following colleagues in the negative on this bill: Marjorie Byrnes, Mr. DiPietro, Mr. Fitzpatrick, Mr. Friend, Mr. Gallahan, Mr. Hawley, Mr. McDonough and Mr. Tague.

Thank you, sir.

ACTING SPEAKER AUBRY: So noted.

MR. GOODELL: Also sir, please add to that list Mr. Brabenec in the negative and Mr. Smith.

Thank you, sir.

ACTING SPEAKER AUBRY: You're quite welcome.

Are there any other votes? Announce the results.

(The Clerk announced the results.)

The bill is passed.

Going to the A-Calendar, page 3, Rules Report No. 6, the Clerk will read.

THE CLERK: Assembly No. A08432-A, Rules Report No. 6, Dinowitz, Kelles, Sillitti, Lavine, Abinanti, Paulin,

Simon, Seawright, Steck, Fernandez, Burgos, Englebright, Galef, Gottfried, Cruz. An act to amend the Election Law, in relation to absentee voting in village elections; to amend Chapter 139 of the Laws of 2020 amending the Election Law relating to absentee voting, in relation to the effectiveness thereof; and providing for the repeal of certain provisions upon expiration thereof.

ACTING SPEAKER AUBRY: On a motion by Mr. Dinowitz, the Senate bill is before the House. The Senate bill is advanced.

Mr. Norris.

MR. NORRIS: Thank you, Mr. Speaker. Will the sponsor yield for a couple of questions, please?

ACTING SPEAKER AUBRY: Mr. Dinowitz, will you yield?

MR. DINOWITZ: Yes, I will.

ACTING SPEAKER AUBRY: The sponsor yields.

MR. NORRIS: Thank you, Chairman Dinowitz. Since the last time we debated this bill a lot of circumstances have changed. I remember doing it actually at my kitchen table. You may have been doing the same thing because there were very few members in this Chamber when we passed the first bill. My question is, it's not a very long bill. The language is very, very open-ended.

MR. DINOWITZ: I'm sorry, could you talk a little more loudly, please?

MR. NORRIS: Yes, I'd be happy to, Chair Dinowitz.

MR. DINOWITZ: Thank you.

MR. NORRIS: The -- the bill language is not very long. So my question to you are three parts: One, it says unable to appear. How would you define that under this proposed legislation?

MR. DINOWITZ: There are many people who because of the virus are concerned about going to a crowded public place, and as a result they would be unable to appear.

MR. NORRIS: Would that apply for, like, a lockdown, a shelter in place or anybody who just doesn't want to appear physically at the polling site?

MR. DINOWITZ: We have a lot of people - when I say "we," I mean me and you and everybody else here - who are concerned about going to a voting -- I mean, a polling place very often has a crowd, has lines and all that. And inevitably, there are some people who -- who may not vote even though they would like to, because they're concerned about catching COVID. Especially now that we're going through a period when there -- there's a variant that is so extraordinarily transmissible. Now, we don't know what conditions are going to be like in June or November. We just don't know. Hopefully, things will be better. I mean, I like when people go out to vote in person. I meet them on the street, I -- I -- you know, election year and the whole bit. You can't do that when people vote absentee but that's not the point here. The point here is we want to do everything we can to, in a legitimate way, give people the means to cast their vote. That's the essence of democracy, people voting. And



no one should lose their vote because they're afraid of catching the virus. And that's what this bill addresses. So I -- and we did this last year, and a lot of people took advantage of it. Particularly older people, because those were the people who were probably more likely to be afraid of going out. And it was -- it was a huge success, I think. And since the numbers are still so high, it makes sense to continue it through this year.

MR. NORRIS: Now, in terms of the illness, does the voter themselves have to have the illness?

MR. DINOWITZ: I'm sorry. Say it again, please.

MR. NORRIS: Do -- in terms of the word "illness," does the voter themselves have to have the illness?

MR. DINOWITZ: No, that's not what the bill says. The bill says, *Provided that for the purposes of this paragraph "illness" shall include but not be limited to instances where a voter is unable to appear personally at a polling place of the election district in which they're a qualified voter because there's a risk of contacting or spreading a disease that may cause illness to the voter or to other members of the public.* So it's not just about protecting the voter, it's about also protecting everybody else. That's why we wear a mask. We wear a mask not only to protect us, but to protect you, to protect these people.

MR. NORRIS: I -- I happened to look up in the Webster Dictionary the word "illness" as defined as *a sickness or an unhealthy condition of body or mind for that individual.* So I just

want to make sure, if I have -- this doesn't just apply for COVID, right? This would apply for the flu, a cold, any other disease?

MR. DINOWITZ: Yeah, it doesn't specifically say COVID. It's slightly more general than that.

MR. NORRIS: Okay, so -- so if I have a fear of getting a cold from somebody else, then under your bill someone could get an absentee ballot because they're afraid of getting a cold?

MR. DINOWITZ: Well, I don't know about you, but I don't personally define a cold as an illness. It's like -- I mean, it's a sniffle. I think we're talking about things like COVID. It could be -- maybe it could be chicken pox, I don't know. But the point is is that we -- we wanted to make it a little more general so as to take into account the contingency of -- of -- whereby there might be some -- something else that goes on this year along the lines of COVID.

MR. NORRIS: So I just want to be clear, though. So, if someone is fearful of getting a disease -- it be a cold, it could be the flu, could be COVID, could be anything -- then through the end of the year they could apply for an absentee ballot and receive one because they might be afraid to get a cold from somebody else.

MR. DINOWITZ: I -- I wouldn't put it that way. I mean we know very well that we're talking about COVID here. But we wanted to use language that was a little bit more general than that. We -- we are -- we are still in the midst of this pandemic. I mean, thankfully the numbers in New York City are going down now, but I'm not sure we can say the same about the rest of the State,

unfortunately. Hopefully that will happen as well. We don't know that there won't be another variant down the road. Hopefully that won't happen, but we have to be prepared for it. I think we would all agree in this room that we want to see every possible person who is eligible to vote to vote. We don't want anybody to not vote because they're worried about catching COVID. And -- and that holds true in all of our districts, whether a Democratic district or Republican district. You have, I'm sure, plenty of constituents who voted by absentee ballot under the special rules that we passed in 2021 and who would be very happy to take advantage of it again in 2022. And I think there will be a lot of people who are going to be very upset if they can't do that.

MR. NORRIS: Did you think about doing it on a piecemeal basis? Maybe through the village elections and not through the end of the year or -- we're going to be here until June, beginning of June. Did you think about doing that right to the end of the year?

MR. DINOWITZ: I'm sorry, doing it for the --

MR. NORRIS: For the village elections. Just do it now for the village elections and then see where we come early in the -- you know, early as we get further through May, June. We're going to be here likely into the beginning of June. Why -- why are we doing this to the end of the year?

MR. DINOWITZ: Well, that wouldn't be very efficient to have to do it again, would it? Either we're here --

MR. NORRIS: Things -- things are changing on a

regular basis. I mean, the last time we debated this bill was the summer of 2020. Not last year. And since then we've had a vaccine, people are vaccinated. People are now in stadiums -- I want to get this on the record because, you know, the Buffalo Bills had over 60,000 people in the stadium just this past week. And I'm very happy about it, by the way.

MR. DINOWITZ: That's good.

MR. NORRIS: We -- we won the game, we're going to win the next game and many more.

MR. DINOWITZ: Well, that's the only good part. But 60,000 people getting together is not too bright, in my opinion.

MR. NORRIS: But people are doing it. They're out and about, they're going to the movies, they're going to restaurants. They're -- they're moving about their business.

MR. DINOWITZ: They are --

MR. NORRIS: Certainly, that could change.

MR. DINOWITZ: Exactly. And the COVID rates are huge in -- in many parts of New York. Coincidence? I think not.

MR. NORRIS: Okay. So I want to ask you another question. So, this -- this would apply to everybody, right? So it would apply potentially to waitresses and waiters who are waiting on people all day long who are seated without their mask. Would that be correct? Would they be eligible to receive an absentee ballot under your proposed bill?

MR. DINOWITZ: If they're registered to vote, yes.

MR. NORRIS: Okay. They -- they would be.

Cashiers --

MR. DINOWITZ: If we thought there was a need we could repeal this, but it makes more -- it makes more sense to pass this and then if for some bizarre reason we would want to repeal it, we could do that. But to pass it for a limited period of time and then have to do it again before the end of Session, to me, makes no sense at all being that we like to be efficient here.

MR. NORRIS: I see. Now, in terms of, like, a candidate if they wanted to challenge the -- the verification of the absentee ballot application, would they be able to do that? What proof would be required of the voter who applies for an absentee ballot under this circumstance?

MR. DINOWITZ: It'll be no different than any other application for an absentee ballot. People have been applying for absentee ballots before I was born, I'm sure. And I don't know what -- I mean, this past year I happened to -- I filled out an application for an absentee ballot. I ultimately didn't use it. I -- I went online, (inaudible) whatever. They sent me the absentee ballot. I didn't have to show any proof. They -- they looked me up, I was registered to vote and I got my absentee ballot in the mail.

MR. NORRIS: (Inaudible) good challenges, like if they say, *I'm going to be in college, I'm going to be out of the county.* They could say, *Where's your plane ticket?* A -- a candidate theoretically could do that. They could challenge the absentee ballot

application. So what I'm asking for, would -- just to be clear, there would be no proof required, you just check the box and then the Board of Elections will send you a ballot.

MR. DINOWITZ: As far as I understand the law, there would be no difference -- difference between what we do and what we would do if this passes. There wouldn't be any additional proof. I mean, I -- I did not have to submit any proof whatsoever to get my absentee ballot. Period.

MR. NORRIS: My point was that someone could challenge the ballot. Now that's why -- or the absentee ballot application. And what -- I just want to know what proof is there.

MR. DINOWITZ: Why would somebody want to challenge an absentee ballot? Why would somebody want to deprive somebody of the ability to vote? That doesn't seem to be consistent with a democracy. You want people to vote. You want people to be able to vote, and this would help that happen.

MR. NORRIS: Okay. Now I want to ask you another question. Last year there was a referendum on the ballot for no excuse absentee voting.

MR. DINOWITZ: Correct.

MR. NORRIS: It basically allowed everybody who wanted to get an absentee ballot application the opportunity to get a ballot.

MR. DINOWITZ: That's right.

MR. NORRIS: The voters of the State of New York,

from the election results that I saw, by over 300,000 people said, *No, we do not want no excuse absentee balloting in the State of New York.* That's what they said. They voted that way.

MR. DINOWITZ: They did, after a very expensive campaign. But yes, they did --

MR. NORRIS: Oh, they did?

MR. DINOWITZ: -- (inaudible), and as a result that ballot proposal was defeated.

MR. NORRIS: All right. Now my next question, would that have included voters who applied for an absentee ballot under the temporary voters provision under your bill before?

MR. DINOWITZ: There's actually --

MR. NORRIS: (Inaudible) voters -- did it actually --

MR. DINOWITZ: Let me -- let me -- I just happen to have this with me.

MR. NORRIS: Great.

MR. DINOWITZ: This is what the ballot -- what it said on the ballot, okay? It said, *The proposed amendment would delete from the current provision on absentee ballots the requirement that an absentee ballot voter -- an absentee voter must be unable to appear at the polls by reason of absence of the country or illness or physical disability shall the proposed amendment be approved.* This has nothing to do -- well, it has a little bit to do, but this is not the same as what we're doing here. This simply says you can get an absentee ballot under any and all circumstances without having a

reason. This legislation is much narrower than that. If it was exactly the same, I don't know that that would be necessarily appropriate because, as you said, the voters voted. But the voters voted on this. They didn't vote on that. What we do here is a much more narrow set of circumstances, and it only allows the absentee ballots in -- in specific circumstances. That's not what the referendum was. The referendum was for no excuse absentee ballots. That's not this.

MR. NORRIS: So in terms of the -- the -- your -- your legislation that's going forward right now, could anybody in the State of New York receive an absentee ballot by checking the temporary illness box with no proof? They just say, *I'm afraid of getting the cold -- a cold* and check the box.

MR. DINOWITZ: Yeah, just like they do now.

MR. NORRIS: So that's like no excuse absentee.

MR. DINOWITZ: That's not no excuse. That -- there is an excuse, they're afraid of catching COVID. That's the excuse. That's not no excuse, that's excuse.

MR. NORRIS: Yeah. Okay.

I'll like to go on the bill, Mr. -- Mr. Dinowitz, thank you very much for answering my question. I appreciate it.

MR. DINOWITZ: Sure.

MR. NORRIS: Mr. Speaker.

ACTING SPEAKER AUBRY: On the bill, sir.

MR. NORRIS: Thank you very much. On the bill. Since we voted on this bill in the summer of 2020, a lot of things have



changed. Circumstances have changed. We are getting back to work. We're getting back moving around. We're going to the Bills games. We're going to movie theaters. We're out at restaurants. Things are getting back to normal. And the voters made it very clear, very clear with no excuse absentee balloting with the provision last year where they voted it down by over 300,000 votes. Voted it down. And this is very, very similar to that. And all this is is an extension of trying to move that goal line to having no excuse absentee balloting through the end of this year. And I just have to implore my colleagues to say listen to the people of the State of New York. They spoke loud and clear. *We do not want no excuse absentee voting in the State of New York.* By over 300,000 people. They spoke up. They said no. And this is very, very similar to that.

And the other thing I just want to mention is there are some constitutional concerns with this particular bill in terms of the actual -- who is entitled to an absentee ballot. That rests with the Constitution. How they are given out rests with the State Legislature. And I just want to put that on the record here because that is very, very important as the legislative history is examined down the road in this particular bill.

So with that, I think circumstances have changed dramatically. The voters of the State of New York have spoken on this issue just this last year, and very clearly. And I thank you for the opportunity to be heard. Thank you, Mr. Speaker.

ACTING SPEAKER AUBRY: Thank you, sir.

Mr. Ra.

MR. RA: Thank you Mr. Speaker. Will the sponsor yield?

ACTING SPEAKER AUBRY: Mr. Dinowitz, will you yield?

MR. DINOWITZ: Yes.

ACTING SPEAKER AUBRY: Mr. Dinowitz yields.

MR. RA: Thank you, Mr. Dinowitz. So, I have some questions as well, you know, really a couple of different areas of this. So I want to start with just the administrative side of this within the Board of Elections because as I'm sure you know, when somebody makes an application for an absentee ballot it goes to the board and the board approves it, you know, sends the person a ballot. And as we know, everything within the boards in our State is done in a bipartisan fashion, and traditionally -- we now have a portal, obviously -- but people would use -- would use this form. And my -- my question really is when a commissioner at the Board of Elections gets an application for an absentee ballot, it doesn't say anything about fear of illness. So how can a commissioner evaluate whether this person is eligible for an absentee ballot when there's nothing in the form to talk about this excuse for getting a ballot.

MR. DINOWITZ: The -- the form, which I happen to have here, the form indicates that you can check off a temporary illness or physical disability, a permanent illness, you know, or physical disability and a few other options. You could be out of town,

you're -- you're absent from the county or the city on Election Day. So they get the form and one of those boxes is checked off.

MR. RA: So what would be the appropriate box to check off if you're using the excuse? None -- none of those boxes -- I'm looking at the same form you are right now -- none of those boxes say anything about a fear or risk of contracting an illness. So how is a voter to know what the appropriate box to check is, and how is somebody at the Board of Elections evaluating that application to know whether the person has a valid excuse to get one?

MR. DINOWITZ: Because the boards of elections, I believe, inform the voters, thousands and thousands of people in my district and I assume in everybody else's district voted by absentee ballot based upon the fear of COVID and they were instructed to check the box that says temporary illness or disability, and they did. I mean, I don't know how many people Statewide voted that way, but it was a huge number. And for the life of me I don't understand why we would not want to help more people vote. Legitimate voters voting. That's what we want to do.

MR. RA: That's -- that's great. But what you're making right now is really an emotional argument, not a -- not a legal argument. Legally, the question is is this an appropriate exercise by the Legislature, or does the fact - and it's a fact - that our State Constitution requires not just an excuse for voting absentee, but a very specific -- you know, one of these very specific categories for voting absentee. So, I mean, it's great to look at all the -- I mean -- and we're

dealing with this in so many different areas of the law right now. We're talking about, you know, what we think is reasonable and great for public health and everything else, but at the end of the day we're -- we do have a system of a constitution and of laws. And if this is not a valid use of our legislative power because our State Constitution says you can vote absentee if you're absent from the county or if you're ill, then any reason we have for doing it just isn't enough. We need to actually have the constitutional power to do this.

MR. DINOWITZ: Well, I -- I don't agree with you that we don't have the constitutional power to do it. But beyond that, we've had this now for two years. In 2020 Governor Cuomo issued an Executive Order which allowed this, and in 2021 we passed legislation that I sponsored to do this. This legislation is -- is basically the same thing, except we also include village elections where the -- that are administered by the village people. And so we'd be allowing more people actually to take advantage of this provision. But I don't see that this is inconsistent at all with the State Constitution, and it certainly hasn't been -- I don't know if it's been challenged, but it hasn't been successfully challenged.

MR. RA: Well, I mean, it was challenged but the final decision on it that came out of the Appellate Division was, I believe, was too close on for -- well, we'll get -- we won't get into that (inaudible). It's probably going to happen again.

But, anyway, so one of my other questions on the administrative side of this, we're doing this today, and as some of my

colleagues may note, there was a special election for the State Assembly held yesterday in New York City. And, you know, we're in a -- we've been in a tenuous situation, really, through the holiday season. Thankfully, things are starting to come down. But that election was conducted without the benefit of this. I don't know if people were able to vote absentee or not. But at the height of Omicron, that election was conducted yesterday without this. And --

MR. DINOWITZ: Check out the turnout in that election. It was so miniscule. Now, I don't know if that was because people couldn't do this because this hasn't been passed yet, but the turnout was really, really low.

MR. RA: Well --

MR. DINOWITZ: We do have elections coming up, several of them in the next several weeks. Hopefully it -- it could be after we pass this.

MR. RA: So this will be applicable if -- you know, I know we have some colleagues that may be moving on to other things. This will be applicable for any of those special elections.

MR. DINOWITZ: If --

MR. RA: (Inaudible)

MR. DINOWITZ: It depends on the timing. If we pass it, if it's signed. If the time period to apply for the absentee ballot is still happening, you know, it will depend on the time frame.

MR. RA: So -- so, but just getting back for a second. So, within the statute that this is amending, there is specifically -- it

does actually say what the application for the absentee ballot should say. So I'm just wondering, why not as part of this add something in that section where it says unable to appear at a polling place because of illness or -- or disability so that the form could be clear to the voter that they're utilizing this excuse?

MR. DINOWITZ: Well, I don't believe that there -- that there would be enough time to change the form and -- and get it throughout the State for that to happen. At least not for the upcoming elections and maybe not even for the village elections and maybe not even for the June 28th election. And that's why the wording in the legislation is what it is. And it's really very simple and straightforward.

MR. RA: We couldn't get the (inaudible/cross-talk) online for people to print and submit an application? We could do that by the end of the day today.

MR. DINOWITZ: We could do a lot of things by the end of the day. But the question is what are the various boards of elections -- and what are there, 58 of them I guess -- would they be able to, you know, do that. And the answer is I don't know.

MR. RA: Okay. Putting -- putting that aside and just in terms of how you've chosen to go about this. I know that this was done a couple years ago, but what about -- since this is kind of a specific situation, as you I'm sure know, under Title 3 of the Election Law we have a couple of special ballots. Like, we have one for employees of the Boards of Elections, emergency responders, victims

of domestic violence. Why not take that approach and have basically a, you know, a temporary type of ballot for somebody who has fear of -- of contracting an -- an illness like COVID?

MR. DINOWITZ: Well, that sounds like creating additional bureaucracy to me. I mean, what -- what we want to do here is pretty straight forward and it accomplishes the goal of allowing people to vote in a way that they feel safe.

MR. RA: I -- I don't know that it would create additional bureaucracy. I do think that it would make things much clearer on both the administrative side within the Boards of Elections and with the voter side as to their eligibility to vote.

MR. DINOWITZ: And there might be a cost attached to it which some might say would be an unfunded mandate on the local boards, and I'm not sure that that's something we want to do at this time either.

MR. RA: Okay. So -- so lastly, and just getting back to the constitutionality side of this. And I --

MR. DINOWITZ: Isn't that Mr. Goodell's --

MR. RA: I'm sorry?

MR. DINOWITZ: I said isn't that Mr. Goodell's job, the Constitution?

MR. RA: I'm sure he will get into it plenty. But having sat next to him for two years down here and I had an office next to him for I think eight years since I've been here, some of it has rubbed off. So as -- as I'm sure you -- you know, right, we had this

referendum last year and it was an attempt to make New York State, you know, not an excuse absentee ballot state, but essentially a no excuse absentee --

MR. DINOWITZ: That's correct.

MR. RA: -- ballot state. And Article 19 of the State Constitution sets forth that procedure that we have to have a concurrent resolution to amend the State Constitution, it gets passed by a successive Legislature, goes out to the public. As we said, this one was -- was defeated. So would you say then this -- I assume you don't believe this bill amends the State Constitution, correct?

MR. DINOWITZ: Correct.

MR. RA: Would you -- do you believe it clarifies the State Constitution with regard to allowing this excuse? I mean, how would you characterize this approach to allowing somebody to vote absentee due to not having an illness, but a fear of contracting an illness?

MR. DINOWITZ: I think this legislation is -- is no different than any one of hundreds of other laws that we passed that does not clarify the Constitution. I don't think this clarifies the Constitution. The Constitution is the Constitution. This -- this is not relevant to that except of the fact that it's a similar idea. But the constitutional amendment that failed was for no excuse absentee ballots. That is not what this is.

MR. RA: Okay. So can you think of any situation where a New York State resident, a registered voter, this year wouldn't



be able to request an absentee ballot by just saying they have a fear of contracting an illness?

MR. DINOWITZ: Yes. If they're not -- if they're not fearful of contracting the illness then they shouldn't request it. Not everybody's a liar. If somebody's not fearful, they're not going to request it. What do you think, people just want to, you know, stay at home because they're lazy? I don't think so. I think most people who vote like to vote in person. I know I do.

MR. RA: But how -- how would anybody know whether somebody is actually fearful of getting an illness? I mean, you're getting (inaudible/cross-talk) --

MR. DINOWITZ: They checked off the appropriate box.

MR. RA: There's -- but there will be no box that says, *I'm fearful of getting the illness*. They're going to say, *I have an illness*.

MR. DINOWITZ: The instruction of the Board of Elections -- I -- I believe that was on their website -- very clearly said that if you are fearful of COVID, of catching it or spreading it or whatever, that you should check that particular box. So when somebody would go and look to apply for an absentee ballot, the instructions were there. That's how they know. And in terms of how do we know whether the person was actually fearful of that, well, I -- I don't think we can read people's minds, but I do think that the vast -- most people are -- are honest and most people -- it's not like this

allows people who aren't eligible to vote to vote. It's not like non-voters are going to be voting. These are voters we're talking about, and we want to make it such that they can vote without worrying about COVID, which is unfortunately after almost two years still here. And people -- and by the way, not everybody is going to movies and going to, you know, Bills game and things like -- I haven't gone to a movie in over two years. I'd like to go to the movies. It can't -- that doesn't mean I can't possibly catch it, but I'd like to keep the odds more in my favor. So I don't go to the movies. I don't go to all these crowded places. And I think a lot of people are living like that. And the people who don't, well, then they have a greater chance of catching something.

MR. RA: Thank you, Mr. Dinowitz.

Mr. Speaker, on the bill.

ACTING SPEAKER AUBRY: On the bill, Mr. Ra.

MR. RA: So, I -- I just want to reiterate, you know, three real points here. Number one, I think that this is vague. It relies on somebody's, basically, state of mind for it to be valid. They're going to check a box. We're actually telling a resident to check a box and then sign a form under penalty of perjury that says they're ill, but we're saying, *Don't worry, we said that ill means you fear getting ill.* So it's vague both, I think, on the voter side to know whether you qualify. It's vague on the Board of Elections side. But back to, you know, the constitutionality of it. I can't see any circumstance under which any registered voter in New York State wouldn't be eligible for

an absentee ballot under this. Now, there may be plenty of people in this Chamber who think anybody who wants an absentee ballot should be able to get one, and that's great. And it's great to say that we need to keep people safe and all of that. But that's not what our State Constitution provides for. And the voters this year were asked the question whether they wanted that to be the case and they said no. Now my colleague talked about all the money that was spent. Well, you know, you also talked about the prior Governor who signed the prior bill. He spent a heck of a lot of money to get elected multiple times. All of us spend money to get elected. That's how elections work. So the idea that just because there was a campaign out to educate the public about that particular bill and certainly influenced their votes doesn't make what the voter decided any less legitimate. The voters spoke last fall. They don't want no excuse absentee voting. And the correct way to allow increased absentee voting in our State is to amend the provisions of the State Constitution, which was attempted and failed.

So I would urge my colleagues to vote in the negative. Thank you.

ACTING SPEAKER AUBRY: Thank you, Mr. Ra.  
Mr. Lawler.

MR. LAWLER: Thank you, Mr. Speaker. It's been a long time. Will the sponsor yield?

ACTING SPEAKER AUBRY: Mr. Dinowitz, will you yield?

MR. DINOWITZ: Yes.

MR. LAWLER: Thanks. I'll be relatively brief because I know most of these questions have been asked and answered. You made reference to the Bills games several times. I -- I just -- I want to make sure I heard you right. You were against the 60,000 people attending the game?

MR. DINOWITZ: No, I just wouldn't want to be one of the 60,000. I think it's great that the Bills won. But I personally, my choice, I would not -- if I was afforded the opportunity to go to the game with 60,000 of my best friends, I would not want to go. That's just me.

MR. LAWLER: Okay. I think you said it was a bad decision, if I recall. I would just note that the Governor attended a Bills game on September 12th.

MR. DINOWITZ: And that's her privilege.

MR. LAWLER: Right. So it's not -- it can't be that bad of an idea.

Why is -- why is this bill necessary, in your -- in your mind?

MR. DINOWITZ: I think it's necessary because we have seen -- I've seen that there are many, many people who don't feel comfortable going out in crowds still. It's unfortunate. It's unfortunate. I mean, I voted in person but I was very careful and I think most people try to be careful. Not everybody, especially the people who don't wear their masks. But I think we, as a Body,

regardless of our political affiliation, should want to make conditions such that everybody who's eligible to vote can vote if they want to vote. No one's forced to vote, but if you're eligible we don't want anybody feeling that, *Oh, well it's only a primary or, It's not a Presidential so I'm not going to bother this time because I don't want to take the chance.* I mean, it's very frustrating seeing that there's only one time in four years where there's huge lines at the polls, and that's November of -- of Presidential. So, we want people to vote. We want more people to vote. And certainly (inaudible/cross-talk) not to vote because they're -- because they're nervous about this. You know, some people are perfectly comfortable going into crowds right now. Others aren't so comfortable. And I don't think this is such a big lift for us to make it easier for them to vote by absentee ballot. It's not no excuse absentee ballot. It gives people the opportunity to vote. And I think -- as I said, regardless of affiliation we collectively should want to have as many people as possible participate in our democratic process.

MR. LAWLER: Right. Well, the problem here is that we've defined what the excuses are to request an absentee ballot per the provisions of the State Constitution and under the laws of New York. We've defined those excuses. And to my colleague's point before, they have been challenged in the past to ensure that somebody who is applying is legally doing so. Now, the reason that we're doing this bill is because the no excuse absentee balloting provision failed in November. Had it passed, would we have to do this bill today?

MR. DINOWITZ: We would not. Had the bill we passed last year covered a longer period of time we wouldn't have to do it now, either. But we're in a situation that --

MR. LAWLER: Well, one -- one would assume that we are doing this because of the state of emergency. So we should be doing it on a temporary basis, not a long basis.

MR. DINOWITZ: Well, but there should be a temporary basis.

MR. LAWLER: It should be based on -- it should be based on the situation on the ground.

MR. DINOWITZ: This bill is just for this year. It's not beyond this year. I thought it should actually be for two years. But in either case it's -- it's temporary. If we -- if -- if -- let's hope not, but if things are bad next year then we'll have to look at that at the time. Hopefully that won't be the case.

MR. LAWLER: So --

MR. DINOWITZ: But we want to make sure this year that no one feels that they should stay home because they don't feel comfortable going to the polls. I know people who live within a block of their polling place who still voted by absentee ballot. They weren't lazy. They weren't pulling, you know, something. They just didn't feel comfortable going into the crowded polling place, and they still were able to have their vote (inaudible/cross-talk) --

MR. LAWLER: I personally -- I personally voted for the bill last year to allow people the opportunity to vote by absentee

ballot without an excuse. I voted for that. The voters --

MR. DINOWITZ: Good vote. Good vote.

MR. LAWLER: -- rejected it. The voters rejected it. They said no. Now, you can decry the money that was spent by the Conservative party and others --

MR. DINOWITZ: You know what? That's not really relevant. I was just pointing out a fact. But that's really low (inaudible/cross-talk).

MR. LAWLER: Well that's -- no, it's relevant insofar as it's our democratic process. And people have a right --

MR. DINOWITZ: And people have a right to absentee ballots.

MR. LAWLER: -- to express their opposition. People have a right to express their support. Unfortunately, the Democratic party couldn't get its act together and put a support campaign together. So I don't know what to tell you. But the voters --

MR. DINOWITZ: But this is not (inaudible/cross-talk) --

MR. LAWLER: The voter -- the voters spoke and they said, *No, we want a process. We want you to have to apply for an absentee ballot, as you have for the entirety of our elections, and to follow the law.* That is not asking too much on behalf of the voters. I think what is remarkable is that shortly after the voters rejected this attempt, the Governor said, *I want New York State to be a leader, and we have not been a leader in the past. We have made it too hard to*

*vote. I believe that everyone should be able to vote by mail. And that's shortly after the voters rejected it. So what this bill says to me is that this Body is trying to circumvent the will of the voters. That's what it is doing. And it using a crisis to do it. We have --*

MR. DINOWITZ: Well, I'll have to disagree with what you're saying because the voters did not reject this. The voters rejected the concept of no excuse absentee balloting. This is not the same thing.

MR. LAWLER: Right, but --

MR. DINOWITZ: (Inaudible/cross-talk). People have trouble understanding the difference.

MR. LAWLER: Here's the problem--

ACTING SPEAKER AUBRY: Gentlemen, please allow each other the room to speak. Not a cross-cut, please.

MR. LAWLER: Thank you, sir. Every -- every voter is eligible to use this -- this excuse. Now, you can say nobody's lying -- and I'm not accusing anybody of lying about being fearful of catching COVID, but the reality is that every New York voter will be eligible, under this bill, to use the temporary illness or disability box to receive an absentee ballot. Everyone. Because as you point out there is no way to verify it. You cannot -- you can't get in somebody's mind to see whether or not they're fearful and neither can I. So nobody will be able to verify that, whether or not somebody is -- is eligible under that box. I can verify if somebody's out-of-State, if somebody's out-of-county, but I can't verify that. So everyone is



eligible. So that is in and of itself giving everybody a built-in excuse and, therefore, making it no excuse absentee balloting. We can go round and round and have semantics and figure out a way to say, *No, it's not*. It is. And that's the problem here. We are two-plus years into --

ACTING SPEAKER AUBRY: Mr. Lawler, would you get to the question? You asked him to yield so you could question. You're not --

MR. LAWLER: Sure. I'll --

ACTING SPEAKER AUBRY: If you want to speak to the bill --

MR. LAWLER: I'll go on the bill. I'll go on the bill.

ACTING SPEAKER AUBRY: That's good.

MR. LAWLER: Thank you so much.

ACTING SPEAKER AUBRY: He doesn't need to stand while you do this.

MR. LAWLER: Sounds good. The reality here is that New York State is rejecting the will of the voters. New York State and its government is saying, *We don't care what you have to say. We don't care that you rejected our constitutional amendment. We don't care that New Yorkers said you need an excuse*. So we're going to use this crisis -- as the old adage goes, *Never let a good crisis go to waste*, and that's exactly what this is. It's an attempt to thwart the voters and it's wrong. It's wrong.

And so I really encourage all of my colleagues to put

your party label aside for a minute and recognize what the voters said when given the opportunity to make this permanent. They said no. So I encourage everybody to vote against this bill.

ACTING SPEAKER AUBRY: Thank you.

Mr. Goodell.

MR. GOODELL: Thank you, Mr. Speaker. Would the sponsor yield?

ACTING SPEAKER AUBRY: Mr. Dinowitz, will you yield.

MR. DINOWITZ: Yes. It's -- it's been so long. I really missed you.

MR. GOODELL: Likewise, Mr. Dinowitz. And thank you very much for yielding.

MR. DINOWITZ: You're welcome.

MR. GOODELL: I have been listening intently, and I -- I think I know the answer but I just wanted to make sure. Under this bill, can a person who is perfectly healthy request an absentee ballot?

MR. DINOWITZ: If they are fearful of catching an illness such as COVID, yes. It doesn't say you have to be ill. It says you have to be fearful --

(Pause)

*Illness shall include -- I'm not going to read the whole thing again -- where a voter is not able to appear personally because there's a risk of contracting or spreading a disease that may*

*cause illness.* And of course the absentee ballot application, when they request it they say, *I'm requesting in good faith.*

MR. GOODELL: So --

MR. DINOWITZ: If they say they're doing it in good faith will be doing it in good faith, I would imagine they would be.

MR. GOODELL: You've mentioned several times, including just now, that an individual would be eligible if they were fearful of getting sick, right?

MR. DINOWITZ: Yes.

MR. GOODELL: But the actual bill language says "unable to appear." The word "fearful" is not in the bill language, it's "unable" --

MR. DINOWITZ: That word is not there. Unable to appear because there's a risk of contracting. Yes.

MR. GOODELL: So, is this language then limited to those who are physically unable to appear? For example, if there was a lockdown or a shelter in place order or they were quarantined or there was a suspension of the subway or mass transit? I mean, those all occurred. (Inaudible) --

MR. DINOWITZ: That certainly would be grounds for getting an absentee ballot, sure.

MR. GOODELL: For sure. But this bill goes beyond that. So those who are able to appear but are fearful would still be eligible. Is that, under your interpretation, the way this bill language is to be read?

MR. DINOWITZ: Well, it depends on how you define "able." If somebody is physically capable of walking to the polling place -- I live a block from my polling place. I could just walk there. But if I was concerned that by doing it I would run the risk of contracting an illness like COVID, then that would make me eligible to apply for the absentee ballot under the provisions of this bill.

MR. GOODELL: Are you aware of any documentation of any infections that have occurred as a result of in-person voting?

MR. DINOWITZ: Am I aware of any infections that -- I don't -- lots of people got the infections. I don't know where people get it. They may not themselves know where they got it.

MR. GOODELL: But you're not aware of any studies or documentation of any infections --

MR. DINOWITZ: I don't think there have been any studies done that I'm aware of.

MR. GOODELL: Well, last year the Governor published a list. It was quite a detailed list, over 30 items on that list of where people were exposed or contacted COVID based on their contact tracing. And I looked at the entire list and nowhere, by the way, did it say voting in person. Am I correct to assume, then, that voting in person wouldn't even show up on this list?

(Inaudible/cross-talk)

MR. DINOWITZ: I haven't -- I haven't seen the list

--

MR. GOODELL: -- percent.

MR. DINOWITZ: I haven't seen the list, but I'm sure most of the things on the list -- and I haven't see the list so I'm just assuming now -- are things that -- that happen, like, on every day basis; going to the grocery store, going to school, going to work. Voting takes place just a few times a year, so there may not be any reason for such a thing to be on the list in the first place.

MR. GOODELL: Now, this bill is triggered only if you are unable to appear because of a risk of contacting or spreading COVID. Is that risk a risk that has to be quantifiable? Such as the certain infection rate in the community or an Executive Order or a declaration of emergency? Is there any quantification of what that risk must be?

MR. DINOWITZ: I don't believe I see that in the bill, so I'm going to say no.

MR. GOODELL: And certainly, this is -- when we're talking about risk, there are some people that are at high risk and some people that are at very low risk, based on medical experience we've seen so far. This language is not limited to people who are recognized at high risk like senior citizens or those who have comorbidities, is it?

MR. DINOWITZ: It does not delineate -- it does not separate people like that. However, I think if we checked the records we will find that the -- the people who've actually taken advantage of the provisions of this bill last year weren't such people. It was disproportionately senior citizens.

MR. GOODELL: I think we all understand that what we're doing is asking the voters to check a box in a form that's by statute that would really stretch the normal reading of English and do so under perjury, certifying that they are temporarily ill when they could be perfectly healthy. Is there any verification of any kind to back this up? For example, as you know, there are some people who are not vaccinated because of a medical exception, right?

MR. DINOWITZ: Well, because they choose not to get vaccinated for some bizarre reason. It's not just medical exceptions.

MR. GOODELL: Right. It could be a religious exemption or a medical --

MR. DINOWITZ: Or it could be people who just don't want to get vaccinated, regardless of religious -- religion -- religious beliefs or medical situations.

MR. GOODELL: But this exception is not limited to those who are unvaccinated for whatever reason, legitimate or not. It's not limited to those who are -- have comorbidities or have a doctor's excuse, correct? There's no -- there's no objective limitation on this language, correct?

MR. DINOWITZ: No. I mean, the bill is very straightforward. And I will tell you just so you know - and I don't know if it's true in other boroughs - but in the Bronx there has been a very significant number of people who work at the Board of Elections who've contracted COVID over time, including -- including the

present. And so it's not only the people who vote. There are people who work the polls who could also be -- hopefully not, but who could be endangering other people. It's not surprising that there are a certain number of people, particularly older people or particularly people who may be immunocompromised, but who aren't necessarily, like, sick that -- that would take advantage of the opportunity to be able to vote by absentee ballot during this health crisis.

MR. GOODELL: Certainly. And to be honest with you, if the bill were narrowly drafted to deal with those who have comorbidities or cannot take the vaccine because of a medical exemption or religious exemption, or -- and it's tied in to an infection rate or some other objective criteria, we'd be talking about a different bill. But none of that is in this bill --

MR. DINOWITZ: (Inaudible) I don't -- I'm sure you'd want to see some documentation. As far as, you know, as being immunocompromised or some other comorbidity.

MR. GOODELL: Certainly.

MR. DINOWITZ: I'm not sure how simple that would be to do. This is very simple, straightforward. And it's clear to me based on what happened in the last year that the people who voted by absentee ballot under this provision were exactly the people we're talking about here.

MR. GOODELL: Now, believe it or not I've actually been involved in election litigation and we actually did challenge an absentee ballot. And one of the cases I was involved in it went all the

way up to the Court of Appeals and I was pleased that at least in that case they agreed with me. They don't always, but that time they did. And sometimes, you know, elections can be decided by just a few absentee ballots, particularly local elections. Would it be open to a candidate challenging an absentee ballot to point out that the person who claimed they were fearful of COVID was a waiter or a waitress that full-time served people without masks, or cashiers who see hundreds of customers every day walking in front of them or sports fans who have season tickets to the Bills? Or maybe ICU nurses who work day in and day out with COVID-infected people? Or a routine subway rider or mass transit rider? All people who have gone about their daily lives without preparing -- without any manifestation or objective criteria of fear. Could -- could a candidate challenge and say, *Hey, you're not unable to appear because of a risk, it's evidenced by all of these characteristics that you exhibit. You're fully vaccinated, you're boosted. You ride the subway, you attend sporting events. You have no hesitation about going out to a restaurant. Can a candidate say, How do you qualify for not appearing for voting when you do all of these other activities?* Is that an opportunity that exists under this legislation to challenge the validity of an absentee ballot?

MR. DINOWITZ: Clearly, we live in a very litigious society, which you are no doubt a very significant part of if you think that there's going to be all this litigation on -- on this. Anybody can bring a challenge in court on anything. Why somebody would do that and go through a lot of trouble to prove that somebody, you know,



went to a restaurant, I don't know. But my experience, at least in -- in my area, is that the people who got the absentee ballots were simply people who fell right into the category we're talking about people, people who were really nervous about going out to vote. And -- and I think the proof is that the people who voted absentee, at least in my district, excused old. Those were the people who voted to -- to a very significant degree, much more so than usual. The numbers were up and the percentage of people who were older was up also. So that suggests to me that it wasn't simply people who just didn't want to, you know, walk around the corner to vote, but actually people who had this concern, which I'm sure we would all share for our constituents.

MR. GOODELL: Thank you very much, Mr. Dinowitz. I appreciate your comments and thank you for the courtesies.

On the bill, Mr. Speaker.

ACTING SPEAKER AUBRY: On the bill, Mr. Goodell.

MR. GOODELL: This legislation is interesting in the sense that it takes what would normally be very clear and understandable language in the Constitution and makes it rather vague and precise and really different than an ordinary plain English reading of the Constitution. So what the Constitution says is you can vote by absentee ballot if you, quote, "... are unable to appear personally at the polling place." Unable to appear. And so the first thing this bill says

is even though you are perfectly capable physically of appearing, you're unable to appear if you don't want to vote. Well, that's a strange reading of "unable," isn't it? I mean, I would understand if it said -- if it said you can get an absentee ballot if you're unable to appear because the subway is shut down or mass transit is shut down. Or you're unable to appear because there's a lockdown in place or there's an order to show -- shelter in place. I would understand if this bill said you're unable to appear if you're ordered into quarantine. All of those deal with the plain English in the Constitution which says "unable to appear." And what this bill says is even though you are perfectly capable of appearing and may appear all over the community on a regular basis, if you are fearful of going then we'll consider it as though you're unable to appear. So then we look at what is it that triggers being unable to appear other than just a subjective fearfulness that is not documented in any particular way. When we're not limiting this bill -- it's not limited to those who have a legitimate fear because of comorbidities or because they cannot get the vaccine because of a medical situation or because they're otherwise at high risk. No. This bill would apply to those who are perfectly healthy, absolutely perfectly healthy, who are avid Buffalo Bills fans, who love eating out at restaurants, who work as a cashier or as a waitress or in any other activity that involves a lot of contact. It doesn't matter. You can be perfectly healthy, routinely engaging without hesitation, and you could apply for an absentee ballot under this language which certainly strains the constitutional language which says you're unable to appear

because of illness. Now, we're told that this language would allow you to apply for an absentee ballot, even though you're perfectly healthy, if you thought there was a risk of contacting or spreading a disease and, as the sponsor noted, that is not limited to COVID. It could include the common cold or less common things like chicken pox (inaudible). (Inaudible), flu. But again, the Constitution says because of illness. Now, I suppose in theory we could limit this to those who have been diagnosed as having the COVID Fear Syndrome. Apparently that's now becoming a recognized diagnosis.

Mr. Speaker, if there's no other people I would like to continue.

ACTING SPEAKER AUBRY: We do have other speakers.

MR. GOODELL: In that case, thank you for the courtesies. I'm not in favor of this twisted language, but I'd defer to the comments of others that are coming after me. Thank you, sir.

ACTING SPEAKER AUBRY: Thank you.

Mr. Epstein.

MR. EPSTEIN: Would the -- would the sponsor yield?

ACTING SPEAKER AUBRY: Mr. Dinowitz, will you yield?

MR. DINOWITZ: Yes.

ACTING SPEAKER AUBRY: Mr. Dinowitz yields.

MR. EPSTEIN: Mr. Dinowitz, are people still dying

in this country from COVID?

MR. DINOWITZ: I believe the death toll in this country is past 855,000. And, in fact, it's the single-biggest death event that's ever taken place in the entire history of our great republic. Greater than World War II. Greater than the Civil War. Greater than the Pandemic of 1918. The answer is yes, people are still dying.

MR. EPSTEIN: Almost 2,000 people are probably dying as of today or yesterday from this pandemic. Right?

MR. DINOWITZ: Yes. Almost 2,000 people are dying. Sadly, most of them are not vaccinated. But it's a huge number of people that are dying and it's horrible.

MR. EPSTEIN: And -- and is there -- if someone wants to vote and isn't wearing a mask, can the Board of Elections stop someone from voting who isn't wearing a mask?

MR. DINOWITZ: I believe everybody who goes into the polling place must be wearing a mask. I'm not -- I'm not aware if they stopped anybody, but then again I'm not aware that there's anybody who actually who had the audacity to go in there not wearing a mask and insisted upon voting.

MR. EPSTEIN: So -- so because we had it in my polling place where people weren't wearing masks but they couldn't -- because they were coming into vote there was no prohibition from letting them vote, even if they were maskless.

MR. DINOWITZ: I --I don't -- I'm not sure you can stop a voter from voting. (Inaudible) specific case.

MR. EPSTEIN: And so -- so you could have a well-founded fear that if a maskless person was in the polling place that they could potentially, you know, impact someone else from not going into that polling site.

MR. DINOWITZ: Oh, not only that, but many of our polling sites are in public places like schools, and schools are generally open on Election Day -- well, they're certainly open on primaries -- and there could be other people in the school besides voters. So if anyone -- there are many opportunities for there to be unmasked people - hopefully not - but there could be -- that certainly could happen.

MR. EPSTEIN: Well, thank you.

On the bill, Mr. Speaker.

ACTING SPEAKER AUBRY: On the bill, sir.

MR. EPSTEIN: I just really want to applaud the sponsor for taking a commonsense public health decision in relation to our polling. I mean, we've seen this pandemic getting worse over the last month. We see thousands of people dying every single day, and if someone has a well-founded fear in their own mind that they're going to get sick -- and literally, I spoke to a 93-year-old constituent the other day who's got the -- got the shot, got the second shot, got the booster (inaudible) she was going to be eligible for a fourth shot, but still doesn't feel comfortable going out because of her health. We should not limit her constitutional right to vote. So this bill will allow her and people who are similarly situated to be able to feel

comfortable voting asking for an absentee ballot. Even though they may be able to go out and do other things, their fear of voting because of health consequences, we should protect those New Yorkers. We should protect their rights. We should ensure that everyone has the right to vote and has access to -- to voting whether they feel comfortable because of health consequences or not, to go into the polls.

This is a good bill. I want to applaud the sponsor and I encourage everyone to vote in favor of this. Thank you, Mr. Speaker.

ACTING SPEAKER AUBRY: Thank you, sir.

Mr. Walczyk.

MR. WALCZYK: Thank you, Mr. Speaker. Would the sponsor yield for some questions?

ACTING SPEAKER AUBRY: Mr. Dinowitz, will you yield?

MR. DINOWITZ: Gladly.

ACTING SPEAKER AUBRY: Mr. Dinowitz yields, sir.

MR. WALCZYK: Thank you. Through you, Mr. Speaker, how many absentee ballots, roughly, were requested in the State of New York in 2020 when we started the -- the new phase of how we vote here in New York State?

MR. DINOWITZ: I would have to check. I don't know offhand. A lot. It was a very high number.

MR. WALCZYK: Through you, Mr. Speaker, I could provide the sponsor an answer. It's 2.5 million absentee ballots were requested in 2020.

ACTING SPEAKER AUBRY: Mr. Walczyk, could you lean into the mic a little bit so that we can hear you?

MR. WALCZYK: Would I just be able to take my mask off, Mr. Speaker? Would that work?

ACTING SPEAKER AUBRY: Well --

MR. WALCZYK: Well, the person in front of you --

ACTING SPEAKER AUBRY: (Inaudible)

MR. WALCZYK: Is that better? No problem, Mr. Speaker. How many absentee ballots were requested in 2020 in the State of New York? Through you, Mr. Speaker.

MR. DINOWITZ: I -- I believe the number -- I'm guessing is the number is -- is a huge number. I don't know the number, though, but it was -- it was probably the most ever.

MR. WALCZYK: It is. Actually, at 2.5 million. And through you, Mr. Speaker, if the sponsor would continue to yield, did you notice that some areas had a higher rate of requests for absentee ballots in 2020 than other areas of New York State?

MR. DINOWITZ: Well, to be perfectly honest, the only district I would have looked at was the 81st Assembly District. So I -- I don't know. I wouldn't know one way or the other.

MR. WALCZYK: And through you, Mr. Speaker, that -- that Assembly District is located in New York City. Do you

happen to know what the rate of requests for absentee ballots in New York City was in 2020?

MR. DINOWITZ: No. But I know that a very high percentage of people who made the request did not vote by absentee ballot. Many voted in person, some didn't vote at all. But it was high. It was very high.

MR. WALCZYK: Mr. Speaker, it was 19 percent. And the answer to my earlier question, the City has made up the bulk -- the City is a major metropolitan area and has made up the bulk of the requests for absentee ballots in 2020. Do you have -- would you have any guesses as to which counties or areas of the State would have the lowest rate of requests for absentee ballots in New York?

MR. DINOWITZ: I would guess - and this is just a total guess - that people who may live in rural or less densely-populated areas would have been less likely to make those requests. Maybe they had fewer fears of -- of the COVID but because there aren't as many people around but I don't know. That would be my guess, that more densely-populated areas would be where you'd have the greatest number of requests, and that would make total sense.

MR. WALCZYK: Your -- your guess logically follows and follows the numbers that I've got in front of me. Why would we want to give an advantage to a population that lives in one area by absentee ballot over the proclivity of voters in the State of New York that live in a different area to vote?

MR. DINOWITZ: Well, everybody -- if this



legislation becomes law, everybody throughout the State regardless of district, regardless of political affiliation, would have an equal opportunity to make such a request if they were fearful of COVID. The fact that some people exercise their freedom of choice to not make a request is perfectly fine. People don't have to do this. But many people would do it. The fact that as the -- based on the numbers or the data that you just referred to that it was more heavily concentrated where people made the requests in -- in the City, to me, that has no bearing on anything. Everybody has the opportunity and the right to do that.

MR. WALCZYK: And through you, Mr. Speaker, if the sponsor would continue to yield, I'm wondering if the sponsor knows which party affiliation has more of a proclivity to vote via absentee ballot than any other party?

MR. DINOWITZ: I don't know. I think many people have said in the past that actually the Republican Party had a greater proclivity. I don't know if that's the case. In my area most people are Democrats, and -- and of course if they're requesting absentee ballots for a primary, they're all Democrats. But I would think anybody would have a proclivity to vote by absentee if they thought that was in their best interest, if that would protect their health. And certainly, they have the opportunity to do it. But I don't really think that -- I don't think it really matters one way or the other whether some people are more likely to vote by absentee ballot. The question is, are we going to give everybody the opportunity to safely vote and feel

comfortable about it.

MR. WALCZYK: Thank you, Mr. Speaker.

On the bill.

ACTING SPEAKER AUBRY: On the bill, sir.

MR. WALCZYK: So 2.5 million ballots were requested Statewide in 2020. That was the last time the members of this Body were on the ballot. 1.5- -- or 1.1 million of those, a rate of 19 percent, were in New York City alone. The top five counties out of New York State that requested an absentee ballot -- and this is the top five rates for voters were -- and I'd like the -- the members of this Body who are about to vote on this bill to think about the -- the areas I'm about to talk about. Monroe County, 26 percent rate of absentee ballot requests. Tompkins County, 23 percent absentee ballot requests. Onondaga County, 20.7. Columbia County, 20 percent. And Westchester County, 19.5 percent. You can think about the party registration of the majority of voters in those areas while I move on to the five counties with the lowest rate of absentee ballot requests. Wyoming County had the lowest rate. So if you think that absentee ballots are going to get you over the finish line and you represent Wyoming County, I'm sorry to say that only 9.4 percent of registered voters in Wyoming County as compared to Monroe County next door with a 26 percent request rate, only 9.4 percent of registered voters in Wyoming County requested an absentee ballot in 2020. And the rest of the list is probably not going to surprise a lot of members of this Body because I'm going to name some more Republican counties.

Herkimer County with 10.4 percent. Cattaraugus with 10 percent. Fulton with 11 percent and Lewis County with 11 percent request rate for absentee ballots. The Republican areas don't request as many absentee ballots. And that's -- that doesn't surprise anybody in this Chamber.

On November 2nd the voters of the State of New York while we were still voting with absentee ballots throughout this pandemic, this past fall the voters with absentee ballots still rejected Proposition 4 on the ballot. We were trying this is no excuse absentee ballot thing. We threw it on there and we said, *We're going to change the New York State Constitution. All we need is the validation of you, the voters.* And they rejected it. They showed up in millions and they rejected the idea that this Legislature sent them and I respect that. And it's funny because I think about the -- the Democrats and the Republicans and the Independents and the Conservatives and the New Yorkers that showed up this past fall to tell us well, no. We probably know what I've already explained to this Body, that Democrats vote more by absentee ballot than Republicans do. It's not a secret. In 2021 -- so just back home, in 2021 Democrats requested more absentee ballots than Republicans in Jefferson County, which I -- I represent. Jefferson County has an enrollment advantage of 10,000 Republicans over Democrats. But Democrats requested more by number absentee ballots than Republicans did. So even in the rural areas, party will far outweigh the proclivity of a voter to -- to request an absentee ballot. They'll tell you that this absentee ballot voting

idea is great for democracy, that we're just expanding voter access. But really, it's nothing more than a partisan approach to make sure that the deck is stacked on one side of the aisle. It's making the republic more partisan. It's not going to instill more faith in our democracy. The best citizen is the one that shows up -- in my opinion, the best citizen is the one that shows up. Shows up on Election Day, shows up to tune in to debates like today. Showed up on November 2nd and rejected this idea the last time the Legislature brought it to them. And now we're trying to end around the voters of the State of New York to get to the same political means. And I'll tell you what. The State -- the voters of the State of New York are fed up with this partisan stuff.

So, Mr. Speaker, I urge my colleagues to vote no on this bill and I thank you for the time.

ACTING SPEAKER AUBRY: Thank you.

We have a -- Mr. Salka.

MR. SALKA: Thank you, Mr. Speaker. Will the sponsor yield for a couple of brief questions?

ACTING SPEAKER AUBRY: Mr. Dinowitz, will you yield?

MR. DINOWITZ: I'll yield for as many questions as you've got.

MR. SALKA: Thank you, sir.

MR. DINOWITZ: For 15 minutes.

MR. SALKA: It probably won't take anywhere near

that. You will agree that what we're trying to do here through this legislation is minimize risk.

MR. DINOWITZ: Minimize risk, yes.

MR. SALKA: Minimize risk.

MR. DINOWITZ: Yes.

MR. SALKA: So, sometime back we decided to incorporate early voting, okay, in -- in New York State. Now, during that early voting process as an elected official at that time running for office I was very interested to see what kind of turnout was occurring with that early voting. And I have a rural district, but there's a couple cities there and there's a very good flow of people. And the election inspectors informed me that it was sparse at best. So if we're talking about minimizing risk, why aren't we pushing the option more for people that are afraid of going on a very busy Election Day or a busier Election Day, that they can minimize their risk by maybe early voting? That means they're pretty much going to the polls by themselves, they're going to the Board of Elections. They're not going to a poll. So why -- why aren't we at least encouraging that?

MR. DINOWITZ: Well, many people do take advantage of the opportunity to vote early. I don't know that early voting has appreciably changed turnout so much as it may have spread it out more, but I'm hoping it increases turnout. I don't know about your area -- although I guess I kind of do in a sense. I know in my area we have in my Assembly District a limited number of early voting sites. So, for example, me, if I didn't drive a car I would have

to take a very long walk to vote. It -- it's not that convenient for people unless they have a car. And a lot of people don't have cars in the City in particular. A lot of the older people don't have cars. A lot of younger people don't have cars. And people in New York City as an example in general don't have a high percentage. So it's -- unless you're in a concentrated area, it's hard. I imagine in your area -- where is your area?

MR. SALKA: It's Upstate New York.

MR. DINOWITZ: Well, that part I knew, but --

MR. SALKA: Madison County, Otsego County, Oneida County and Delaware.

MR. DINOWITZ: Okay. I -- I imagine that for most people they would have to drive to the early voting site. That works for some people. It works for people who drive. So, yeah, early voting I think is a plus. But it doesn't necessarily really address this for the most part.

MR. SALKA: And if I may ask you another question. Do you believe in the CDC guidelines?

MR. DINOWITZ: Do I believe in the what?

MR. SALKA: The CDC guidelines. The guidelines that are recommended by the CDC and the New York State Department of Health, as far as mitigating or preventing the spread infection.

MR. DINOWITZ: I -- I can tell you what I believe. I believe you get vaccinated and you wear a mask and you wash your

hands and you don't sneeze on people and you don't go indoors without a mask. In fact, many people go outdoors with a mask. That's what I believe. That's the current CDC guidelines. Good. I -- I don't believe it's wise for a lot of people to get together right now while the -- while the positivity rates are so high in this State, although they seem to be moving in the right direction. They're still not where they should be. You know, it was only about, I want to say, about a month-and-a-half ago that the positivity rate in the Bronx was like .75. Less than 1. And then just a week or two ago it was approaching 30 percent. So, you know, it skyrocketed. And I think the rest of the State is a little bit behind the City so your rates -- there's a good chance your rates are higher than the rates in my area. I think people should be wise in what they do. I mean, I can't tell people what to do. Well, within -- I do tell people what to do sometimes but I -- I really can't force people to wear a mask. But not everybody does what they should do. And so it -- it's not always -- you know, some people might not always find it safe or feel safe. As far as -- you know, as far as the CDC I guess as a general rule I would -- I would follow their guidelines. But I know what I think is right and I'm -- you know, I'm not the one who makes up the guidelines but I think it takes -- some things just take commonsense. And the ability to want to survive, you know, there's a thing called survival of the fittest. Well, if you don't wear a mask you might not fall into that category.

MR. SALKA: Okay, thank you. Thank you, Mr. Dinowitz.

Mr. Speaker, on the bill briefly.

ACTING SPEAKER AUBRY: On the bill, sir.

MR. SALKA: Two years ago we used fear, all right, as a motivator to make some quite drastic changes to our -- to our voting process, and here we're going to try to do it again out of fear. I guess my biggest concern is what's next? In the next election, what's going to be the fear factor that's going to be used by changing the way we vote, to change what is contrary to the Constitution of the State of New York. So I'm very concerned that we're starting a trend here because we found that fear works. Fear makes people do things that they wouldn't necessarily do, and that's just human nature. So my concern is as this trend goes, as we each election find some other way to be able to circumvent, number one in this case, the vote of the people on Proposition 4, or something contrary to the Constitution of New York State. Now we found out it's pretty easy to do. So what's going to be in the next election? That's my concern. I think we need to be very, very careful and very, very vigilant that we make sure that if, in fact, there are reasons that are used, they're based in the constitutionality of the bill. Not in the fear factor, not in something that we made up or somebody who just doesn't want to go. We're concerned that this is something we're going to see again in the future, and for that matter, because of that I'm going to be voting no on this bill.

Thank you.

ACTING SPEAKER AUBRY: Thank you, sir.



Mr. Manktelow.

MR. MANKTELOW: Thank you, Mr. Speaker.

Would the sponsor yield for a question?

ACTING SPEAKER AUBRY: Mr. Dinowitz, will you yield?

(Pause)

He asked you to yield, Mr. Dinowitz.

MR. DINOWITZ: Yes. I was busy gossiping.

MR. MANKTELOW: I'm sorry?

MR. DINOWITZ: Nothing.

MR. MANKTELOW: Good.

MR. DINOWITZ: Yes, I'd be happy to yield.

MR. MANKTELOW: Thank you so much. In your bill and I think in the State Constitution, if you're sick you can request an absentee ballot, correct?

MR. DINOWITZ: You can.

MR. MANKTELOW: So, I like -- I like what you're trying to do and I like the -- the -- the end result from this to get people out to vote. My question is, why is fear in this bill?

MR. DINOWITZ: Why is what?

MR. MANKTELOW: Why is -- why is fear -- why -- if someone's afraid to go out because they're going to possibly get COVID or -- or any other illness, why was that added to this?

MR. DINOWITZ: You know, for a -- for a significant period of time New York City and places like the Bronx

and Queens were the epicenter of the pandemic worldwide, and countless people died. So I guess over a period of time we were conditioned to be a little concerned about COVID. A lot of steps were taken over the past two years of -- Governor Cuomo issued numerous Executive Orders on a variety of topics. A lot of things changed. We -- we just did a lot of things to address the situation as it was and as it still is in -- in just many different areas. And while I'm kind of feeling like maybe we're turning a corner -- we've had that feeling before, I'm hoping that's what's happening now -- we don't know that that's a fact. And so legislation like this is meant only to be -- to be in effect during this emergency. And it's hard to argue that we're not still in an emergency. Each day for the past couple of weeks between 150 and 200 New Yorkers have died. And I've got to tell you, they're not coming mostly from New York City at this point. They're just not. The -- the distribution has changed because -- because of the way the virus has moved, because of -- of decisions some people made as to whether or not to get vaccinated. So we're still in an emergency and we want to make sure that people will comfortably vote -- exercise their franchise. And I know it was mentioned previously that some areas might have had a higher rate of applications for absentee ballots and I say so what. So what. It doesn't matter. What matters is that there are many people who want to vote and want to make sure they can do it safely, and that's what this bill does. Now, I'm hoping that next year we won't even think of doing something like this at all. That it wouldn't be necessary. That's what we're hoping. I think we're all

hoping the same thing.

MR. MANKTELOW: Absolutely. I totally agree with you there. And I also believe that if this is put into effect and this time next year there -- there still would be some COVID around, hopefully not as much. My concern here is we're adding something that people are going to use for a very long time: Fear.

MR. DINOWITZ: They could be fearful of dying? 855,000 Americans have died. That's something to be fearful of. This is not something that was created, this is a reality that a lot of people have died and a lot of people see that and have the concern that that could happen to them.

MR. MANKTELOW: Do you also -- do you feel that with this bill that you're going to alleviate that fear for the individuals that truly want to vote?

MR. DINOWITZ: I think if we can ensure that those people who want to vote but are nervous about going to the polls can still vote, that's a good thing. That's a positive thing. That will be one less thing that people have to go to a crowded place for. You know, some people -- I don't know how many people actually do their own food shopping anymore. A lot of people -- I don't know if they have it in your neck of the woods, but where I am we have places like FreshDirect and Shop & Stop, (inaudible), where you can just place your -- your grocery orders online and get a delivery. A lot of people are doing that even though it's a greater expense because they don't want to take the chance of going into a crowded supermarket. And

there are a lot of other things people are doing. How many people -- I'm not sure if you have apartment buildings in your district or not, but my district is mostly apartment buildings, and if you go into any building lobby you're going to stacks of cartons from Amazon. People who are doing their shopping online. And that's not because people are lazy - although I think some people are going to get used to the idea - but because they don't want to go to crowded stores right now. I personally like to go out and -- and do shopping, but not right now. I don't -- I mean, I don't go to grocery stores anymore.

MR. MANKTELOW: And you made a great point. You know, people are shopping online and using Amazon. What -- what would happen if -- never mind, I won't go there. So, up in our neck of the woods, as you made reference to just a few minutes ago, people take pride as Americans. They take pride as New Yorkers. And they take pride of doing their duty to go and vote, and they're going to find a way to do it whether they're fearful -- fearful or not. I really want to support this bill only if you can take the fear factor out of it.

MR. DINOWITZ: Well, fear is not in the bill, so feel free to vote for it.

MR. MANKTELOW: All right. I understand what you're saying. But out of respect for our first responders, our healthcare workers, our essential workers, truck drivers, sanitation individuals, everybody that had to work the whole time through this pandemic and especially in the early months and early days and hours

of this, I think a lot of them were very fearful. And I think a lot of them, including our healthcare workers, our nurses that we saw in New York City that didn't have the proper PPE gear, they were -- they were asked and told to wear a garbage bag. Wear your mask for two weeks or whatever. Find a way to make it work. These individuals fought the fear, not only the fear of getting COVID, but the -- the fear of transmitting it back to their loved ones back at home.

So, I appreciate your comments. I want to go on the bill. Thank you, sir.

MR. DINOWITZ: Okay.

ACTING SPEAKER AUBRY: On the bill, sir.

MR. MANKTELOW: Mr. Speaker, on the bill. If you go back in history of who we are as Americans and what we've been through, whether it's Civil Rights marches and stuff that we talked about a few days ago, whether it's the wars that we've been in, whether the things we've done to help other countries to bring them food, security, help, reconstructing, you know, after a tsunami, do we not here in New York owe this part of it to our first responders, to our healthcare workers, to our nurses, to our doctors? Do we not owe them something? These individuals have fought this fight since day one. They've made it work. They've made it -- they've found a way to protect themselves, going to their job every single day. And we're -- here we're allowing voters that could vote but they may have a little bit of anxiety or they're concerned about getting the COVID. As the sponsor of the bill said, get vaccinated. Get your booster or get your

second booster or get your third booster. Wear your mask. Wear PPE if you want. You could get to that voting place and do it safely. There's no doubt in my mind. As my colleague just said earlier, they've got multiple days to go and vote. Well, go on the days where there's not a lot of people so that lessens the risk. Out of respect for our workers that have -- that have fought this fight since the beginning of this and still are today, if you took that -- that part of the bill out or if they're nervous or if they feel intimidated or they -- they don't want to get something, if you took that out I -- I would -- I would support this bill. But, Mr. Speaker, out of respect for everyone else I'm going to vote no. Because there are -- this is already taken care of. It's already taken care of in our -- in our Election Laws, it's taken care of in our Constitution. Out of respect for those individuals and -- and some of those frontline workers that have passed away from COVID, I'll be voting no. I'm going to ask all of you to vote no out of respect for them.

So, thank you, Mr. Speaker.

ACTING SPEAKER AUBRY: Thank you, sir.

Ms. Bichotte Hermelyn.

MS. BICHOTTE HERMELYN: Thank you, Mr. Speaker, for allowing me to affirm my vote in support of this bill which extends absentee voting without an excuse due to the risk of spreading the disease. Earlier this week we celebrated Dr. Reverend Martin Luther King, Jr., and as we remembered his legacy we remembered how he championed for us and for our voting rights.

And because for too long we have many communities such as communities of color, new American communities, as well as low-income communities that have been systematically denied their rights to vote in a very disenfranchising and unconstitutional way. We only need to look at Georgia to see how this is still happening now. There's ongoing attacks on how our voting rights across the nation is being threatened and destroying our democracy. We, as Americans, we, as New York Staters, want as many qualified voters as possible to exercise their right to vote. The threat of COVID-19 is still before us. I said this last year, but we should not have to choose between our lives and our right to vote. Participation in our democracy is a fundamental right. Omicron has hit our City and State with force. Many New Yorkers remain vulnerable to this disease. So what this bill does, it extends the provision that allows voters to cast an absentee ballot in the instances where there's a risk of contracting or spreading or being fear of a disease causing illness. This is the bare minimum. I believe you shouldn't need an excuse to vote by now. You shouldn't need to fear for your life in order to exercise your fundamental right to participate in our democracy.

Mr. Speaker, I am the Chair of the largest party in the State of New York. And I am also a resident of the largest borough in the State of New York with millions and millions of people who are registered to -- to -- to vote. It is my duty, my duty, to make sure that each of these registered voters are not denied of their right to vote because of the current health circumstances. I believe that in addition

to expanding voting rights due to illness, we need to expand them without a reason.

So, with that, Mr. Speaker, I want to thank the sponsor for introducing this bill and I will be voting in the affirmative and I ask my colleagues to do so as well. Thank you.

ACTING SPEAKER AUBRY: Thank you.

Mrs. Peoples-Stokes.

MRS. PEOPLES-STOKES: Thank you so much to make comments on this bill. I realize that it does create discrepancies for some because there is part of our society, quite honestly, Mr. Speaker, that would not like everyone to have their right to vote. The 1965 Voting Rights Act, that's what it was about. People were being denied access to vote. Well, in 2020, Mr. Speaker, we both know that more people voted than had at the same time in at least a century. And those numbers and that race were so shocking to people that some people still think that it's a lie. Well, it was not a lie. It's the truth. When you make access to all American voters to vote, they will vote. And because of the results of that election, there are now 19 states that are wanting to change or diminish people's access to the polls. That's what should be the lie. That you're actually going to do things to deny people a right to vote. Now, I've heard the Bills talked about a lot here. I'm a major Bills fan. I've been a Bills fan since I grew up, between two brothers and my parents. I have not been to but one Bills game. And the one I went to, it was in a clubhouse with only 60 people. That's a personal choice. But the other people who



were there, they made the choice to sit next to other people who have on a mask who sometimes would take it off. But they all walked in the door with a vaccination card. That's not a guarantee at the supermarket that everybody's going to be vaccinated. But it is a guarantee if you go to a Bills game. And so when we're talking about people's access to voting, we need to keep two things in mind, and I want to commend the sponsor for doing so. One is that this virus is not gone yet. And, two, is that everybody has a right to vote. Give them that opportunity.

This does that, so I will certainly be voting in the affirmative. I would implore my colleagues to vote yes on this one in spite of the negative rhetoric that we've had heard today on this issue. Thank you, Mr. Speaker.

ACTING SPEAKER AUBRY: Thank you.

Read the last section.

THE CLERK: This act shall take effect immediately.

ACTING SPEAKER AUBRY: The Clerk will record the vote on Senate print 7565-B. This is a Party vote. Any member who wishes to be recorded as an exception to their Conference position is reminded to contact the Majority or Minority Leader at the numbers previously provided.

Mr. Goodell.

MR. GOODELL: Thank you, Mr. Speaker. The Republican Conference is generally opposed to this bill. But as you correctly noted, if you would like to vote in favor of it please contact

the Minority Leader's Office.

Thank you, sir.

ACTING SPEAKER AUBRY: Thank you.

Mrs. Peoples-Stokes.

MRS. PEOPLES-STOKES: Mr. Speaker, the Majority Conference will generally be voting in favor on this piece of legislation. However, colleagues deciding that they would not like to vote for this bill please feel free to contact the Majority Leader's Office and we will make sure that your vote is properly recorded.

(The Clerk recorded the vote.)

ACTING SPEAKER AUBRY: Thank you.

Mr. Dinowitz to explain his vote.

MR. DINOWITZ: Thank you. I almost never explain my vote after I've debated a bill because I don't want to take any more time. But I-- I really feel I have to say a few things. You know, we face so many issues in this State and our country, whether it's the economy, whether it's foreign policy. So many issues that are really critical. But to me there's one basic issue that runs through everything, and that's the future of our democracy. I think we've seen in the past year, certainly since January 6th of last year, how precious democracy is. This week we celebrated Martin Luther King, Jr. Day. This -- the United States Congress, the discussion is on voting rights. I have to say that if there's one issue which divides the political parties, it's this. There's one party that in my opinion wants people to vote. And the other party, I don't believe does. One party wants to

make it open and make it easier to vote, one party doesn't. One party wants to make it so that the votes can be counted. And I don't believe that's the case in the other party. We've seen what's happened throughout the country. And I think that's the case here. I'm not -- I'm not saying that anybody in this room is, you know, bad or -- or anything. I'm just saying that I think it's a different outlook on life. I believe, and I believe most people on our side of the aisle believe, that we want everybody to participate in our democracy. Regardless of how they vote, we want them to participate. And that's what this bill is about. It's not about giving one side an advantage over the other. It's about making sure that nobody is denied their ability to vote because of the circumstances. And if we can make sure that even a few more people vote because we passed this, then we've done what's the right thing to do in a democracy, and I would hope everybody would agree with that.

So I vote in the affirmative.

ACTING SPEAKER AUBRY: Mr. Dinowitz in the affirmative.

Ms. Walsh.

MS. WALSH: Thank you, Mr. Speaker, to explain my vote. I'm opposed to this bill because it is over broad. It is a completely subjective standard that is unverifiable. It's disrespectful to our New York State Constitution and it's disrespectful to the voters who resoundingly rejected the ballot proposition for no excuse absentee voting last November. It's an end around and a back door to

no excuse absentee voting. It ignores the progress that we have made in this State with COVID, which our own Governor said last week we're -- we've got a glimmer of hope. This bill still runs, though, and allows this no excuse absentee voting -- or a whisper of an excuse, maybe. I mean, it's just -- it's completely subjective. It's if you feel like you might be possibly afraid on a given day, you can get an absentee ballot. And it -- you know, the talk about negative rhetoric, I've got to say, you know, for all that we're quoting Dr. King and wanting a more healthy and positive environment in this Chamber and throughout this State as we debate bills, you know, basically saying that one side of the aisle doesn't want voting or doesn't want people to participate, I want everybody to get out and vote. I think that there are many, many ways that people can get out and make their voices heard. And I think just because we object to a bill doesn't mean that we're like somehow in favor of voter suppression. You know, I just think that it was interesting after the voting proposition failed resoundingly by like 300,000 votes last November, one of the -- one of the people said -- not in this Chamber -- but people said there was a strong anti-Democratic push and the pro-democracy folks stayed home. I mean, come on. You know, we want people to vote. We also want to follow the Constitution and I don't think that there's anything wrong with that. That's probably why we have one.

So this bill is a bad bill and I'll be voting no. I voted yes for it last time, by the way - full disclosure - because we were in a different point in the pandemic. I think right now I think it's

stretching. And I think the next bill we're going to get is a bill to reduce the number of signatures we need on petitions, and then we're going to get more and more using COVID, as my colleague said, as an excuse to just continue to push and push and make things -- I don't know, I vote in the negative. I'm sorry.

ACTING SPEAKER AUBRY: Ms. Walsh in the negative.

Mr. Lawler.

MR. LAWLER: Thank you, Mr. Speaker. I just want to note for my colleagues, New York City voter turnout hits record low out for a mayoral election, December 1, 2021. A smaller percentage of New York City voters turned out in the November 2021 general election than in any other mayoral election in nearly seven decades. We gave voters every opportunity to show up to the polls. We gave them basically no excuse absentee balloting and they chose not to vote. Now, maybe it's because DACC and its Chairman didn't spend any money to get a campaign together to encourage voters to support no excuse absentee balloting. But they rejected it, the ones who did show up. So at the end of the day here, this isn't about one side wanting democracy to work and voters to vote and the other side being against it. No. This is about ensuring that our laws are followed. The Constitution is clear, and the voters - not me, the voters - rejected the constitutional amendment that was proposed in November. As I said, I voted for the bill in this Body. And the voters saw otherwise. So let's actually respect the voters of the State of New

York as they are far more capable of deciding what is in the best interest of this State than the 150 members who are here.

So I encourage everybody to vote no on this legislation.

ACTING SPEAKER AUBRY: Mr. Lawler in the negative.

Mr. Goodell to explain his vote.

MR. GOODELL: Thank you very much, Mr. Speaker. First, on behalf of all my Republican colleagues I want to make sure everyone here understands that our party certainly supports the right of everyone to vote. And I'm not going to speak about the other party because that's not really my role. And we respect how the voters actually vote. And so, the Republicans are willing to have constitutional amendments presented to the -- to the voters and we've supported that in the past. But if the voters turn it down, we're willing to go and certainly support their views on that as well. And we want to encourage more people to vote, which is why my Conference has introduced legislation to have automatic voter registration for taxpayers when they pay their property tax or their income tax. Or when they apply for a business permit or maybe a hunting license. By the way, all those bills have been blocked, not by the Republican party (inaudible) to have them come up for a vote. We've come a long ways in the last year. Vaccines are widely available. COVID tests are widely available. N95 masks are widely available. I remember when COVID first hit I had to delay a construction project because I

couldn't get a mask. They're now widely available. And the economy is fully reopened, isn't it? You can go to every sports bar you want, you can go to sporting events, restaurants. Beaches and pools are open without masks. Subways, mass transit. All businesses are open for in-person participation. Schools reopened. Here's the irony: You know what's not reopened? You may be thinking, *Wait a minute, everything's open, right?* No. The State Legislative offices, they're closed. No in-person meetings there. And we authorized local municipalities to follow that destructive lead by closing their meetings. We're not leading the country out of the pandemic, we're holding it back. Let's get back to normal. Return to in-person voting. Return to in-person proceedings in the Legislature, and let's move forward.

Thank you.

Oh, I'm not in favor of this bill.

ACTING SPEAKER AUBRY: Mr. Goodell in the negative.

Mr. Salka.

MR. SALKA: Mr. Speaker, to explain my vote.

ACTING SPEAKER AUBRY: Please.

MR. SALKA: You know, the big motivating factor behind these -- making these changes is fear. Probably because someone might be afraid of being exposed to -- by going to the polls. And I think we've given people a lot of opportunities to minimize that risk. But my fear is this: My fear is we are watching -- we are

watching as we speak the degradation, the downsizing of our democracy. We're letting fear take over any kind of rationale that we might have had to be able to protect our most important asset, and that is in the vote. We are letting fear take over any kind of reason that we are going to use to be able to get to the polls and vote like we should be doing as Americans. So what's going to be the next fear factor that we're going to use in the next election? Climate change? We're going to be afraid there's going to be a snowstorm and we're going to slip and break our legs? As ridiculous as that sounds, it's about as ridiculous as this vote here is today. Because what we're doing is we're using fear. And fear is never a good tool for people to be able to make rational decisions, especially something that's protecting the integrity of our vote.

I will be voting no, and I'm proud to vote no because this is just a bad bill. Thank you.

ACTING SPEAKER AUBRY: Mr. Salka in the negative.

ACTING SPEAKER HUNTER: Are there any other votes? Announce the results.

(The Clerk announced the results.)

The bill is passed.

On consent, A-Calendar, Rules Report No. 7, the Clerk will read.

THE CLERK: Assembly No. A08592, Rules Report No. 7, Clark, Reyes. An act to amend the Public Health Law, in



SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF SARATOGA

---

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,

**AFFIDAVIT**

Index No. 2023-2399

Petitioners/Plaintiffs,

v.

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 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.

---

STATE OF NEW YORK     )  
  )  
COUNTY OF ALBANY     ) SS:

Danny McDonald, being duly sworn, deposes and says:

1. I am employed by the Office of the Attorney General of New York State in the Albany Litigation Bureau as a Clerk III.
2. The Albany Litigation Bureau is one of two bureaus in the Office of the

Attorney General to which special proceedings brought in the Supreme Court, Saratoga County, may be assigned. The Office of the Attorney General maintains a database (“the Database”) used by these two bureaus in the regular course of business to record their receipt of pleadings and papers served on the Attorney General. The Database includes pleadings and papers served by personal delivery at the Office of the Attorney General, as well as papers received by means of First-Class Mail or other manner of mail delivery.

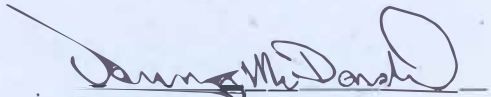
3. My responsibilities as Office Assistant III in the Albany Litigation Bureau include making entries into the Database and searching the Database for information on litigation matters. The information contained within this Affidavit is based on my personal knowledge as well as a search of the Database.

4. Based on my search of the Database, I have determined that the Office of the Attorney General was not served with a summons, summons with notice or complaint on behalf of the State of New York or Governor Hochul in this proceeding. My findings relevant to this proceeding are below.

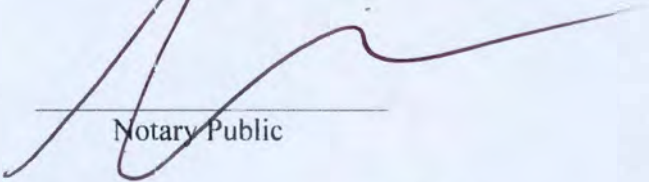
5. On September 1, 2023, the Office of the Attorney General received a copy of the unsigned Order to Show Cause, Petition, and supporting papers via personal service. A copy of the aforementioned documents, together with the post-marked envelope containing said documents, are attached as **Exhibit A**.

6. On September 12, 2023, the Office of the Attorney General received a copy of the signed Order to Show Cause, Petition, and supporting papers via personal service. A copy of the aforementioned documents, together with the post-marked envelope containing said documents, are attached as **Exhibit B**.

7. The OAG was not served with a summons, summons with notice or complaint on behalf of the State of New York or Governor Hochul.

  
DANNY McDONALD  
Office Assistant III

Sworn to before me this  
18<sup>th</sup> day of September, 2023

  
\_\_\_\_\_  
Notary Public

~~ADRIENNE KERWIN~~  
Notary Public, State of New York  
Qualified in Rensselaer County  
Commission Expires February 22, 2027

RETRIEVED FROM DEMOCRACYDOCKET.COM

# Exhibit A

RETRIEVED FROM DEMOCRACYDOCKET.COM

# FUSCO LAW OFFICE

ATTORNEYS AT LAW

P.O. Box 7114  
THE CAPITOL  
ALBANY, NEW YORK 12224  
Phone (518) 620-3920 \* Fax (518) 691-9304  
[afusco@fuscolaw.net](mailto:afusco@fuscolaw.net)

August 31, 2023

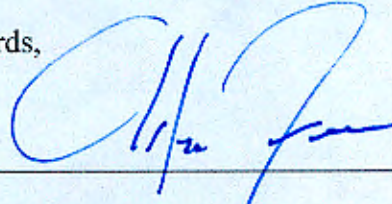
Office of the New York State Attorney General  
The Capitol  
Albany, New York 12224

**Re: *Matter of Amedure v. New York State et al.***

Dear Sir or Madam:

Enclosed, please find legal papers which are being served prior to filing consistent with the notice requirements of the CPLR and Executive Law.

Regards,



**By: Adam Fusco, Esq.**  
Fusco Law Office  
P.O. Box 7114  
The Capitol  
Albany, New York 12224  
(518) 620-3920

Enc.

2023 SEP - 1 PM 12: 21

STATE OF NEW YORK  
ATTORNEY GENERAL  
MANAGING ATTYS OFC  
RECEIVED-ALB

RETRIEVED FROM DEMOCRACYDOCKET.COM

AT AN IAS TERM OF THE  
SUPREME COURT HELD IN &  
FOR SARATOGA COUNTY AT  
THE COURTHOUSE THEREOF  
ON \_\_\_\_\_ 2023

PRESENT: HON. \_\_\_\_\_, J.S.C.

SUPREME COURT OF THE STATE OF NEW YORK  
SARATOGA COUNTY

2023 SEP - 1 PM 12:22

STATE OF NEW YORK  
ATTORNEY GENERAL  
MANAGING ATTYS OFC  
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\_\_\_\_\_  
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-  
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,

INDEX NO.

ORDER TO  
SHOW CAUSE

Respondents / Defendants.

\_\_\_\_\_ X

Upon the filing and reading of the annexed verified petition / complaint, duly verified by the attorneys for the Plaintiff / Petitioners, Perillo Hill, LLP, John Ciampoli, Esq. & Adam Fusco, Esq. *of counsel*, on the 31<sup>st</sup> Day of August 2023, and all of the papers and proceedings heretofore had herein, it is hereby:

**ORDERED**, that Respondents herein **SHOW CAUSE** before a Special Term of this Court held in and for the County of Saratoga at the Courthouse thereof at SARATOGA COUNTY SUPREME COURT, 30 McMaster Street, Building 3, Ballston Span, New York, 12020, at \_\_\_\_ AM in the forenoon of the \_\_\_\_ day of September, 2023, or as soon thereafter as counsel may be heard, as to why an Order of the Court should not be made and entered pursuant to the provisions of the New York State Constitution, Article 78 CPLR, §3001 CPLR, and Article 16 Election Law, thereby,

1. Declaring Chapter 763, New York Laws of 2021 to be unconstitutional upon the causes of action in the annexed verified complaint, and
2. Determining that because the subject Chapter of New York Laws has no severability clause, that the said Chapter 763, New York Laws of 2021 is entirely invalid and that any chapters amending such law are also invalid, and
3. Issuing a preliminary injunction against the Defendant Respondents prohibiting the enforcement of such unconstitutional statutes, and

4. Issuing an order for such other, further and different relief as this Court may deem to be just and proper in the premises.

SUFFICIENT CAUSE APPEARING THEREFOR,

Leave is hereby granted to the Plaintiff / Petitioners to submit on the return date hereof, or any adjourn date thereof, such additional evidence, testimony, affidavits and exhibits as may be necessary, and it is

ORDERED that proof of service may be filed with the Clerk of the Part on the Return Date hereof, and

SUFFICIENT CAUSE APPEARING THEREFOR, it is further

ORDERED, that a copy of this Order to Show Cause together with the papers upon which it was granted be served upon the Defendant Respondents by one of the following methods, at the option of the Plaintiff / Petitioners:

1. By delivering same to such Respondent pursuant to CPLR 308(1) on or before **September \_\_\_\_\_, 2023**, or
2. By delivering same to the offices of such Respondent, and leaving such copy with any person(s) authorized to accept service thereof for said Defendant – Respondent, on or before **September \_\_\_\_\_, 2023**, or alternatively by electronic or fax transmission thereof to the said Defendant Respondent at an e-mail or FAX number designated and maintained for such purpose on or before **September \_\_\_\_\_, 2023**,



3. Or, at the option of the Plaintiff / Petitioner, same may be served upon such Defendant / Respondent by enclosing same in a post paid wrapper and depositing same with a depository of the United States postal Service via Priority Mail EXPRESS service (or alternatively any other recognized overnight delivery service) on or before **September \_\_\_\_\_, 2023,**
4. Or, by any other method of service authorized by the CPLR on or before **September \_\_\_\_\_, 2023,** and that such service shall constitute good and sufficient service and notice thereof.

**E N T E R:**

DATED: September \_\_\_\_\_, 2023  
\_\_\_\_\_, New York

\_\_\_\_\_, J.S.C.

Justice of the Supreme Court

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-

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.

X

**TO: THE SUPREME COURT OF THE STATE OF NEW YORK**

2023 SEP - 1 PM 12: 22

STATE OF NEW YORK  
ATTORNEY GENERAL  
MANAGING ATTYS. OFC  
RECEIVED-ALB

INDEX NO.

VERIFIED PETITION

PETITIONERS / PLAINTIFFS, as captioned hereinabove, do hereby complain of the above captioned Respondents / Defendants and hereby petition this Court and state as follows:

#### NATURE OF THE CASE

1. This is a hybrid proceeding brought pursuant to Article 16 of the Election Law, an Article 78 Proceeding pursuant to Article 78 CPLR, and a declaratory judgment action brought pursuant to the New York Civil Practice Law and Rules, ("CPLR") 3001.
2. Plaintiff's declaratory judgment action seeks a determination, and order declaring that Chapter 763 of the New York State laws of 2021, A.7931 /S. 1027-A (hereinafter, the "Statute", "the Chapter", or "Chapter 763") passed by Defendants Assembly and Senate of the State of New York, and then signed into law by the Defendant Governor, amending §9 – 209 Election Law and other related sections of law, to accelerate the canvass of absentee and other paper ballots, is in conflict with other statutes and violative of the New York State Constitution as set forth herein.
3. The Statute violates the Constitution of the State of New York ("Constitution") and interferes with the constitutionally protected rights of citizens, electors, candidates, and political parties to engage

in the political process as prescribed by the Constitution. Accordingly, Plaintiffs seek a judgement declaring the statute unconstitutional on its face and as applied on the basis that: (a) In enacting the Statute, the Legislature exceeded the authority granted to it by Article II, §2 of the Constitution; (b) the Statute is inconsistent with and in direct conflict with the Constitution and other applicable statutes, such that it can not be enforced without a violation thereof; (c) the Statute impermissibly interferes with Plaintiffs / Petitioners' rights to free speech and free association as guaranteed by the New York State Constitution; (d) the Statute impermissibly opens the election process to the counting of improper and invalid votes, including fraudulent votes; the Statute is unconstitutionally vague.

4. Plaintiff – Petitioners seek a preliminary injunction as against the Defendant – Respondents enjoining the enforcement of the unconstitutional provisions of the New York State Chapter of Laws challenged herein.
5. Plaintiff – Petitioners seek their declaratory judgment, and other relief, as to the 2024 election cycle, unless the court determines that the relief may be applied immediately.

6. Plaintiff – Petitioners seek Article 78 relief as it is arbitrary and capricious action by any administrative agency to enforce a law which violates the Constitution. Further a mandamus / prohibition order should issue prohibiting such enforcement.

#### THE PARTIES

7. Plaintiff – Petitioner New York State Republican Party is an unincorporated association and a political party organized under the provisions of the Election Law. Its principal office is located at 315 State Street, Albany, New York.
8. Plaintiff – Petitioner Edward Cox is the Chairman and a member of the State Republican Party. He is a resident, elector and taxpayer of Suffolk County, and the State of New York. He resides in Suffolk County, New York.
9. Plaintiff – Petitioner New York State Conservative Party is an unincorporated association and a political party organized under the Election Law. Its principal office is located at 486 78<sup>th</sup> Street, Brooklyn, New York.
10. Plaintiff – Petitioner Gerard Kassar is Chairman and a member of the New York State Conservative Party. He is a resident, elector and

taxpayer of Kings County and the State of New York. Plaintiff Kassar resides in Kings County (Brooklyn), New York.

11. Plaintiff – Petitioner Joseph Whalen is Chairman of the Saratoga County Republican party and a Member of the New York State Republican party. He is a resident, elector and taxpayer of Saratoga County and New York State. Plaintiff Whalen resides in Saratoga County New York.
12. Plaintiff – Petitioner Saratoga Republican Party is a county party committee and unincorporated association organized under the terms of the Election Law to represent the party in Saratoga County.
13. Plaintiff – Petitioner Ralph M. Mohr is a Commissioner of Elections and a member of the Erie County Board of Elections.
14. Plaintiff – Petitioner Erik Haight is a Commissioner of Elections and a member of the Dutchess County Board of Elections.
15. Plaintiff – Petitioner John Quigley is a Commissioner of elections and a member of the Ulster County Board of Elections.
16. Plaintiff – Petitioner Robert Smullen is a Member of the New York State Assembly, 118<sup>th</sup> Assembly District, and a resident, elector and taxpayer of Fulton County and the State of New York. He intends to seek re-election to the Assembly in 2024.

17. Plaintiff - Petitioner Rich Amedure has been a candidate for member of the New York State Senate, and is considering candidacy for such office in 2024. He is a resident, elector and taxpayer of Albany County and New York State. He resides in Albany County, New York.
18. Plaintiff - Petitioner Garth Snide is a resident elector and taxpayer of Saratoga County. He has, in the past, availed himself of an absentee ballot when he was outside his home county.
19. Defendant – Respondent State of New York, by the Attorney General, is the body bound by the Constitution, including but not limited to its executive and legislative branches of government, Defendant Governor, Defendant Senate, Defendant Assembly and the Defendant State Board of Elections.
20. Defendant - Respondent New York State Board of Elections is a bipartisan body of the State vested with the power to oversee and manage the administration and enforcement of all laws relating to elections in the State of New York.
21. In addition to its regulatory and enforcement responsibilities; the Defendant – Respondent Board is charged with the administration and supervision of the election process and the preservation of citizens' confidence in the election process and election integrity.

22. Defendant – Respondent Board of Elections supervises the election process administered by the fifty seven county boards of elections and in the five counties comprising the City of New York, by supervising the City’s board of elections.
23. Defendant – Respondent Governor of the State of New York, Kathy Hochul, is the head of the Executive Branch of Government in New York State. The Governor’s powers and duties are expressly set forth in the Constitution. The Governor approved the Statute by signing same into law, and is ultimately responsible for the enforcement of the laws of the State of New York.
24. Defendant – Respondent New York State Senate is the upper house of the New York State legislature empowered by the Constitution to represent the will of the people of New York State by drafting and approving changes to the laws of the State. The Senate adopted the Statute which is challenged herein.
25. Defendant – Respondent Majority Leader and President Pro Tempore of the Senate, Andrea Stewart Cousins, is an officer and leader of the Senate. She is elected by and represents the Majority Conference of the Senate.



26. Defendant – Respondent Robert Ort is an officer and leader of the Senate. He is elected by and represents the Minority Conference of the Senate.
27. Defendant – Respondent New York State Assembly is the lower house of the New York State Legislature empowered by the Constitution to represent the will of the people of New York State by drafting and approving changes to the laws of the State. The Assembly adopted the Statute which is challenged herein.
28. Defendant – Respondent Speaker of the Assembly, Carl Heastie, is an officer and leader of the Assembly. He is elected by and represents the Majority Conference of the Assembly.
29. Defendant – Respondent William Barclay is an officer and leader of the Assembly. He is elected by and represents the Minority Conference of the Assembly.

#### JURISDICTION AND VENUE

30. This Court has jurisdiction over the parties and the substantive issues and claims set forth in this action pursuant to Article 3 CPLR.
31. The within declaratory judgement action is brought pursuant to CPLR §3001.

32. An actual justiciable controversy exists among Plaintiffs and Defendants within the meaning of CPLR §3001.
33. Here, the Respondent New York State Board of Elections is enforcing statutory provisions that contravene the Constitution, which may be enjoined pursuant to Article 78 CPLR.
34. Pursuant to §503 CPLR, venue of this action is proper in Saratoga County, State of New York.
35. Plaintiff – Petitioner Whalen is a resident of Saratoga County.
36. Plaintiff – Petitioner Snide is a resident of Saratoga County.
37. Plaintiff – Petitioner Saratoga County Republican Committee is an unincorporated association / party committee organized and operating in Saratoga County.
38. Said Plaintiffs – Petitioners, Whalen, Snide, and Saratoga Republican Party hereby designate Saratoga County as venue for these proceedings.
39. All of the individuals who are Plaintiff – Petitioners in this action are voters whose rights are adversely affected by the provisions of law put in place by Chapter 763, New York Laws of 2021.
40. Plaintiff – Petitioners who are party committee chairmen and the party committees they represent will and intend to have poll watchers

present for the canvass of ballots in future elections including the 2024 General Election, and are adversely affected by the provisions of law put into place by Chapter 763 of the Laws of 2021.

41. Plaintiffs – Petitioners who will be candidates for public office in 2024 intend to have poll watchers present and participating in the canvass and recanvass of ballots in the election(s) they are competing in. They will be adversely affected by the provisions of law put into place by Chapter 763 of the New York Laws of 2021.

42. Plaintiffs – Petitioners who are commissioners of elections will not be able to perform their statutory duties and are adversely affected by the provisions of law put into place by Chapter 763 of the New York Laws of 2021.

#### BACKGROUND – NATURE OF THE CHALLENGE

43. Plaintiff – Petitioners make their claims under the provisions of the New York State Constitution and New York State Statutes.

44. Any claims based upon federal law or the U.S. Constitution are hereby expressly reserved for a federal forum, see England v. Louisiana State Board of Medical Examiners, 375 U.S. 411 (1964).

45. Plaintiff – Petitioners' challenge herein is to the entirety of the Chapters specified and to any subsequent amendments thereto.

46. Chapter 763 has no severability clause. The entirety of the Chapter must fall and is void upon any finding of unconstitutionality by this Court.

47. Each of the causes of action herein shall be put forward as a challenge to the constitutionality of the Chapter as well as a challenge to the Chapter as it is applied to the Plaintiffs – Petitioners.

FIRST CAUSE OF ACTION – CHAPTER 763  
UNCONSTITUTIONALLY IMPAIRS THE RIGHTS OF VOTERS

48. The license granted to the Legislature to regulate the “how, when, and where” of absentee voting must not, however, contravene the constitutional rights of the voters, candidates and political parties.

49. Moreover, the legislature is NOT empowered by Article II §2 of the New York State Constitution to protect illegal conduct, abridge due process, deprive the Judiciary – co-equal branch of government - of the ability to perform its duties and review administrative determinations, or to provide for ballots of persons who are not qualified to vote to be included in the votes that determine who our elected representatives will be.

RELEVANT PROVISIONS OF THE ELECTION LAW & CPLR

50. In addition to seeking a declaratory judgment, Plaintiff – Petitioners seek relief under the provisions of Article 16 Election Law (and related sections of such law) and Article 78 CPLR as are hereinafter referenced and relied upon.
51. Pursuant to Article II §2 of the Constitution, the Legislature enacted Article Eight of the Election Law (a general law) to, *inter alia*, erect a system for absentee voting.
52. Article Eight, Title Four of the Election Law provides for absentee voting.
53. Article Eight, Title Five of the Election Law provides for challenging voters.
54. Article Nine of the Election Law (a general law) provides for canvassing procedures.
55. The challenged Chapter Law, Chapter 763, materially interferes with Plaintiff – Petitioners’ rights under the Constitution and statutes of this State as hereinafter set forth.
56. Under the provisions of Chapter 763, Laws of 2021, if a voter’s name appears in the pollbook or on the computer generated registration list, with a notation that the Board of Elections has issued the voter an absentee, military, or special ballot such voter shall NOT be permitted

to vote on the voting machine at an early voting site or on Election Day, but will only be allowed an affidavit ballot. That affidavit ballot will be invalidated where the Board of Elections has canvassed the absentee before Election Day.

57. This deprives the voter of the right to change his / her mind on (or before) the day of Election, which right was preserved by prior law that required an absentee ballot to be set aside and NOT counted and canvassed if the voter appeared at the polls on election day (or during early voting) and voted in person.

58. In fact, this new law challenged herein misleads the voter by permitting him / her to cast a provisional ballot (affidavit ballot) on the days the polls are open.

59. Where the Board of Elections has received an application in the voter's name (authentic or fraudulent) and issued and canvassed the returned ballot (genuine or fraudulent) the Chapter MANDATES the ballot cast in person to be invalidated and discarded.

60. It is respectfully submitted that Chapter 763 not only protects fraudulent votes from the post-election scrutiny that they have traditionally received, but that it favors fraudulent ballots over genuine ballots cast in person.

61. This, further, interferes with the voters' rights of free speech and Free Association as guaranteed by the New York State Constitution under the provisions of Article I, §§ 8 & 9 by *inter alia*, not allowing them to change their mind on the day of the election.
62. The Chapter challenged herein actually promotes the canvassing of votes cast in contravention of the law and the Constitution – including falsified ballots cast from those not qualified to vote, people who were defrauded in the voting process, and even persons who have died prior to the day of the election (and, of course, were therefore not qualified to vote).
63. The perpetrator of fraud is assured, under the provisions of this Chapter, that ballots illegally harvested will not be the subject of review during the canvass / recanvass by election officials, or invalidation by the Board of Elections (or in Court). Upon information and belief, based upon reports from local Boards of Elections, as applied in the 2022 and 2023 primary elections, the provisions of Chapter 763, Laws of 2021, have resulted in instances where persons who were not true citizens of the State of New York and even dead persons had their votes canvassed and included with the votes of

legitimate citizens who were qualified to vote and actually alive on the date of the Primary Election.

64. In 2022, in the Matter of Shiroff v. Mannion, 77 Misc. 3d 1203(A), the Court held,

“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). In these special proceedings, the candidates seek the issuance of temporary restraining orders altering that canvassing process under Section 9-209 to direct, among other things, the preservation of the paper ballot envelopes during the post-election canvassing, similar to the procedure followed in O’Keefe v. Gentile (1 Misc 3d 151, 757 N.Y.S.2d 689 [Sup Ct Kings Cty 2003]), as well as the advanced production of records and materials by the Boards of Elections that the candidates claim will assist them in reviewing the validity of paper ballots during the canvassing.

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 [\*\*2] 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.

65. 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.

66. In Tenney v. Oswego County BOE, supra, there was extensive, outcome determinative, litigation in which detailed review of ballots, applications and related elections documents was conducted. The litigation featured orders to the Boards of Elections in the Congressional district to correct erroneous practices that had resulted in disenfranchisement of voters.
67. The litigation in Tenney, supra resulted in that Congressional contest being the last to be decided in America. The careful scrutiny of the process and the ballots, however, resulted in no appeal from the final order. The result of the election was that Congresswoman Claudia Tenney upset an incumbent Member of Congress.
68. There can be no question that the results took a long time to get to, however, they were correct and conclusive due to Judicial review.
69. Justice Del Conte commented from the bench in Shiroff that he was sure that the Legislature's actions in enacting Chapter 763 were in direct response to what occurred in Tenney, supra.

70. He then ruled that the Judiciary had been effectively precluded from conducting the type of review that the Law at the time of Tenney, supra, allowed for.
71. The Shiroff case, supra, saw an election decided by only ten votes out of 123,148 votes cast – a 0.008% difference.
72. Counsel is certain that strict scrutiny of ballots and election processes would have yielded a different result.
73. The voters were given quicker results in Shiroff, supra, but not necessarily the accurate results that the Tenney, supra, era law delivered.
74. Most recently Chapter 763 reared its ugly head in a primary election in Queens County. In Chen v. Pai, Index No. 713743/2023, 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.

75. 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 challenged Chapter 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)).
76. 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” NYSCEF Index No. 713743/2023, Doc. 30.
77. While the Petitioner’s position in that matter was that there was no fraud, assuming *arguendo*, that there was fraud, the deprivation of a participatory administrative process (the canvass) would serve to prevent an aggrieved candidate from having any opportunity to detect the fraud.

78. This situation was intentionally exacerbated by the Legislature by spreading out the canvass of ballots over a period of more than a month preceding the election – with canvassing to be done every four days, see Chapter 736.
79. In fact, a recanvass every four days not only discourages or prevents candidate from participation, but invites any person or person choosing to affect the results of an election via a fraudulent harvesting of absentee ballots has an invitation – via 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 every four days.
80. Upon information and belief, based upon reports from Boards of Elections, the provisions of Chapter 763 have resulted in multiple instances where persons who were not true citizens of the State of New York, and even dead persons, had their votes counted and included with the votes of legitimate citizens who were qualified to vote and actually alive on election day.
81. The voters of this state are entitled to have their right to vote protected against vote dilution.

82. The voters of this state have the right to be able to change their mind(s) as to who they will vote for up to and including the day of the election.
83. Further, voters should not be misled as to their ability to make a choice on any day of balloting by being issued a provisional (affidavit) ballot that is certain to be invalidated and discarded so as to allow the ballot that no longer reflects the voter's choice to be counted.
84. This impermissibly impinges upon the Constitutional rights of Free Speech and Free Association.
85. This irreparably harms your Plaintiff – Petitioners, and requires a remedial order.
86. Accordingly, this Court must declare the provisions of Chapter 763 to be unconstitutional (and / or unconstitutional as applied) and enjoin its enforcement by Defendant-Respondents.

**SECOND CAUSE OF ACTION - CHAPTER 763 UNCONSTITUTIONALLY IMPAIRS THE RIGHTS OF CANDIDATES AND POLITICAL PARTIES**

87. Each and every allegation contained in the preceding paragraphs is hereby repeated and re-alleged as if fully set forth herein.
88. It is beyond dispute that the early canvassing provided for by Chapter 763, Laws of 2021, also categorically squelches any administrative

proceedings challenging illegal, improper, or fraudulent votes (and votes by the dead and non-citizens).

89. The New York State Constitution establishes the right to due process of law and equal protection under these laws. It states, "No person shall be deprived of life, liberty or property without due process of law" Constitution, Article 1, § 6. Further, "No person shall be denied the equal protection of the laws of this state or any subdivision thereof. No person shall be denied the equal protection of the laws of this state or any subdivision thereof" Constitution, Article I, § 11.
90. The right to due process applies to administrative proceedings.
91. This right attaches to the proceedings conducted by a Board of Elections. That includes administrative proceedings relating to the canvass of ballots under the provisions of Chapter 763, Laws of 2021.
92. The essence of the right to due process in the administrative setting is two pronged. There must be: 1. adequate notice, and 2. an adequate opportunity to be heard.
93. Plaintiff - Petitioners are entitled by law to have watchers participate in the administrative proceedings of the Boards of Elections by law, see Election Law § 8 - 500.

94. By purporting to preclude any objections to ballots Chapter 763, Laws of 2021 deprives Plaintiffs - Petitioners of due process of law.
95. This is because the Plaintiffs - Petitioners are entitled to watchers, however, those representatives, by this new law, are deprived of the right to be heard, and the administrative agency has been prohibited from acting on a watcher's objections to invalidate a ballot that is improper or illegal.
96. Also, the public policy of this state gives Plaintiffs - Petitioners the right to have ***ONLY A LIST OF ABSENTEE VOTERS BEFORE*** the day of election, see Election Law § 8-402, as cited in Jacobs v. Biamonte, 15 Misc.3d 223, affd, 38 A.D.3d 777 (2<sup>nd</sup> Dept., 2007).
97. The implication of Jacobs, supra, is that the applications and other relevant data are made available only after the election when there is a close race and a contested canvass proceeding at the Board of Elections, and / or a post-election contest pursuant to Article 16 Election Law.
77. Chapter 763, Laws of 2021, requires the Board of Elections to canvass ballots not less than ten times during the forty days prior to Election Day.

98. It does not allow for the party chairs, candidates, or any other citizen to obtain the records that would allow for meaningful participation in the canvass process.
99. This Chapter further circumscribes the commencement of a pre-election impoundment under §16 - 112 Election Law to preserve ballots and election data in contemplation of a future contest. (Such orders are / have been commonly brought where the race is expected to be close; and are often brought with the consent of the party committees and candidates.)
100. These impermissible restrictions deprive Plaintiffs - Petitioners of their due process rights, and access to the Courts.
101. Accordingly, Chapter 763 of the Laws of 2021 must be declared to be unconstitutional as depriving Plaintiffs - Petitioners of the right to Due Process of Law as specified by the New York State Constitution.

**THIRD CAUSE OF ACTION - CHAPTER 763 UNCONSTITUTIONALLY IMPAIRS THE RIGHTS OF COMMISSIONERS OF ELECTIONS AND PREVENTS THEM FROM PERFORMING THEIR DUTIES**

102. Each and every allegation contained in the preceding paragraphs is hereby repeated and re-alleged as if fully set forth herein.



103. It is respectfully submitted that a Commissioner of Elections participating in administrative procedures to canvass ballots has a duty under the Law to entertain and rule on objections from poll watchers legally present at the canvass of ballots.
104. In fact, each Commissioner of Elections has taken an oath to enforce the terms of the Constitution and the statute.
105. The Chapter of Law that is the subject of these proceedings precludes any Commissioner of Elections from ruling on a poll watcher's objection so as to result in the invalidation of any ballot.
106. This effectively prohibits Elections Commissioners from performing their duties.
107. Additionally, it prohibits Elections Commissioners from exercising their rights of free speech (making a ruling) and free association (determining to associate him / herself with the arguments advanced by the poll watcher / objector) in contravention of the State Constitution.
108. The "early canvassing" provisions of Chapter 763, Laws of 2021, effectively prevents the Board of Elections and its Commissioners from performing their duties to investigate the validity of applications and ballots issued thereon.

109. Accordingly, this Court should declare the subject statute to be unconstitutional.

**FOURTH CAUSE OF ACTION - THE STATUTE IMPERMISSABLY  
COMPROMISES VOTERS' RIGHTS TO HAVE A SECRET BALLOT**

110. Each and every allegation contained in the preceding paragraphs is hereby repeated and re-alleged as if fully set forth herein.

111. It is the personal experience of Counsel that where the number of ballots in a particular Election District is so small that there are only a few or even one or two ballots to be counted that the secrecy of the ballot guaranteed by Article II, § 7 of the New York State Constitution is compromised.

112. Here the compromise of the secrecy of voters' ballots occurs on two levels due to Chapter 736, Laws of 2021.

113. First, the drive to have pre-election canvassing occurring every four days before the day of election assures that the number of times that the voters' secret ballots will be compromised will rise exponentially.

114. This compromise of a fundamental right of the individual voters guaranteed by the Constitution is intolerable.

115. In this highly polarized political environment, the voters will be subject to threat, pressure, and ridicule from political operatives who will use their knowledge of the canvassing process to get voters to cast the ballots as they desire.
116. Concomitantly, voters who do not cast their votes as desired by political operatives will leave them vulnerable to retaliation.
117. This is exactly why we hold the secret ballot sacrosanct. It demonstrates a clear case of the Legislature sacrificing constitutional rights to achieve political ends.
118. Secondly, the new Statute requires the Boards of Elections to conduct a running, but "secret" canvass of the votes, see § 9 - 209 (6).
119. This provision is not only unworkable, but completely unrealistic.
120. Poll watchers are still entitled to see the face of each ballot when it is canvassed (but now are prohibited from objecting to ballots that do not conform to the law).
121. Nothing can stop poll watchers (or election personnel present at the canvass) from keeping a tally of the votes (or identifying particular voters' ballots).

122. We note here that where the voters engage in writing in their votes (as was recently the case in the election for the office of mayor of the City of Buffalo) voting machines used to scan the ballots will segregate any ballot with a "write-in vote". Further compromising the right of the voters to a secret ballot.
123. Further, many of the election workers are party committee members or volunteers for candidates' campaigns.
124. This state has party officers, including committee chairs, and party committee members, serving as commissioners, deputy commissioners and other election officers.
125. Accordingly, Chapter 763 contemplates the absolute absurdity of a person keeping the canvass results a secret from him or herself.
126. The inescapable conclusion here is that the sieve designed by the Legislature compromises the Constitutional right to a secret ballot in several ways.
127. The compromise of Constitutional Rights and absurdities created by this Chapter would be completely avoided by this Court declaring the new law unconstitutional and leaving the post-election canvass until the day of election is over.

128. This Court should declare the subject statute to be unconstitutional for compromising the voters rights to a secret ballot pursuant to Article I, §11 of the New York State Constitution.

FIFTH CAUSE OF ACTION - THE CHALLENGED STATUTE  
UNCONSTITUTIONALLY REMOVES THE POWER OF JUDICIAL  
OVERSIGHT OVER ADMINISTRATIVE PROCEEDINGS

129. Each and every allegation contained in the preceding paragraphs is hereby repeated and re-alleged as if fully set forth herein.

130. The Constitution establishes the Judiciary as an independent co-equal branch of government.

131. Article VI, §7 of the New York State Constitution gives the Supreme Court jurisdiction over all questions of law emanating from the Election Law.

132. It is fair to say that the Courts of our state have authority to review the determinations made by administrative agencies in our state, see generally, *Judicial Review of Administrative Action in New York: An Overview and Survey*, St. John's Law Review, Vol. 52 No.3 (1978), Gabrielli & Nonna.

133. Here, in addition to the general provisions of Article 78 CPLR, we have the Election Law which provides that, “The supreme court is vested with jurisdiction to summarily determine any question of law or fact arising as to any subject set forth in this article, which shall be construed liberally”, see Election Law § 16 - 101(1).

134. It is only logical to conclude that the administrative process of ballot review is (and should be) subject to Court review.

135. Under the Election Law the Courts have declared:

“The Court's role in this proceeding is to preserve the integrity of the electoral system by ensuring that the laws governing elections are strictly and uniformly applied. (Gross v. Albany County Bd. of Elections, 3 N.Y.3d 251, 258, 785 N.Y.S.2d 729, 819 N.E.2d 197 [2004]). This means ensuring that every single valid vote - and only every single valid vote - is counted. Accordingly, all rulings in this Decision and Order are based upon either existing appellate authority or the plain language of the governing statutes and regulations, and each ruling is applied equally to all similarly situated ballots. Previously, this Court exercised its statutory authority and ordered the Boards of Elections to carry out their “dut[ies] imposed by law” by canvassing all ballots in accordance with the provisions of Election Law § 9-209 Election Law § 16-106[4]). Now, in determining the validity of the properly canvassed ballots, only ballots that were challenged during the canvasses, and only the objections made by the candidates at those canvasses, are considered Gross, 3 N.Y.3d 251; Benson v. Prusinski, 151 A.D.3d 1441, 1444, 58 N.Y.S.3d 685 [3d Dept. 2017]”, Tenney v. Oswego County Board of Elections, 71 Misc.3d 400 (Sup. Ct., Oswego Co., 2021).

136. Provisions for Judicial proceedings under the Election Law are set forth in Article 16 of the Election Law. The former provisions of § 9 - 209 of the Election Law stated:

“If the board cannot agree as to the validity of the ballot it shall set the ballot aside, un-opened, for a period of three days at which time the ballot envelope shall be opened and the vote counted unless other - wise directed by an order of the court”.

137. The provisions of Article Nine were seamlessly linked to the provisions of §16 - 112, which states:

“Proceedings for examination or preservation of ballots. The supreme court, by a justice within the judicial district, or the county court, by a county judge within his county, may direct the examination by any candidate or his agent of any ballot or voting machine upon which his name appeared, and the preservation of any ballots in view of a prospective contest, upon such conditions as may be proper”.

138. The actual review of ballots and materials which are preserved is addressed in §16 - 102 Election Law. The statute provides:

“The casting or canvassing or refusal to cast challenged ballots, blank ballots, void or canvass absentee, military, special federal, federal write-in or emergency ballots and ballots voted in affidavit envelopes by persons whose registration poll records were not in the ledger or whose names were not on the computer generated registration list on the day of election or voters in inactive status, voters who moved to a new address in the city or county or after they registered or voters who claimed to be enrolled in a party other than that shown on their

registration poll record or on the computer generated registration list and the original applications for a military, special federal, federal write-in, emergency or absentee voter's ballot may be contested in a proceeding instituted in the supreme or county court, by any candidate or the chairman of any party committee, and by any voter with respect to the refusal to cast such voter's ballot, against the board of canvassers of the returns from such district, if any, and otherwise against the board of inspectors of election of such district. If the court determines that the person who cast such ballot was entitled to vote at such election, it shall order such ballot to be cast and canvassed if the court finds that ministerial error by the board of elections or any of its employees caused such ballot envelope not to be valid on its face.

2. The canvass of returns by the state, or county, city, town or village board of canvassers may be contested, in a proceeding instituted in the supreme court by any voter, except a proceeding on account of the failure of the state board of canvassers to act upon new returns of a board of canvassers of any county made pursuant to the order of a court or justice, which may be instituted only by a candidate aggrieved or a voter in the county." Election Law §16 - 102.

139. By enactment of Chapter 763, Laws of 2021 the Legislature has completely abridged any person - be it a candidate, party chair, election commissioner or voter from contesting a determination by the Board of Elections to canvass an illegal or improper ballot. Moreover, a partisan split on the validity of a ballot is not accompanied by a three-day preservation of the questioned ballot for judicial review. Rather, the Supreme Court is divested of jurisdiction as now the ballot envelope is to be immediately burst and the ballot intermingled with all others for canvassing.



140. The offending statute enables a single member of the bipartisan Board of Elections to control the outcome of the canvass and prevent a determination to not canvass any ballot which is improper or illegal by "splitting" in the vote from his / her counterpart. In all such cases this statute compels the canvassing of the ballot without regard to the merits, and further the Statute precludes any Court review.
141. This precludes any meaningful proceeding to determine the validity of the ballot.
142. The Legislature has, in contravention of the Constitution and statute, prohibited the Courts from performing their duty by the statute's dictate "In no event may a court order a ballot that has been counted to be uncounted" see §9 - 209 Election Law at sub sections (7)(j) and (8)(e).
143. Thus, should the Supreme Court, or the Appellate Courts, determine that a voter was not entitled to vote at the subject election, or that the ballot in question was fraudulent, the Legislature has actually reached into the courtroom and stopped the Judiciary from doing its appointed job under the terms of the Constitution.

144. Accordingly, the Statute must be declared unconstitutional as it violates the terms of the Constitution which empower the Judiciary to review administrative determinations.

**SIXTH CAUSE OF ACTION - THE CHALLENGED STATUTE  
UNCONSTITUTIONALLY VIOLATES THE DOCTRINE OF SEPARATION  
OF POWERS.**

145. Each and every allegation contained in the preceding paragraphs is hereby repeated and re-alleged as if fully set forth herein.

146. The Constitution establishes the Judiciary as an independent co-equal branch of government.

147. Here, 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 provisions of §16 - 112 Election Law.

148. The Legislature has clearly usurped the role of the Judiciary in enacting this new statute.

149. This is an overreach by the Legislature which is a flagrant violation of the Doctrine of Separation of Powers.

150. Accordingly, this Court must declare the challenged statute to be unconstitutional for its violation of the Separation of Powers

Doctrine and a legislative act in excess of the powers allowed to the Legislature.

SEVENTH CAUSE OF ACTION - THE CHALLENGED STATUTE  
UNCONSTITUTIONALLY CURTAILS THE ABILITY OF THE PLAINTIFFS -  
PETITIONERS TO EXERCISE THEIR RIGHTS UNDER THE ELECTION LAW

151. Each and every allegation contained in the preceding paragraphs is hereby repeated and re-alleged as if fully set forth herein.
152. Here, 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 provisions of §16 - 112 Election Law, by preventing the Plaintiffs - Petitioners from preserving their objections at the administrative level for review by the Courts.
153. The new Chapter explicitly precludes poll watchers appointed by your Plaintiffs-Petitioners from making objections, see Election Law §9-209 (5) as amended by Chapter 763, Laws of 2021.
154. Recording objections at the Board of Elections to ballots being contested is a pre-requisite to litigating the validity of same before the Supreme Court.

155. The candidates, party chairs and voters allowed to contest determinations of validity or invalidity of ballots under the provisions of Article 16 Election Law will be, and are, precluded from making a case because they cannot exhaust administrative remedies by recording any objections at the administrative level of the post-election proceeding.
156. This deprives the Plaintiffs - Petitioners from seeking redress from the Supreme Court under Election Law §16 - 112.
157. Accordingly, the due process, free speech, and free associational rights provided by the Constitution, in addition to the statutory rights provided by the Election Law, and the right to proceed before the Courts has / have been improperly abridged by the enactment of Chapter 763, Laws of 2021.
158. This Court should enter a declaratory judgment striking the offending Statute as unconstitutional.

EIGHTH CAUSE OF ACTION- THE CHALLENGED STATUTE  
UNCONSTITUTIONALLY CURTAILS THE ABILITY OF THE PLAINTIFFS -  
PETITIONERS TO EXERCISE THEIR RIGHTS UNDER THE ELECTION  
LAW

159. Each and every allegation contained in the preceding paragraphs is hereby repeated and re-alleged as if fully set forth herein.
160. The prohibition of a poll watcher from making objections to a ballot is a per se violation of the right of Free Speech granted to such poll watchers and the Plaintiffs - Petitioners who appoint them.
161. Additionally, the new statute curtails a poll watcher's meaningful access to subject ballots, abridging their substantive rights to freely associate and exercise political speech.
162. Accordingly, the offending Statute must be stricken as unconstitutional.

NINTH CAUSE OF ACTION - THE CHALLENGED STATUTE  
IMPERMISSABLY CONFLICTS WITH THE RIGHTS CONFERRED  
BY OTHER SECTIONS OF THE ELECTION LAW

163. Each and every allegation contained in the preceding paragraphs is hereby repeated and re-alleged as if fully set forth herein.
164. Poll watchers are defined by, and the authority to appoint watchers is established by, Title V of Article 8 of the Election Law.
165. The provisions of §8 - 502 allow for watchers to challenge “any Person” as to their right to vote.
166. This provision of law applies to the polling places on the days of election and to the central polling place at which absentee and other paper ballots are canvassed, see §8 - 506 Election Law.
167. Section 8 - 506 expressly regulates the entry of objections at the central polling place set for the canvass of absentee, military, federal and other paper ballots.
168. This section of the law provides:
- “1. During the examination of absentee, military, special federal and special presidential voters' ballot envelopes, any inspector shall, and any watcher or registered voter properly in the polling place may, challenge the casting of any ballot upon the ground or grounds allowed for challenges generally, or (a) that the voter was not entitled to cast an absentee, military, special federal or special presidential

ballot, or (b) that notwithstanding the permissive use of titles, initials or customary abbreviations of given names, the signature on the ballot envelope does not correspond to the signature on the registration poll record, or (c) that the voter died before the day of the election.

2. The board of inspectors forthwith shall proceed to determine each challenge. Unless the board by majority vote shall sustain the challenge, an inspector shall endorse upon the envelope the nature of the challenge and the words "not sustained", shall sign such endorsement, and shall proceed to cast the ballot as provided herein" Should the board, by majority vote, sustain such challenge, the reason and the word "sustained" shall be similarly endorsed upon the envelope and an inspector shall sign such endorsement. The envelope shall not be opened and such envelope shall be returned unopened to the board of elections. If a challenge is sustained after the ballot has been removed from the envelope, but before it has been deposited in the ballot box, such ballot shall be rejected without being unfolded or inspected and shall be returned to the envelope. The board shall immediately enter the reason for sustaining the challenge on such envelope and an inspector shall sign such endorsement.

3. If the board of inspectors determines by majority vote that it lacks sufficient knowledge and information to determine the validity of a challenge, the inspectors shall endorse upon the ballot envelope the words "unable to determine", enter the reason for the challenge in the appropriate section of the challenge report and return the envelope unopened to the board of elections. Such ballots shall be cast and canvassed pursuant to the provisions of section 9-209 of this chapter" Election Law §8-506, emphasis added.

169. Obviously, the provisions of Chapter 763, Laws of 2021 are in direct conflict with the existing provisions of Article Eight, Title Five of the Election Law.

170. This conflict might be attributed to poor draftsmanship by the Legislature. It might be attributed to an ignorance of the Election

Process as established by the Law and as carried out for decades.

171. Whatever the root cause of this conflict of laws the resolution of the conflict must fall clearly on the side of preserving the rights of the participants given standing to contest the validity of the ballots in Article 16 Election Law; the right of the Judiciary to perform its duties in preserving the contested ballots and reviewing the Board's administrative determinations; and the Constitutional rights of the party chairs, candidates and the voters to be protected against improper or illegal ballots from being allowed to determine the outcome of our elections.

172. It is also clear that the provisions of this new law transgress against the rights conveyed upon Plaintiffs - Petitioners by Article Sixteen Election Law.

173. The Legislature chose not to repeal the provisions of Articles Eight and Sixteen of the Election Law in adopting the Chapter challenged herein. There can be no inference made that the rights secured by the sections of law not repealed or amended should in any way be abridged.



174. It cannot be said that the voters cannot be compelled to associate with or have their votes diluted by persons who are dead, not qualified to vote, or are voting illegally.
175. The Courts have an obligation to preserve the integrity of our election process and assure the public's confidence in the election process.
176. Accordingly, to the extent that Chapter 763, Laws of 2021 conflicts with the rights established by Article Eight of the Election Law and other Sections of that Law including Article Sixteen, the conflicting provisions of Chapter 763, Laws of 2021 must be declared to be invalid and the provisions of Article Eight and Sixteen Election Law must be declared to be controlling.

WHEREFORE, Plaintiffs - Petitioners respectfully pray for an order of this Court:

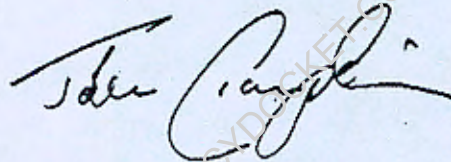
1. Declaring Chapter 763 of the New York Laws of 2021 to be unconstitutional on the basis of the FIRST, SECOND, THIRD, FOURTH, FIFTH, SIXTH, SEVENTH, EIGHTH, and NINTH CAUSES OF ACTION, and
2. Because the subject statutes do not have a severability clause, declaring the entirety of the statutes challenged herein to be invalid as unconstitutional, and

3. Issuing a preliminary injunction as against Defendants - Respondents prohibiting the enforcement of the unconstitutional statutes challenged herein,

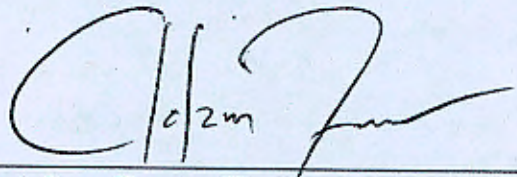
Together with such other, further and different relief as this Court may deem to be just and proper in the premises.

DATED: August 31, 2023

Respectfully submitted,



John Ciampoli, Esq.  
*of counsel*  
Perillo Hill, LLP  
285 W. Main Street, Suite 203  
Sayville, New York 11782  
Phone: 631-582-9422  
Cell: 518 - 522 - 3548  
Email: Ciampolilaw@yahoo.com



**By: Adam Fusco, Esq.**  
Fusco Law Office  
P.O. Box 7114  
Albany, New York 12224  
P: (518) 620-3920  
F: (518) 691-9304  
C: (315) 246-5816  
afusco@fuscolaw.net

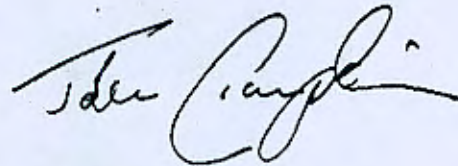
**ATTORNEY'S VERIFICATION**

STATE OF NEW YORK )  
COUNTY OF SUFFOLK ) s.ss:

JOHN CIAMPOLI, ESQ., an attorney duly admitted to the practice of law before the Courts of the State of New York, does hereby affirm under the penalties of perjury:

1. He is the attorney for the Petitioner(s) in this action.
2. He has reviewed the contents of this document with his client(s), and / or their campaign workers, and upon the conclusion of said review as to the facts alleged therein, believes same to be true, as indicated herein, upon information and belief.
3. He has personally reviewed originals or copies of the relevant petitions, Board of Elections records, and ancillary documents on file with the Boards of Elections, together with other papers relating thereto, contacted the respondent board, and upon the conclusion of the said review, believes the within allegations to be true, on the basis of his personal knowledge.
4. This affirmation is being used pursuant to the provisions of the CPLR and applicable case law, due to the fact that time is of the essence and that petitioner(s)' residence(s) and his counsel's office are in different counties.

DATED: Suffolk County, New York  
August 31, 2023



John Ciampoli, Esq.  
*of counsel*  
Perillo Hill, LLP  
285 W. Main Street, Suite 203  
Sayville, New York 11782  
Phone: 631-582-9422 Cell: 518 - 522 - 3548  
Email: Ciampolilaw@yahoo.com

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.

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,

EMERGENCY  
AFFIRMATION

Respondents / Defendants.

X

**TO: THE SUPREME COURT OF THE STATE OF NEW YORK**

John Ciampoli, Esq. an attorney duly admitted to the practise of law before the  
Courts of the State of New York does hereby affirm under the penalties of perjury, as

follows:

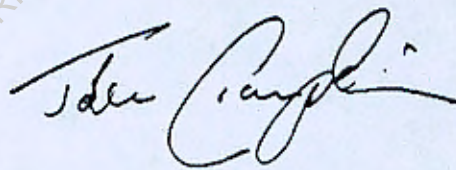
1. I am the attorney for the Petitioner(s) in the above captioned proceeding.
2. This affirmation is offered to the Court to explain why this matter is of the most urgent nature and requires the Court's immediate attention.
3. This is an Election Law proceeding, and as such, this matter has a statutory preference over all other matters on the Court's calendar, see, Election Law Section 16 - 116.
4. This matter is subject to an incredibly short statute of limitations. The last day to commence this proceeding is a mere fourteen days after the last day to file petitions. As a practical matter, this case must receive immediate attention so that the Court may achieve jurisdiction.
5. This matter must be instituted and provided an Election Law preference because the application of the challenged chapter of laws may affect upcoming elections.
6. To that end, the Court of Appeals has determined that Elections Matters are always to be given the highest priority by the Courts. It is respectfully submitted that the circumstances described in the petition present this court with an emergency situation requiring immediate action, and further that the very nature of an election proceeding, particularly with regard to petition challenges which have a very short statute of limitations, presents

an exemption to any rule which might delay or bar the court's action in other circumstances, see Banko v. Webber, 7 NY2d 758 (1959).

7. It is respectfully submitted that the statute and case law require the *immediate* consideration of this matter by the Supreme Court.

**WHEREFORE**, it is respectfully requested that this Court take up the annexed Order to Show Cause immediately and grant the relief requested for such order in the verified petition, together with such other, further and different relief as this Court may deem to be just and proper in the premises.

Dated: August 31, 2023

A handwritten signature in black ink, appearing to read "John Ciampoli". The signature is fluid and cursive, with a large initial "J" and a long, sweeping underline.

John Ciampoli, Esq.  
*of counsel*  
Perillo Hill, LLP  
285 W. Main Street, Suite 203  
Sayville, New York 11782  
Phone: 631-582-9422  
Cell: 518 - 522 - 3548  
Email: Ciampolilaw@yahoo.com



# REQUEST FOR JUDICIAL INTERVENTION

## SUPREME COURT, COUNTY OF Saratoga

UCS-840  
(rev. 11/24/2022)

Index No: \_\_\_\_\_ Date Index Issued: \_\_\_\_\_

**For Court Use Only:**

**CAPTION** Enter the complete case caption. Do not use et al or et ano. If more space is needed, attach a caption rider sheet.

IAS Entry Date: \_\_\_\_\_

Plaintiff(s)/Petitioner(s): \_\_\_\_\_

Judge Assigned: \_\_\_\_\_

-against-  
Defendant(s)/Respondent(s): \_\_\_\_\_

RJI Filed Date: \_\_\_\_\_

**NATURE OF ACTION OR PROCEEDING** Check only one box and specify where indicated.

**COMMERCIAL**

Business Entity (includes corporations, partnerships, LLCs, LLPs, etc.)

Contract

Insurance (where insurance company is a party, except arbitration)

UCC (includes sales and negotiable instruments)

Other Commercial (specify): \_\_\_\_\_

*NOTE: For Commercial Division assignment requests pursuant to 22 NYCRR 202.70(d), complete and attach the COMMERCIAL DIVISION RJI ADDENDUM (UCS-840C).*

**MATRIMONIAL**

Contested

*NOTE: If there are children under the age of 18, complete and attach the MATRIMONIAL RJI ADDENDUM (UCS-840M).  
For Uncontested Matrimonial actions, use the Uncontested Divorce RJI (UD-13).*

**TORTS**

Adult Survivors Act

Asbestos

Environmental (specify): \_\_\_\_\_

Medical, Dental or Podiatric Malpractice

Motor Vehicle

Products Liability (specify): \_\_\_\_\_

Other Negligence (specify): \_\_\_\_\_

Other Professional Malpractice (specify): \_\_\_\_\_

Other Tort (specify): \_\_\_\_\_

**REAL PROPERTY** Specify how many properties the application includes: \_\_\_\_\_

Condemnation

Mortgage Foreclosure (specify):  Residential  Commercial

Property Address: \_\_\_\_\_

*NOTE: For Mortgage Foreclosure actions involving a one to four-family, owner-occupied residential property or owner-occupied condominium, complete and attach the FORECLOSURE RJI ADDENDUM (UCS-840F).*

Partition

*NOTE: Complete and attach the PARTITION RJI ADDENDUM (UCS-840P).*

Tax Certiorari (specify): Section: \_\_\_\_\_ Block: \_\_\_\_\_ Lot: \_\_\_\_\_

Tax Foreclosure

Other Real Property (specify): \_\_\_\_\_

**SPECIAL PROCEEDINGS**

Child-Parent Security Act (specify):  Assisted Reproduction  Surrogacy Agreement

CPLR Article 75 – Arbitration [see NOTE in COMMERCIAL section]

CPLR Article 78 – Proceeding against a Body or Officer

Flection Law

Extreme Risk Protection Order

MHL Article 9.60 – Kendra's Law

MHL Article 10 – Sex Offender Confinement (specify):  Initial  Review

MHL Article 81 (Guardianship)

Other Mental Hygiene (specify): \_\_\_\_\_

Other Special Proceeding (specify): \_\_\_\_\_

**OTHER MATTERS**

Certificate of Incorporation/Dissolution [see NOTE in COMMERCIAL section]

Emergency Medical Treatment

Habeas Corpus

Local Court Appeal

Mechanic's Lien

Name Change/Sex Designation Change

Pistol Permit Revocation Hearing

Sale or Finance of Religious/Not-for-Profit Property

Other (specify): CPLR 3001 Dec. Judgment

**STATUS OF ACTION OR PROCEEDING** Answer YES or NO for every question and enter additional information where indicated.

	YES	NO	
Has a summons and complaint or summons with notice been filed?	<input type="radio"/>	<input checked="" type="radio"/>	If yes, date filed: _____
Has a summons and complaint or summons with notice been served?	<input type="radio"/>	<input checked="" type="radio"/>	If yes, date served: _____
Is this action/proceeding being filed post-judgment?	<input type="radio"/>	<input checked="" type="radio"/>	If yes, judgment date: _____

**NATURE OF JUDICIAL INTERVENTION** Check one box only and enter additional information where indicated.

Infant's Compromise

Extreme Risk Protection Order Application

Note of Issue/Certificate of Readiness

Notice of Medical, Dental or Podiatric Malpractice Date Issue Joined: \_\_\_\_\_

Notice of Motion Relief Requested: \_\_\_\_\_ Return Date: \_\_\_\_\_

Notice of Petition Relief Requested: \_\_\_\_\_ Return Date: \_\_\_\_\_

Order to Show Cause Relief Requested: Dec. Jgmt., Pl, CPLR 78, EL 16 Return Date: \_\_\_\_\_

Other Ex Parte Application Relief Requested: \_\_\_\_\_

Partition Settlement Conference

Poor Person Application

Request for Preliminary Conference

Residential Mortgage Foreclosure Settlement Conference

Writ of Habeas Corpus

Other (specify): \_\_\_\_\_

**RELATED CASES** List any related actions. For Matrimonial cases, list any related criminal or Family Court cases. If none, leave blank. If additional space is required, complete and attach the **RJI ADDENDUM (UCS-840A)**.

Case Title	Index/Case Number	Court	Judge (if assigned)	Relationship to instant case

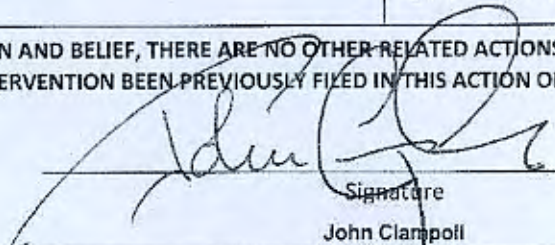
**PARTIES** For parties without an attorney, check the "Un-Rep" box and enter the party's address, phone number and email in the space provided. If additional space is required, complete and attach the **RJI ADDENDUM (UCS-840A)**.

Un-Rep	Parties List parties in same order as listed in the caption and indicate roles (e.g., plaintiff, defendant, 3 <sup>rd</sup> party plaintiff, etc.)	Attorneys and Unrepresented Litigants For represented parties, provide attorney's name, firm name, address, phone and email. For unrepresented parties, provide party's address, phone and email.	Issue Joined For each defendant, indicate if issue has been joined.	Insurance Carriers For each defendant, indicate insurance carrier, if applicable.
<input type="checkbox"/>	Name: Rich Amedure Role(s): Plaintiff	Perillo Hill LLP 285 W. Main Street (203) Sayville, NY 11782	<input type="radio"/> YES <input type="radio"/> NO	
<input type="checkbox"/>	Name: Garth Snide Role(s):	Perillo Hill LLP 285 W. Main Street (203) Sayville, NY 11782	<input type="radio"/> YES <input type="radio"/> NO	
<input type="checkbox"/>	Name: Robert Smullen Role(s):	Perillo Hill LLP 285 W. Main Street (203) Sayville, NY 11782	<input type="radio"/> YES <input type="radio"/> NO	
<input type="checkbox"/>	Name: Edward Cox Role(s):	Perillo Hill LLP 285 W. Main Street (203) Sayville, NY 11782	<input type="radio"/> YES <input type="radio"/> NO	
<input type="checkbox"/>	Name: NY State Republican Party Role(s):	Perillo Hill LLP 285 W. Main Street (203) Sayville, NY 11782	<input type="radio"/> YES <input type="radio"/> NO	
<input type="checkbox"/>	Name: Edward Cox Role(s):	Perillo Hill LLP 285 W. Main Street (203) Sayville, NY 11782	<input type="radio"/> YES <input type="radio"/> NO	
<input type="checkbox"/>	Name: Gerard Kassar Role(s):	Perillo Hill LLP 285 W. Main Street (203) Sayville, NY 11782	<input type="radio"/> YES <input type="radio"/> NO	
<input type="checkbox"/>	Name: NY State Conservative Party Role(s):	Perillo Hill LLP 285 W. Main Street (203) Sayville, NY 11782	<input type="radio"/> YES <input type="radio"/> NO	
<input type="checkbox"/>	Name: Joseph Whalen Role(s):	Perillo Hill LLP 285 W. Main Street (203) Sayville, NY 11782	<input type="radio"/> YES <input type="radio"/> NO	
<input type="checkbox"/>	Name: Saratoga County Republican Role(s):	Perillo Hill LLP 285 W. Main Street (203) Sayville, NY 11782	<input type="radio"/> YES <input type="radio"/> NO	
<input type="checkbox"/>	Name: Ralph Mohr Role(s):	Perillo Hill LLP 285 W. Main Street (203) Sayville, NY 11782	<input type="radio"/> YES <input type="radio"/> NO	
<input type="checkbox"/>	Name: Erik Haight Role(s):	Perillo Hill LLP 285 W. Main Street (203) Sayville, NY 11782	<input type="radio"/> YES <input type="radio"/> NO	
<input type="checkbox"/>	Name: John Quigley Role(s):	Perillo Hill LLP 285 W. Main Street (203) Sayville, NY 11782	<input type="radio"/> YES <input type="radio"/> NO	
<input type="checkbox"/>	Name: State of New York Role(s):	NYS Atty General Justice Building, Capital Albany NY 12224	<input type="radio"/> YES <input type="radio"/> NO	
<input type="checkbox"/>	Name: NYS Board of Elections Role(s):	40 N. Pearl Street Albany NY 12207	<input type="radio"/> YES <input type="radio"/> NO	

I AFFIRM UNDER THE PENALTY OF PERJURY THAT, UPON INFORMATION AND BELIEF, THERE ARE NO OTHER RELATED ACTIONS OR PROCEEDINGS, EXCEPT AS NOTED ABOVE, NOR HAS A REQUEST FOR JUDICIAL INTERVENTION BEEN PREVIOUSLY FILED IN THIS ACTION OR PROCEEDING.

Dated: 08/30/2023

2003317

  
 \_\_\_\_\_  
 Signature  
 John Clappoll  
 Print Name

Attorney Registration Number



# Request for Judicial Intervention Addendum

Supreme

COURT, COUNTY OF

*Saratoga*

Index No: \_\_\_\_\_

For use when additional space is needed to provide party or related case information.

**PARTIES:** For parties without an attorney, check "Un-Rep" box AND enter party address, phone number and e-mail address in "Attorneys" space.

Un-Rep	Parties:	Attorneys and/or Unrepresented Litigants:	Issue Joined (Y/N):	Insurance Carrier(s):
<input type="checkbox"/>	Governor State of New York Last Name  First Name Primary Role: Defendant: Secondary Role (if any):	NYS Atty General Justice Building, Capital Albany N' Last Name First Name Firm Name Street Address City State Zip Phone Fax e-mail	<input type="radio"/> YES  <input type="radio"/> NO	
<input type="checkbox"/>	Senate, State of New York Last Name  First Name Primary Role: Defendant Secondary Role (if any):	unknown Last Name First Name Firm Name Capital Building, Albany, NY 12247 Street Address City State Zip Phone Fax e-mail	<input type="radio"/> YES  <input type="radio"/> NO	
<input type="checkbox"/>	Majority Leader & President Pro Tem NYS Last Name  First Name Primary Role: Defendant Secondary Role (if any):	unknown Last Name First Name Firm Name Capital Building, Albany, NY 12247 Street Address City State Zip Phone Fax e-mail	<input type="radio"/> YES  <input type="radio"/> NO	
<input type="checkbox"/>	Minority Leader NYS Senate Last Name  First Name Primary Role: Defendant Secondary Role (if any):	unknown Last Name First Name Firm Name Capital Building, Albany, NY 12247 Street Address City State Zip Phone Fax e-mail	<input type="radio"/> YES  <input type="radio"/> NO	
<input type="checkbox"/>	NYS Assembly Last Name  First Name Primary Role: Defendant Secondary Role (if any):	unknown Last Name First Name Firm Name Capital Building, Albany NY 12248 Street Address City State Zip Phone Fax e-mail	<input type="radio"/> YES  <input type="radio"/> NO	
<input type="checkbox"/>	Speaker, NYS Assembly Last Name  First Name Primary Role: Defendant Secondary Role (if any):	unknown Last Name First Name Firm Name Capital Building, Albany NY 12248 Street Address City State Zip Phone Fax e-mail	<input type="radio"/> YES  <input type="radio"/> NO	

**RELATED CASES:** List any related actions. For Matrimonial actions, include any related criminal and/or Family Court cases.

Case Title	Index/Case No.	Court	Judge (if assigned)	Relationship to Instant Case

# Request for Judicial Intervention Addendum

Supreme

COURT, COUNTY OF Saratoga

Index No: \_\_\_\_\_

**For use when additional space is needed to provide party or related case information.**

**PARTIES:** For parties without an attorney, check "Un-Rep" box AND enter party address, phone number and e-mail address in "Attorneys" space.

Un-Rep	Parties:	Attorneys and/or Unrepresented Litigants:	Issue Joined (Y/N):	Insurance Carrier(s):
<input type="checkbox"/>	Minority Leader NYS Assembly Last Name  First Name Primary Role:  Secondary Role (if any):	unknown  Last Name  First Name  Firm Name  Capital Building, Albany, NY 12248 Street Address  City  State  Zip  Phone  Fax  e-mail	<input type="radio"/> YES  <input type="radio"/> NO	
<input type="checkbox"/>	Majority leader NYS Assembly Last Name  First Name Primary Role:  Secondary Role (if any):	unknown  Last Name  First Name  Firm Name  Capital Building, Albany, NY 12248 Street Address  City  State  Zip  Phone  Fax  e-mail	<input type="radio"/> YES  <input type="radio"/> NO	
<input type="checkbox"/>	Last Name  First Name Primary Role:  Secondary Role (if any):	Last Name  First Name  Firm Name  Street Address  City  State  Zip  Phone  Fax  e-mail	<input type="radio"/> YES  <input type="radio"/> NO	
<input type="checkbox"/>	Last Name  First Name Primary Role:  Secondary Role (if any):	Last Name  First Name  Firm Name  Street Address  City  State  Zip  Phone  Fax  e-mail	<input type="radio"/> YES  <input type="radio"/> NO	
<input type="checkbox"/>	Last Name  First Name Primary Role:  Secondary Role (if any):	Last Name  First Name  Firm Name  Street Address  City  State  Zip  Phone  Fax  e-mail	<input type="radio"/> YES  <input type="radio"/> NO	
<input type="checkbox"/>	Last Name  First Name Primary Role:  Secondary Role (if any):	Last Name  First Name  Firm Name  Street Address  City  State  Zip  Phone  Fax  e-mail	<input type="radio"/> YES  <input type="radio"/> NO	

**RELATED CASES:** List any related actions. For Matrimonial actions, include any related criminal and/or Family Court cases.

Case Title	Index/Case No.	Court	Judge (if assigned)	Relationship to Instant Case

# Exhibit B

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AT AN IAS TERM OF THE  
SUPREME COURT HELD IN &  
FOR SARATOGA COUNTY AT  
THE COURTHOUSE THEREOF  
ON SEPTEMBER 8, 2023

PRESENT: HON. James E. Walsh, J.S.C.

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-  
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.

X

2023 SEP 12 PM 12:30

STATE OF NEW YORK  
CLERK OF THE SUPREME COURT  
SARATOGA COUNTY

INDEX NO.

ORDER TO  
SHOW CAUSE

Upon the filing and reading of the annexed verified petition / complaint, duly verified by the attorneys for the Plaintiff / Petitioners, Perillo Hill, LLP, John Ciampoli, Esq. & Adam Fusco, Esq. *of counsel*, on the 31<sup>st</sup> Day of August 2023, and all of the papers and proceedings heretofore had herein, it is hereby:

**ORDERED**, that Respondents herein **SHOW CAUSE** before a Special Term of this Court held in and for the County of Saratoga at the Courthouse thereof at SARATOGA COUNTY SUPREME COURT, 30 McMaster Street, Building 3, Ballston Span, New York, 12020, at 9:15 AM in the forenoon of the 20<sup>th</sup> day of September, 2023, or as soon thereafter as counsel may be heard, as to why an Order of the Court should not be made and entered pursuant to the provisions of the New York State Constitution, Article 78 CPLR, §3001 CPLR, and Article 16 Election Law, thereby,

1. Declaring Chapter 763, New York Laws of 2021 to be unconstitutional upon the causes of action in the annexed verified complaint, and
2. Determining that because the subject Chapter of New York Laws has no severability clause, that the said Chapter 763, New York Laws of 2021 is entirely invalid and that any chapters amending such law are also invalid, and
3. Issuing a preliminary injunction against the Defendant Respondents prohibiting the enforcement of such unconstitutional statutes, and

4. Issuing an order for such other, further and different relief as this Court may deem to be just and proper in the premises.

SUFFICIENT CAUSE APPEARING THEREFOR,

Leave is hereby granted to the Plaintiff / Petitioners to submit on the return date hereof, or any adjourn date thereof, such additional evidence, testimony, affidavits and exhibits as may be necessary, and it is

ORDERED that proof of service may be filed with the Clerk of the Part on the Return Date hereof, and

SUFFICIENT CAUSE APPEARING THEREFOR, it is further

ORDERED, that a copy of this Order to Show Cause together with the papers upon which it was granted be served upon the Defendant Respondents by one of the following methods, at the option of the Plaintiff / Petitioners:

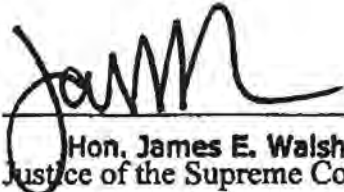
1. By delivering same to such Respondent pursuant to CPLR 308(1) on or before September 13<sup>th</sup>, 2023, or
2. By delivering same to the offices of such Respondent, and leaving such copy with any person(s) authorized to accept service thereof for said Defendant – Respondent, on or before September 13<sup>th</sup>, 2023, or alternatively by electronic or fax transmission thereof to the said Defendant Respondent at an e-mail or FAX number designated and maintained for such purpose on or before September 13<sup>th</sup>, 2023,

3. Or, at the option of the Plaintiff / Petitioner, same may be served upon such Defendant / Respondent by enclosing same in a post paid wrapper and depositing same with a depository of the United States postal Service via Priority Mail EXPRESS service (or alternatively any other recognized overnight delivery service) on or before September 13<sup>th</sup>, 2023,

4. Or, by any other method of service authorized by the CPLR on or before September 13<sup>th</sup>, 2023, and that such service shall constitute good and sufficient service and notice thereof.

① 5. Responsive Papers Due by September 18<sup>th</sup>, 2023.  
ENTER:

DATED: September 9<sup>th</sup>, 2023  
Boston Sp4, New York

  
\_\_\_\_\_, J.S.C.  
Hon. James E. Walsh  
Justice of the Supreme Court

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,

2023 SEP 12 PM 12:30  
STATE OF NEW YORK  
ATTORNEY GENERAL  
HARRIS

Petitioners / Plaintiffs,

-against-

INDEX NO.

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,

VERIFIED PETITION

Respondents / Defendants.

X

TO: THE SUPREME COURT OF THE STATE OF NEW YORK



PETITIONERS / PLAINTIFFS, as captioned hereinabove, do hereby complain of the above captioned Respondents / Defendants and hereby petition this Court and state as follows:

#### NATURE OF THE CASE

1. This is a hybrid proceeding brought pursuant to Article 16 of the Election Law, an Article 78 Proceeding pursuant to Article 78 CPLR, and a declaratory judgment action brought pursuant to the New York Civil Practice Law and Rules, ("CPLR") 3001.
2. Plaintiff's declaratory judgment action seeks a determination, and order declaring that Chapter 763 of the New York State laws of 2021, A.7931 /S. 1027-A (hereinafter, the "Statute", "the Chapter", or "Chapter 763") passed by Defendants Assembly and Senate of the State of New York, and then signed into law by the Defendant Governor, amending §9 – 209 Election Law and other related sections of law, to accelerate the canvass of absentee and other paper ballots, is in conflict with other statutes and violative of the New York State Constitution as set forth herein.
3. The Statute violates the Constitution of the State of New York ("Constitution") and interferes with the constitutionally protected rights of citizens, electors, candidates, and political parties to engage

in the political process as prescribed by the Constitution. Accordingly, Plaintiffs seek a judgement declaring the statute unconstitutional on its face and as applied on the basis that: (a) In enacting the Statute, the Legislature exceeded the authority granted to it by Article II, §2 of the Constitution; (b) the Statute is inconsistent with and in direct conflict with the Constitution and other applicable statutes, such that it can not be enforced without a violation thereof; (c) the Statute impermissibly interferes with Plaintiffs / Petitioners' rights to free speech and free association as guaranteed by the New York State Constitution; (d) the Statute impermissibly opens the election process to the counting of improper and invalid votes, including fraudulent votes; the Statute is unconstitutionally vague.

4. Plaintiff – Petitioners seek a preliminary injunction as against the Defendant – Respondents enjoining the enforcement of the unconstitutional provisions of the New York State Chapter of Laws challenged herein.
5. Plaintiff – Petitioners seek their declaratory judgment, and other relief, as to the 2024 election cycle, unless the court determines that the relief may be applied immediately.

6. Plaintiff – Petitioners seek Article 78 relief as it is arbitrary and capricious action by any administrative agency to enforce a law which violates the Constitution. Further a mandamus / prohibition order should issue prohibiting such enforcement.

#### THE PARTIES

7. Plaintiff – Petitioner New York State Republican Party is an unincorporated association and a political party organized under the provisions of the Election Law. Its principal office is located at 315 State Street, Albany, New York.
8. Plaintiff – Petitioner Edward Cox is the Chairman and a member of the State Republican Party. He is a resident, elector and taxpayer of Suffolk County, and the State of New York. He resides in Suffolk County, New York.
9. Plaintiff – Petitioner New York State Conservative Party is an unincorporated association and a political party organized under the Election Law. Its principal office is located at 486 78<sup>th</sup> Street, Brooklyn, New York.
10. Plaintiff – Petitioner Gerard Kassar is Chairman and a member of the New York State Conservative Party. He is a resident, elector and

taxpayer of Kings County and the State of New York. Plaintiff Kassar resides in Kings County (Brooklyn), New York.

11. Plaintiff – Petitioner Joseph Whalen is Chairman of the Saratoga County Republican party and a Member of the New York State Republican party. He is a resident, elector and taxpayer of Saratoga County and New York State. Plaintiff Whalen resides in Saratoga County New York.
12. Plaintiff – Petitioner Saratoga Republican Party is a county party committee and unincorporated association organized under the terms of the Election Law to represent the party in Saratoga County.
13. Plaintiff – Petitioner Ralph M. Mohr is a Commissioner of Elections and a member of the Erie County Board of Elections.
14. Plaintiff – Petitioner Erik Haight is a Commissioner of Elections and a member of the Dutchess County Board of Elections.
15. Plaintiff – Petitioner John Quigley is a Commissioner of elections and a member of the Ulster County Board of Elections.
16. Plaintiff – Petitioner Robert Smullen is a Member of the New York State Assembly, 118<sup>th</sup> Assembly District, and a resident, elector and taxpayer of Fulton County and the State of New York. He intends to seek re-election to the Assembly in 2024.

17. Plaintiff - Petitioner Rich Amedure has been a candidate for member of the New York State Senate, and is considering candidacy for such office in 2024. He is a resident, elector and taxpayer of Albany County and New York State. He resides in Albany County, New York.
18. Plaintiff - Petitioner Garth Snide is a resident elector and taxpayer of Saratoga County. He has, in the past, availed himself of an absentee ballot when he was outside his home county.
19. Defendant – Respondent State of New York, by the Attorney General, is the body bound by the Constitution, including but not limited to its executive and legislative branches of government, Defendant Governor, Defendant Senate, Defendant Assembly and the Defendant State Board of Elections.
20. Defendant - Respondent New York State Board of Elections is a bipartisan body of the State vested with the power to oversee and manage the administration and enforcement of all laws relating to elections in the State of New York.
21. In addition to its regulatory and enforcement responsibilities; the Defendant – Respondent Board is charged with the administration and supervision of the election process and the preservation of citizens' confidence in the election process and election integrity.

22. Defendant – Respondent Board of Elections supervises the election process administered by the fifty seven county boards of elections and in the five counties comprising the City of New York, by supervising the City's board of elections.
23. Defendant – Respondent Governor of the State of New York, Kathy Hochul, is the head of the Executive Branch of Government in New York State. The Governor's powers and duties are expressly set forth in the Constitution. The Governor approved the Statute by signing same into law, and is ultimately responsible for the enforcement of the laws of the State of New York.
24. Defendant – Respondent New York State Senate is the upper house of the New York State legislature empowered by the Constitution to represent the will of the people of New York State by drafting and approving changes to the laws of the State. The Senate adopted the Statute which is challenged herein.
25. Defendant – Respondent Majority Leader and President Pro Tempore of the Senate, Andrea Stewart Cousins, is an officer and leader of the Senate. She is elected by and represents the Majority Conference of the Senate.

26. Defendant – Respondent Robert Ort is an officer and leader of the Senate. He is elected by and represents the Minority Conference of the Senate.
27. Defendant – Respondent New York State Assembly is the lower house of the New York State Legislature empowered by the Constitution to represent the will of the people of New York State by drafting and approving changes to the laws of the State. The Assembly adopted the Statute which is challenged herein.
28. Defendant – Respondent Speaker of the Assembly, Carl Heastie, is an officer and leader of the Assembly. He is elected by and represents the Majority Conference of the Assembly.
29. Defendant – Respondent William Barclay is an officer and leader of the Assembly. He is elected by and represents the Minority Conference of the Assembly.

#### JURISDICTION AND VENUE

30. This Court has jurisdiction over the parties and the substantive issues and claims set forth in this action pursuant to Article 3 CPLR.
31. The within declaratory judgement action is brought pursuant to CPLR §3001.

32. An actual justiciable controversy exists among Plaintiffs and Defendants within the meaning of CPLR §3001.
33. Here, the Respondent New York State Board of Elections is enforcing statutory provisions that contravene the Constitution, which may be enjoined pursuant to Article 78 CPLR.
34. Pursuant to §503 CPLR, venue of this action is proper in Saratoga County, State of New York.
35. Plaintiff – Petitioner Whalen is a resident of Saratoga County.
36. Plaintiff – Petitioner Snide is a resident of Saratoga County.
37. Plaintiff – Petitioner Saratoga County Republican Committee is an unincorporated association / party committee organized and operating in Saratoga County.
38. Said Plaintiffs – Petitioners, Whalen, Snide, and Saratoga Republican Party hereby designate Saratoga County as venue for these proceedings.
39. All of the individuals who are Plaintiff – Petitioners in this action are voters whose rights are adversely affected by the provisions of law put in place by Chapter 763, New York Laws of 2021.
40. Plaintiff – Petitioners who are party committee chairmen and the party committees they represent will and intend to have poll watchers



present for the canvass of ballots in future elections including the 2024 General Election, and are adversely affected by the provisions of law put into place by Chapter 763 of the Laws of 2021.

41. Plaintiffs – Petitioners who will be candidates for public office in 2024 intend to have poll watchers present and participating in the canvass and recanvass of ballots in the election(s) they are competing in. They will be adversely affected by the provisions of law put into place by Chapter 763 of the New York Laws of 2021.
42. Plaintiffs – Petitioners who are commissioners of elections will not be able to perform their statutory duties and are adversely affected by the provisions of law put into place by Chapter 763 of the New York Laws of 2021.

#### BACKGROUND – NATURE OF THE CHALLENGE

43. Plaintiff – Petitioners make their claims under the provisions of the New York State Constitution and New York State Statutes.
44. Any claims based upon federal law or the U.S. Constitution are hereby expressly reserved for a federal forum, see England v. Louisiana State Board of Medical Examiners, 375 U.S. 411 (1964).
45. Plaintiff – Petitioners’ challenge herein is to the entirety of the Chapters specified and to any subsequent amendments thereto.

46. Chapter 763 has no severability clause. The entirety of the Chapter must fall and is void upon any finding of unconstitutionality by this Court.

47. Each of the causes of action herein shall be put forward as a challenge to the constitutionality of the Chapter as well as a challenge to the Chapter as it is applied to the Plaintiffs – Petitioners.

**FIRST CAUSE OF ACTION – CHAPTER 763  
UNCONSTITUTIONALLY IMPAIRS THE RIGHTS OF VOTERS**

48. The license granted to the Legislature to regulate the “how, when, and where” of absentee voting must not, however, contravene the constitutional rights of the voters, candidates and political parties.

49. Moreover, the legislature is NOT empowered by Article II §2 of the New York State Constitution to protect illegal conduct, abridge due process, deprive the Judiciary – co-equal branch of government - of the ability to perform its duties and review administrative determinations, or to provide for ballots of persons who are not qualified to vote to be included in the votes that determine who our elected representatives will be.

**RELEVANT PROVISIONS OF THE ELECTION LAW & CPLR**

50. In addition to seeking a declaratory judgment, Plaintiff – Petitioners seek relief under the provisions of Article 16 Election Law (and related sections of such law) and Article 78 CPLR as are hereinafter referenced and relied upon.
51. Pursuant to Article II §2 of the Constitution, the Legislature enacted Article Eight of the Election Law (a general law) to, *inter alia*, erect a system for absentee voting.
52. Article Eight, Title Four of the Election Law provides for absentee voting.
53. Article Eight, Title Five of the Election Law provides for challenging voters.
54. Article Nine of the Election Law (a general law) provides for canvassing procedures.
55. The challenged Chapter Law, Chapter 763, materially interferes with Plaintiff – Petitioners’ rights under the Constitution and statutes of this State as hereinafter set forth.
56. Under the provisions of Chapter 763, Laws of 2021, if a voter’s name appears in the pollbook or on the computer generated registration list, with a notation that the Board of Elections has issued the voter an absentee, military, or special ballot such voter shall NOT be permitted

to vote on the voting machine at an early voting site or on Election Day, but will only be allowed an affidavit ballot. That affidavit ballot will be invalidated where the Board of Elections has canvassed the absentee before Election Day.

57. This deprives the voter of the right to change his / her mind on (or before) the day of Election, which right was preserved by prior law that required an absentee ballot to be set aside and NOT counted and canvassed if the voter appeared at the polls on election day (or during early voting) and voted in person.

58. In fact, this new law challenged herein misleads the voter by permitting him / her to cast a provisional ballot (affidavit ballot) on the days the polls are open.

59. Where the Board of Elections has received an application in the voter's name (authentic or fraudulent) and issued and canvassed the returned ballot (genuine or fraudulent) the Chapter MANDATES the ballot cast in person to be invalidated and discarded.

60. It is respectfully submitted that Chapter 763 not only protects fraudulent votes from the post-election scrutiny that they have traditionally received, but that it favors fraudulent ballots over genuine ballots cast in person.

61. This, further, interferes with the voters' rights of free speech and Free Association as guaranteed by the New York State Constitution under the provisions of Article I, §§ 8 & 9 by *inter alia*, not allowing them to change their mind on the day of the election.
62. The Chapter challenged herein actually promotes the canvassing of votes cast in contravention of the law and the Constitution -- including falsified ballots cast from those not qualified to vote, people who were defrauded in the voting process, and even persons who have died prior to the day of the election (and, of course, were therefore not qualified to vote).
63. The perpetrator of fraud is assured, under the provisions of this Chapter, that ballots illegally harvested will not be the subject of review during the canvass / recanvass by election officials, or invalidation by the Board of Elections (or in Court). Upon information and belief, based upon reports from local Boards of Elections, as applied in the 2022 and 2023 primary elections, the provisions of Chapter 763, Laws of 2021, have resulted in instances where persons who were not true citizens of the State of New York and even dead persons had their votes canvassed and included with the votes of

legitimate citizens who were qualified to vote and actually alive on the date of the Primary Election.

64. In 2022, in the Matter of Shiroff v. Mannion, 77 Misc. 3d 1203(A), the Court held,

“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). In these special proceedings, the candidates seek the issuance of temporary restraining orders altering that canvassing process under Section 9-209 to direct, among other things, the preservation of the paper ballot envelopes during the post-election canvassing, similar to the procedure followed in O'Keefe v. Gentile (1 Misc 3d 151, 757 N.Y.S.2d 689 [Sup Ct Kings Cty 2003]), as well as the advanced production of records and materials by the Boards of Elections that the candidates claim will assist them in reviewing the validity of paper ballots during the canvassing.

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 [\*\*2] 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.

65. 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.

66. In Tenney v. Oswego County BOE, supra, there was extensive, outcome determinative, litigation in which detailed review of ballots, applications and related elections documents was conducted. The litigation featured orders to the Boards of Elections in the Congressional district to correct erroneous practices that had resulted in disenfranchisement of voters.
67. The litigation in Tenney, supra resulted in that Congressional contest being the last to be decided in America. The careful scrutiny of the process and the ballots, however, resulted in no appeal from the final order. The result of the election was that Congresswoman Claudia Tenney upset an incumbent Member of Congress.
68. There can be no question that the results took a long time to get to, however, they were correct and conclusive due to Judicial review.
69. Justice Del Conte commented from the bench in Shiroff that he was sure that the Legislature's actions in enacting Chapter 763 were in direct response to what occurred in Tenney, supra.

70. He then ruled that the Judiciary had been effectively precluded from conducting the type of review that the Law at the time of Tenney, supra, allowed for.
71. The Shiroff case, supra, saw an election decided by only ten votes out of 123,148 votes cast – a 0.008% difference.
72. Counsel is certain that strict scrutiny of ballots and election processes would have yielded a different result.
73. The voters were given quicker results in Shiroff, supra, but not necessarily the accurate results that the Tenney, supra, era law delivered.
74. Most recently Chapter 763 reared its ugly head in a primary election in Queens County. In Chen v. Pai, Index No. 713743/2023, 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.

75. 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 challenged Chapter 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)”).

76. 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” NYSCEF Index No. 713743/2023, Doc. 30.

77. While the Petitioner’s position in that matter was that there was no fraud, assuming *arguendo*, that there was fraud, the deprivation of a participatory administrative process (the canvass) would serve to prevent an aggrieved candidate from having any opportunity to detect the fraud.

78. This situation was intentionally exacerbated by the Legislature by spreading out the canvass of ballots over a period of more than a month preceding the election – with canvassing to be done every four days, see Chapter 736.
79. In fact, a recanvass every four days not only discourages or prevents candidate from participation, but invites any person or person choosing to affect the results of an election via a fraudulent harvesting of absentee ballots has an invitation – via 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 every four days.
80. Upon information and belief, based upon reports from Boards of Elections, the provisions of Chapter 763 have resulted in multiple instances where persons who were not true citizens of the State of New York, and even dead persons, had their votes counted and included with the votes of legitimate citizens who were qualified to vote and actually alive on election day.
81. The voters of this state are entitled to have their right to vote protected against vote dilution.

82. The voters of this state have the right to be able to change their mind(s) as to who they will vote for up to and including the day of the election.
83. Further, voters should not be misled as to their ability to make a choice on any day of balloting by being issued a provisional (affidavit) ballot that is certain to be invalidated and discarded so as to allow the ballot that no longer reflects the voter's choice to be counted.
84. This impermissibly impinges upon the Constitutional rights of Free Speech and Free Association.
85. This irreparably harms your Plaintiff – Petitioners, and requires a remedial order.
86. Accordingly, this Court must declare the provisions of Chapter 763 to be unconstitutional (and / or unconstitutional as applied) and enjoin its enforcement by Defendant-Respondents.

**SECOND CAUSE OF ACTION - CHAPTER 763 UNCONSTITUTIONALLY IMPAIRS THE RIGHTS OF CANDIDATES AND POLITICAL PARTIES**

87. Each and every allegation contained in the preceding paragraphs is hereby repeated and re-alleged as if fully set forth herein.
88. It is beyond dispute that the early canvassing provided for by Chapter 763, Laws of 2021, also categorically squelches any administrative

proceedings challenging illegal, improper, or fraudulent votes (and votes by the dead and non-citizens).

89. The New York State Constitution establishes the right to due process of law and equal protection under these laws. It states, “No person shall be deprived of life, liberty or property without due process of law” Constitution, Article 1, § 6. Further, “No person shall be denied the equal protection of the laws of this state or any subdivision thereof. No person shall be denied the equal protection of the laws of this state or any subdivision thereof” Constitution, Article I, § 11.
90. The right to due process applies to administrative proceedings.
91. This right attaches to the proceedings conducted by a Board of Elections. That includes administrative proceedings relating to the canvass of ballots under the provisions of Chapter 763, Laws of 2021.
92. The essence of the right to due process in the administrative setting is two pronged. There must be: 1. adequate notice, and 2. an adequate opportunity to be heard.
93. Plaintiff - Petitioners are entitled by law to have watchers participate in the administrative proceedings of the Boards of Elections by law, see Election Law § 8 - 500.

94. By purporting to preclude any objections to ballots Chapter 763, Laws of 2021 deprives Plaintiffs - Petitioners of due process of law.
95. This is because the Plaintiffs - Petitioners are entitled to watchers, however, those representatives, by this new law, are deprived of the right to be heard, and the administrative agency has been prohibited from acting on a watcher's objections to invalidate a ballot that is improper or illegal.
96. Also, the public policy of this state gives Plaintiffs - Petitioners the right to have ***ONLY A LIST OF ABSENTEE VOTERS BEFORE*** the day of election, see Election Law § 8-402, as cited in Jacobs v. Biamonte, 15 Misc.3d 223, affd, 38 A.D.3d 777 (2<sup>nd</sup> Dept., 2007).
97. The implication of Jacobs, supra, is that the applications and other relevant data are made available only after the election when there is a close race and a contested canvass proceeding at the Board of Elections, and / or a post-election contest pursuant to Article 16 Election Law.
77. Chapter 763, Laws of 2021, requires the Board of Elections to canvass ballots not less than ten times during the forty days prior to Election Day.

98. It does not allow for the party chairs, candidates, or any other citizen to obtain the records that would allow for meaningful participation in the canvass process.
99. This Chapter further circumscribes the commencement of a pre-election impoundment under §16 - 112 Election Law to preserve ballots and election data in contemplation of a future contest. (Such orders are / have been commonly brought where the race is expected to be close; and are often brought with the consent of the party committees and candidates.)
100. These impermissible restrictions deprive Plaintiffs - Petitioners of their due process rights, and access to the Courts.
101. Accordingly, Chapter 763 of the Laws of 2021 must be declared to be unconstitutional as depriving Plaintiffs - Petitioners of the right to Due Process of Law as specified by the New York State Constitution.

**THIRD CAUSE OF ACTION - CHAPTER 763 UNCONSTITUTIONALLY  
IMPAIRS THE RIGHTS OF COMMISSIONERS OF ELECTIONS AND  
PREVENTS THEM FROM PERFORMING THEIR DUTIES**

102. Each and every allegation contained in the preceding paragraphs is hereby repeated and re-alleged as if fully set forth herein.

103. It is respectfully submitted that a Commissioner of Elections participating in administrative procedures to canvass ballots has a duty under the Law to entertain and rule on objections from poll watchers legally present at the canvass of ballots.
104. In fact, each Commissioner of Elections has taken an oath to enforce the terms of the Constitution and the statute.
105. The Chapter of Law that is the subject of these proceedings precludes any Commissioner of Elections from ruling on a poll watcher's objection so as to result in the invalidation of any ballot.
106. This effectively prohibits Elections Commissioners from performing their duties.
107. Additionally, it prohibits Elections Commissioners from exercising their rights of free speech (making a ruling) and free association (determining to associate him / herself with the arguments advanced by the poll watcher / objector) in contravention of the State Constitution.
108. The "early canvassing" provisions of Chapter 763, Laws of 2021, effectively prevents the Board of Elections and its Commissioners from performing their duties to investigate the validity of applications and ballots issued thereon.

109. Accordingly, this Court should declare the subject statute to be unconstitutional.

**FOURTH CAUSE OF ACTION - THE STATUTE IMPERMISSABLY COMPROMISES VOTERS' RIGHTS TO HAVE A SECRET BALLOT**

110. Each and every allegation contained in the preceding paragraphs is hereby repeated and re-alleged as if fully set forth herein.

111. It is the personal experience of Counsel that where the number of ballots in a particular Election District is so small that there are only a few or even one or two ballots to be counted that the secrecy of the ballot guaranteed by Article II, § 7 of the New York State Constitution is compromised.

112. Here the compromise of the secrecy of voters' ballots occurs on two levels due to Chapter 736, Laws of 2021.

113. First, the drive to have pre-election canvassing occurring every four days before the day of election assures that the number of times that the voters' secret ballots will be compromised will rise exponentially.

114. This compromise of a fundamental right of the individual voters guaranteed by the Constitution is intolerable.



115. In this highly polarized political environment, the voters will be subject to threat, pressure, and ridicule from political operatives who will use their knowledge of the canvassing process to get voters to cast the ballots as they desire.
116. Concomitantly, voters who do not cast their votes as desired by political operatives will leave them vulnerable to retaliation.
117. This is exactly why we hold the secret ballot sacrosanct. It demonstrates a clear case of the Legislature sacrificing constitutional rights to achieve political ends.
118. Secondly, the new Statute requires the Boards of Elections to conduct a running, but "secret" canvass of the votes, see § 9 - 209 (6).
119. This provision is not only unworkable, but completely unrealistic.
120. Poll watchers are still entitled to see the face of each ballot when it is canvassed (but now are prohibited from objecting to ballots that do not conform to the law).
121. Nothing can stop poll watchers (or election personnel present at the canvass) from keeping a tally of the votes (or identifying particular voters' ballots).

122. We note here that where the voters engage in writing in their votes (as was recently the case in the election for the office of mayor of the City of Buffalo) voting machines used to scan the ballots will segregate any ballot with a “write-in vote”. Further compromising the right of the voters to a secret ballot.
123. Further, many of the election workers are party committee members or volunteers for candidates’ campaigns.
124. This state has party officers, including committee chairs, and party committee members, serving as commissioners, deputy commissioners and other election officers.
125. Accordingly, Chapter 763 contemplates the absolute absurdity of a person keeping the canvass results a secret from him or herself.
126. The inescapable conclusion here is that the sieve designed by the Legislature compromises the Constitutional right to a secret ballot in several ways.
127. The compromise of Constitutional Rights and absurdities created by this Chapter would be completely avoided by this Court declaring the new law unconstitutional and leaving the post-election canvass until the day of election is over.

128. This Court should declare the subject statute to be unconstitutional for compromising the voters rights to a secret ballot pursuant to Article I, §11 of the New York State Constitution.

**FIFTH CAUSE OF ACTION - THE CHALLENGED STATUTE UNCONSTITUTIONALLY REMOVES THE POWER OF JUDICIAL OVERSIGHT OVER ADMINISTRATIVE PROCEEDINGS**

129. Each and every allegation contained in the preceding paragraphs is hereby repeated and re-alleged as if fully set forth herein.

130. The Constitution establishes the Judiciary as an independent co-equal branch of government.

131. Article VI, §7 of the New York State Constitution gives the Supreme Court jurisdiction over all questions of law emanating from the Election Law.

132. It is fair to say that the Courts of our state have authority to review the determinations made by administrative agencies in our state, see generally, *Judicial Review of Administrative Action in New York: An Overview and Survey*, St. John's Law Review, Vol. 52 No.3 (1978), Gabrielli & Nonna.

133. Here, in addition to the general provisions of Article 78 CPLR, we have the Election Law which provides that, “The supreme court is vested with jurisdiction to summarily determine any question of law or fact arising as to any subject set forth in this article, which shall be construed liberally”, see Election Law § 16 - 101(1).

134. It is only logical to conclude that the administrative process of ballot review is (and should be) subject to Court review.

135. Under the Election Law the Courts have declared:

“The Court's role in this proceeding is to preserve the integrity of the electoral system by ensuring that the laws governing elections are strictly and uniformly applied. (Gross v. Albany County Bd. of Elections, 3 N.Y.3d 251, 258, 785 N.Y.S.2d 729, 819 N.E.2d 197 [2004]). This means ensuring that every single valid vote - and only every single valid vote - is counted. Accordingly, all rulings in this Decision and Order are based upon either existing appellate authority or the plain language of the governing statutes and regulations, and each ruling is applied equally to all similarly situated ballots. Previously, this Court exercised its statutory authority and ordered the Boards of Elections to carry out their “dut[ies] imposed by law” by canvassing all ballots in accordance with the provisions of Election Law § 9-209 Election Law § 16-106[4]). Now, in determining the validity of the properly canvassed ballots, only ballots that were challenged during the canvasses, and only the objections made by the candidates at those canvasses, are considered Gross, 3 N.Y.3d 251; Benson v. Prusinski, 151 A.D.3d 1441, 1444, 58 N.Y.S.3d 685 [3d Dept. 2017]”, Tenney v. Oswego County Board of Elections, 71 Misc.3d 400 (Sup. Ct., Oswego Co., 2021).

136. Provisions for Judicial proceedings under the Election Law are set forth in Article 16 of the Election Law. The former provisions of § 9 - 209 of the Election Law stated:

“If the board cannot agree as to the validity of the ballot it shall set the ballot aside, un-opened, for a period of three days at which time the ballot envelope shall be opened and the vote counted unless otherwise directed by an order of the court”.

137. The provisions of Article Nine were seamlessly linked to the provisions of §16 - 112, which states:

“Proceedings for examination or preservation of ballots. The supreme court, by a justice within the judicial district, or the county court, by a county judge within his county, may direct the examination by any candidate or his agent of any ballot or voting machine upon which his name appeared, and the preservation of any ballots in view of a prospective contest, upon such conditions as may be proper”.

138. The actual review of ballots and materials which are preserved is addressed in §16 - 102 Election Law. The statute provides:

“The casting or canvassing or refusal to cast challenged ballots, blank ballots, void or canvass absentee, military, special federal, federal write-in or emergency ballots and ballots voted in affidavit envelopes by persons whose registration poll records were not in the ledger or whose names were not on the computer generated registration list on the day of election or voters in inactive status, voters who moved to a new address in the city or county or after they registered or voters who claimed to be enrolled in a party other than that shown on their

registration poll record or on the computer generated registration list and the original applications for a military, special federal, federal write-in, emergency or absentee voter's ballot may be contested in a proceeding instituted in the supreme or county court, by any candidate or the chairman of any party committee, and by any voter with respect to the refusal to cast such voter's ballot, against the board of canvassers of the returns from such district, if any, and otherwise against the board of inspectors of election of such district. If the court determines that the person who cast such ballot was entitled to vote at such election, it shall order such ballot to be cast and canvassed if the court finds that ministerial error by the board of elections or any of its employees caused such ballot envelope not to be valid on its face.

2. The canvass of returns by the state, or county, city, town or village board of canvassers may be contested, in a proceeding instituted in the supreme court by any voter, except a proceeding on account of the failure of the state board of canvassers to act upon new returns of a board of canvassers of any county made pursuant to the order of a court or justice, which may be instituted only by a candidate aggrieved or a voter in the county." Election Law §16 - 102.

139. By enactment of Chapter 763, Laws of 2021 the Legislature has completely abridged any person - be it a candidate, party chair, election commissioner or voter from contesting a determination by the Board of Elections to canvass an illegal or improper ballot. Moreover, a partisan split on the validity of a ballot is not accompanied by a three-day preservation of the questioned ballot for judicial review. Rather, the Supreme Court is divested of jurisdiction as now the ballot envelope is to be immediately burst and the ballot intermingled with all others for canvassing.

140. The offending statute enables a single member of the bipartisan Board of Elections to control the outcome of the canvass and prevent a determination to not canvass any ballot which is improper or illegal by "splitting" in the vote from his / her counterpart. In all such cases this statute compels the canvassing of the ballot without regard to the merits, and further the Statute precludes any Court review.
141. This precludes any meaningful proceeding to determine the validity of the ballot.
142. The Legislature has, in contravention of the Constitution and statute, prohibited the Courts from performing their duty by the statute's dictate "In no event may a court order a ballot that has been counted to be uncounted" see §9 - 209 Election Law at sub sections (7)(j) and (8)(e).
143. Thus, should the Supreme Court, or the Appellate Courts, determine that a voter was not entitled to vote at the subject election, or that the ballot in question was fraudulent, the Legislature has actually reached into the courtroom and stopped the Judiciary from doing its appointed job under the terms of the Constitution.

144. Accordingly, the Statute must be declared unconstitutional as it violates the terms of the Constitution which empower the Judiciary to review administrative determinations.

**SIXTH CAUSE OF ACTION - THE CHALLENGED STATUTE  
UNCONSTITUTIONALLY VIOLATES THE DOCTRINE OF SEPARATION  
OF POWERS.**

145. Each and every allegation contained in the preceding paragraphs is hereby repeated and re-alleged as if fully set forth herein.

146. The Constitution establishes the Judiciary as an independent co-equal branch of government.

147. Here, 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 provisions of §16 - 112 Election Law.

148. The Legislature has clearly usurped the role of the Judiciary in enacting this new statute.

149. This is an overreach by the Legislature which is a flagrant violation of the Doctrine of Separation of Powers.

150. Accordingly, this Court must declare the challenged statute to be unconstitutional for its violation of the Separation of Powers



Doctrine and a legislative act in excess of the powers allowed to the Legislature.

**SEVENTH CAUSE OF ACTION - THE CHALLENGED STATUTE  
UNCONSTITUTIONALLY CURTAILS THE ABILITY OF THE PLAINTIFFS -  
PETITIONERS TO EXERCISE THEIR RIGHTS UNDER THE ELECTION LAW**

151. Each and every allegation contained in the preceding paragraphs is hereby repeated and re-alleged as if fully set forth herein.
152. Here, 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 provisions of §16 - 112 Election Law, by preventing the Plaintiffs - Petitioners from preserving their objections at the administrative level for review by the Courts.
153. The new Chapter explicitly precludes poll watchers appointed by your Plaintiffs-Petitioners from making objections, see Election Law §9-209 (5) as amended by Chapter 763, Laws of 2021.
154. Recording objections at the Board of Elections to ballots being contested is a pre-requisite to litigating the validity of same before the Supreme Court.

155. The candidates, party chairs and voters allowed to contest determinations of validity or invalidity of ballots under the provisions of Article 16 Election Law will be, and are, precluded from making a case because they cannot exhaust administrative remedies by recording any objections at the administrative level of the post-election proceeding.
156. This deprives the Plaintiffs - Petitioners from seeking redress from the Supreme Court under Election Law §16 - 112.
157. Accordingly, the due process, free speech, and free associational rights provided by the Constitution, in addition to the statutory rights provided by the Election Law, and the right to proceed before the Courts has / have been improperly abridged by the enactment of Chapter 763, Laws of 2021.
158. This Court should enter a declaratory judgment striking the offending Statute as unconstitutional.

**EIGHTH CAUSE OF ACTION- THE CHALLENGED STATUTE  
UNCONSTITUTIONALLY CURTAILS THE ABILITY OF THE PLAINTIFFS -  
PETITIONERS TO EXERCISE THEIR RIGHTS UNDER THE ELECTION  
LAW**

159. Each and every allegation contained in the preceding paragraphs is hereby repeated and re-alleged as if fully set forth herein.

160. The prohibition of a poll watcher from making objections to a ballot is a per se violation of the right of Free Speech granted to such poll watchers and the Plaintiffs - Petitioners who appoint them.

161. Additionally, the new statute curtails a poll watcher's meaningful access to subject ballots, abridging their substantive rights to freely associate and exercise political speech.

162. Accordingly, the offending Statute must be stricken as unconstitutional.

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NINTH CAUSE OF ACTION - THE CHALLENGED STATUTE  
IMPERMISSABLY CONFLICTS WITH THE RIGHTS CONFERRED  
BY OTHER SECTIONS OF THE ELECTION LAW

163. Each and every allegation contained in the preceding paragraphs is hereby repeated and re-alleged as if fully set forth herein.
164. Poll watchers are defined by, and the authority to appoint watchers is established by, Title V of Article 8 of the Election Law.
165. The provisions of §8 - 502 allow for watchers to challenge “any Person” as to their right to vote.
166. This provision of law applies to the polling places on the days of election and to the central polling place at which absentee and other paper ballots are canvassed, see §8 - 506 Election Law.
167. Section 8 - 506 expressly regulates the entry of objections at the central polling place set for the canvass of absentee, military, federal and other paper ballots.
168. This section of the law provides:
- “1. During the examination of absentee, military, special federal and special presidential voters' ballot envelopes, any inspector shall, and any watcher or registered voter properly in the polling place may, challenge the casting of any ballot upon the ground or grounds allowed for challenges generally, or (a) that the voter was not entitled to cast an absentee, military, special federal or special presidential

ballot, or (b) that notwithstanding the permissive use of titles, initials or customary abbreviations of given names, the signature on the ballot envelope does not correspond to the signature on the registration poll record, or (c) that the voter died before the day of the election.

2. The board of inspectors forthwith shall proceed to determine each challenge. Unless the board by majority vote shall sustain the challenge, an inspector shall endorse upon the envelope the nature of the challenge and the words "not sustained", shall sign such endorsement, and shall proceed to cast the ballot as provided herein" Should the board, by majority vote, sustain such challenge, the reason and the word "sustained" shall be similarly endorsed upon the envelope and an inspector shall sign such endorsement. The envelope shall not be opened and such envelope shall be returned unopened to the board of elections. If a challenge is sustained after the ballot has been removed from the envelope, but before it has been deposited in the ballot box, such ballot shall be rejected without being unfolded or inspected and shall be returned to the envelope. The board shall immediately enter the reason for sustaining the challenge on such envelope and an inspector shall sign such endorsement.

3. If the board of inspectors determines by majority vote that it lacks sufficient knowledge and information to determine the validity of a challenge, the inspectors shall endorse upon the ballot envelope the words "unable to determine", enter the reason for the challenge in the appropriate section of the challenge report and return the envelope unopened to the board of elections. Such ballots shall be cast and canvassed pursuant to the provisions of section 9-209 of this chapter" Election Law §8-506, emphasis added.

169. Obviously, the provisions of Chapter 763, Laws of 2021 are in direct conflict with the existing provisions of Article Eight, Title Five of the Election Law.

170. This conflict might be attributed to poor draftsmanship by the Legislature. It might be attributed to an ignorance of the Election

Process as established by the Law and as carried out for decades.

171. Whatever the root cause of this conflict of laws the resolution of the conflict must fall clearly on the side of preserving the rights of the participants given standing to contest the validity of the ballots in Article 16 Election Law; the right of the Judiciary to perform its duties in preserving the contested ballots and reviewing the Board's administrative determinations; and the Constitutional rights of the party chairs, candidates and the voters to be protected against improper or illegal ballots from being allowed to determine the outcome of our elections.

172. It is also clear that the provisions of this new law transgress against the rights conveyed upon Plaintiffs - Petitioners by Article Sixteen Election Law.

173. The Legislature chose not to repeal the provisions of Articles Eight and Sixteen of the Election Law in adopting the Chapter challenged herein. There can be no inference made that the rights secured by the sections of law not repealed or amended should in any way be abridged.

174. It cannot be said that the voters cannot be compelled to associate with or have their votes diluted by persons who are dead, not qualified to vote, or are voting illegally.
175. The Courts have an obligation to preserve the integrity of our election process and assure the public's confidence in the election process.
176. Accordingly, to the extent that Chapter 763, Laws of 2021 conflicts with the rights established by Article Eight of the Election Law and other Sections of that Law including Article Sixteen, the conflicting provisions of Chapter 763, Laws of 2021 must be declared to be invalid and the provisions of Article Eight and Sixteen Election Law must be declared to be controlling.

WHEREFORE, Plaintiffs - Petitioners respectfully pray for an order of this Court:

1. Declaring Chapter 763 of the New York Laws of 2021 to be unconstitutional on the basis of the FIRST, SECOND, THIRD, FOURTH, FIFTH, SIXTH, SEVENTH, EIGHTH, and NINTH CAUSES OF ACTION, and
2. Because the subject statutes do not have a severability clause, declaring the entirety of the statutes challenged herein to be invalid as unconstitutional, and

3. Issuing a preliminary injunction as against Defendants - Respondents prohibiting the enforcement of the unconstitutional statutes challenged herein,

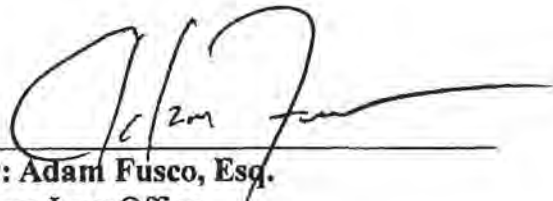
Together with such other, further and different relief as this Court may deem to be just and proper in the premises.

DATED: August 31, 2023

Respectfully submitted,



John Ciampoli, Esq.  
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**ATTORNEY'S VERIFICATION**

STATE OF NEW YORK )  
COUNTY OF SUFFOLK ) s.ss:

JOHN CIAMPOLI, ESQ., an attorney duly admitted to the practice of law before the Courts of the State of New York, does hereby affirm under the penalties of perjury:

1. He is the attorney for the Petitioner(s) in this action.
2. He has reviewed the contents of this document with his client(s), and / or their campaign workers, and upon the conclusion of said review as to the facts alleged therein, believes same to be true, as indicated herein, upon information and belief.
3. He has personally reviewed originals or copies of the relevant petitions, Board of Elections records, and ancillary documents on file with the Boards of Elections, together with other papers relating thereto, contacted the respondent board, and upon the conclusion of the said review, believes the within allegations to be true, on the basis of his personal knowledge.
4. This affirmation is being used pursuant to the provisions of the CPLR and applicable case law, due to the fact that time is of the essence and that petitioner(s)' residence(s) and his counsel's office are in different counties.

DATED: Suffolk County, New York  
August 31, 2023



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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.**

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,

**EMERGENCY  
AFFIRMATION**

Respondents / Defendants.

X

**TO: THE SUPREME COURT OF THE STATE OF NEW YORK**

John Ciampoli, Esq. an attorney duly admitted to the practise of law before the  
Courts of the State of New York does hereby affirm under the penalties of perjury, as

follows:

1. I am the attorney for the Petitioner(s) in the above captioned proceeding.
2. This affirmation is offered to the Court to explain why this matter is of the most urgent nature and requires the Court's immediate attention.
3. This is an Election Law proceeding, and as such, this matter has a statutory preference over all other matters on the Court's calendar, see, Election Law Section 16 - 116.
4. This matter is subject to an incredibly short statute of limitations. The last day to commence this proceeding is a mere fourteen days after the last day to file petitions. As a practical matter, this case must receive immediate attention so that the Court may achieve jurisdiction.
5. This matter must be instituted and provided an Election Law preference because the application of the challenged chapter of laws may affect upcoming elections.
6. To that end, the Court of Appeals has determined that Elections Matters are always to be given the highest priority by the Courts. It is respectfully submitted that the circumstances described in the petition present this court with an emergency situation requiring immediate action, and further that the very nature of an election proceeding, particularly with regard to petition challenges which have a very short statute of limitations, presents

an exemption to any rule which might delay or bar the court's action in other circumstances, see Banko v. Webber, 7 NY2d 758 (1959).

7. It is respectfully submitted that the statute and case law require the *immediate* consideration of this matter by the Supreme Court.

**WHEREFORE**, it is respectfully requested that this Court take up the annexed Order to Show Cause immediately and grant the relief requested for such order in the verified petition, together with such other, further and different relief as this Court may deem to be just and proper in the premises.

Dated: August 31, 2023

A handwritten signature in black ink, appearing to read "John Ciampoli". The signature is written in a cursive style with a large initial "J".

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**REQUEST FOR JUDICIAL INTERVENTION**  
**SUPREME COURT, COUNTY OF Saratoga**

UCS-840  
(rev. 11/24/2022)

Index No: \_\_\_\_\_ Date Index Issued: \_\_\_\_\_

**CAPTION** Enter the complete case caption. Do not use et al or et ano. If more space is needed, attach a caption rider sheet.

**RII (REQUEST FOR JUDICIAL INTERVENTION)**

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 Pages 4 \$95.00  
 Saratoga County Clerk

Plaintiff(s)/Petitioner(s) \_\_\_\_\_  
 Defendant(s)/Respondent(s) \_\_\_\_\_

**For Court Use Only:**

IAS Entry Date \_\_\_\_\_

Judge Assigned \_\_\_\_\_

RJI Filed Date \_\_\_\_\_

**NATURE OF ACTION OR PROCEEDING** Check only one box and specify where indicated.

**COMMERCIAL**

Business Entity (includes corporations, partnerships, LLCs, LLPs, etc.)

Contract

Insurance (where insurance company is a party, except arbitration)

UCC (includes sales and negotiable instruments)

Other Commercial (specify): \_\_\_\_\_

*NOTE: For Commercial Division assignment requests pursuant to 22 NYCRR 202.70(d), complete and attach the COMMERCIAL DIVISION RJI ADDENDUM (UCS-840C).*

**MATRIMONIAL**

Contested

*NOTE: If there are children under the age of 18, complete and attach the MATRIMONIAL RJI ADDENDUM (UCS-840M). For Uncontested Matrimonial actions, use the Uncontested Divorce RJI (UD-13).*

**TORTS**

Adult Survivors Act

Asbestos

Environmental (specify): \_\_\_\_\_

Medical, Dental or Podiatric Malpractice

Motor Vehicle

Products Liability (specify): \_\_\_\_\_

Other Negligence (specify): \_\_\_\_\_

Other Professional Malpractice (specify): \_\_\_\_\_

Other Tort (specify): \_\_\_\_\_

**REAL PROPERTY** Specify how many properties the application includes: \_\_\_\_\_

Condemnation

Mortgage Foreclosure (specify):  Residential  Commercial

Property Address: \_\_\_\_\_

*NOTE: For Mortgage Foreclosure actions involving a one to four-family, owner-occupied residential property or owner-occupied condominium, complete and attach the FORECLOSURE RJI ADDENDUM (UCS-840F).*

Partition

*NOTE: Complete and attach the PARTITION RJI ADDENDUM (UCS-840P).*

Tax Certiorari (specify): Section: \_\_\_\_\_ Block: \_\_\_\_\_ Lot: \_\_\_\_\_

Tax Foreclosure

Other Real Property (specify): \_\_\_\_\_

**SPECIAL PROCEEDINGS**

Child-Parent Security Act (specify):  Assisted Reproduction  Surrogacy Agreement

CPLR Article 75 - Arbitration [see NOTE in COMMERCIAL section]

CPLR Article 78 - Proceeding against a Body or Officer

Election Law

Extreme Risk Protection Order

MHL Article 9.60 - Kendra's Law

MHL Article 10 - Sex Offender Confinement (specify):  Initial  Review

MHL Article 81 (Guardianship)

Other Mental Hygiene (specify): \_\_\_\_\_

Other Special Proceeding (specify): \_\_\_\_\_

**OTHER MATTERS**

Certificate of Incorporation/Dissolution [see NOTE in COMMERCIAL section]

Emergency Medical Treatment

Habeas Corpus

Local Court Appeal

Mechanic's Lien

Name Change/Sex Designation Change

Pistol Permit Revocation Hearing

Sale or Finance of Religious/Not-for-Profit Property

Other (specify): CPLR 3001 Dec. Judgment

**STATUS OF ACTION OR PROCEEDING** Answer YES or NO for every question and enter additional information where indicated.

	YES	NO	
Has a summons and complaint or summons with notice been filed?	<input type="radio"/>	<input checked="" type="radio"/>	If yes, date filed: _____
Has a summons and complaint or summons with notice been served?	<input type="radio"/>	<input checked="" type="radio"/>	If yes, date served: _____
Is this action/proceeding being filed post-judgment?	<input type="radio"/>	<input checked="" type="radio"/>	If yes, judgment date: _____

**NATURE OF JUDICIAL INTERVENTION** Check one box only and enter additional information where indicated.

Infant's Compromise

Extreme Risk Protection Order Application

Note of Issue/Certificate of Readiness

Notice of Medical, Dental or Podiatric Malpractice Date Issue Joined: \_\_\_\_\_

Notice of Motion Relief Requested: \_\_\_\_\_ Return Date: \_\_\_\_\_

Notice of Petition Relief Requested: \_\_\_\_\_ Return Date: \_\_\_\_\_

Order to Show Cause Relief Requested: Dec. Jgmt., Pl. CPLR 78, EL 18 Return Date: \_\_\_\_\_

Other Ex Parte Application Relief Requested: \_\_\_\_\_

Partition Settlement Conference

Poor Person Application

Request for Preliminary Conference

Residential Mortgage Foreclosure Settlement Conference

Writ of Habeas Corpus

Other (specify): \_\_\_\_\_

**RELATED CASES** List any related actions. For Matrimonial cases, list any related criminal or Family Court cases. If none, leave blank. If additional space is required, complete and attach the RJ1 ADDENDUM (UCS-840A).

Case Title	Index/Case Number	Court	Judge (if assigned)	Relationship to instant case

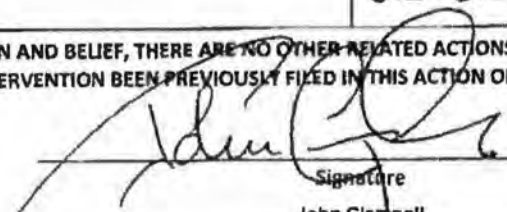
**PARTIES** For parties without an attorney, check the "Un-Rep" box and enter the party's address, phone number and email in the space provided. If additional space is required, complete and attach the RJ1 ADDENDUM (UCS-840A).

Un-Rep	Parties (List parties in same order as listed in the caption and indicate roles (e.g., plaintiff, defendant, 3 <sup>rd</sup> party plaintiff, etc.)	Attorneys and Unrepresented Litigants (For represented parties, provide attorney's name, firm name, address, phone and email. For unrepresented parties, provide party's address, phone and email.)	Issue Joined (For each defendant, indicate if issue has been joined.)	Insurance Carriers (For each defendant, indicate insurance carrier, if applicable.)
<input type="checkbox"/>	Name: Rich Amodeo Role(s): Plaintiff	Perillo Hill LLP 285 W. Main Street (203) Sayville, NY 11782	<input type="radio"/> YES <input type="radio"/> NO	
<input type="checkbox"/>	Name: Garth Snide Role(s):	Perillo Hill LLP 285 W. Main Street (203) Sayville, NY 11782	<input type="radio"/> YES <input type="radio"/> NO	
<input type="checkbox"/>	Name: Robert Smullen Role(s):	Perillo Hill LLP 285 W. Main Street (203) Sayville, NY 11782	<input type="radio"/> YES <input type="radio"/> NO	
<input type="checkbox"/>	Name: Edward Cox Role(s):	Perillo Hill LLP 285 W. Main Street (203) Sayville, NY 11782	<input type="radio"/> YES <input type="radio"/> NO	
<input type="checkbox"/>	Name: NY State Republican Party Role(s):	Perillo Hill LLP 285 W. Main Street (203) Sayville, NY 11782	<input type="radio"/> YES <input type="radio"/> NO	
<input type="checkbox"/>	Name: Edward Cox Role(s):	Perillo Hill LLP 285 W. Main Street (203) Sayville, NY 11782	<input type="radio"/> YES <input type="radio"/> NO	
<input type="checkbox"/>	Name: Gerard Kassar Role(s):	Perillo Hill LLP 285 W. Main Street (203) Sayville, NY 11782	<input type="radio"/> YES <input type="radio"/> NO	
<input type="checkbox"/>	Name: NY State Conservative Party Role(s):	Perillo Hill LLP 285 W. Main Street (203) Sayville, NY 11782	<input type="radio"/> YES <input type="radio"/> NO	
<input type="checkbox"/>	Name: Joseph Whalen Role(s):	Perillo Hill LLP 285 W. Main Street (203) Sayville, NY 11782	<input type="radio"/> YES <input type="radio"/> NO	
<input type="checkbox"/>	Name: Saratoga County Republican Role(s):	Perillo Hill LLP 285 W. Main Street (203) Sayville, NY 11782	<input type="radio"/> YES <input type="radio"/> NO	
<input type="checkbox"/>	Name: Ralph Mohr Role(s):	Perillo Hill LLP 285 W. Main Street (203) Sayville, NY 11782	<input type="radio"/> YES <input type="radio"/> NO	
<input type="checkbox"/>	Name: Erik Haight Role(s):	Perillo Hill LLP 285 W. Main Street (203) Sayville, NY 11782	<input type="radio"/> YES <input type="radio"/> NO	
<input type="checkbox"/>	Name: John Quigley Role(s):	Perillo Hill LLP 285 W. Main Street (203) Sayville, NY 11782	<input type="radio"/> YES <input type="radio"/> NO	
<input type="checkbox"/>	Name: State of New York Role(s):	NYS Atty General Justice Building, Capital Albany NY 12224	<input type="radio"/> YES <input type="radio"/> NO	
<input type="checkbox"/>	Name: NYS Board of Elections Role(s):	40 N. Pearl Street Albany NY 12207	<input type="radio"/> YES <input type="radio"/> NO	

I AFFIRM UNDER THE PENALTY OF PERJURY THAT, UPON INFORMATION AND BELIEF, THERE ARE NO OTHER RELATED ACTIONS OR PROCEEDINGS, EXCEPT AS NOTED ABOVE, NOR HAS A REQUEST FOR JUDICIAL INTERVENTION BEEN PREVIOUSLY FILED IN THIS ACTION OR PROCEEDING.

Dated: 08/30/2023

2003317

  
 \_\_\_\_\_  
 Signature  
 John Ciampoll  
 Print Name

Attorney Registration Number

# Request for Judicial Intervention Addendum

FD-1111  
UCS-840A (7/2012)

Supreme

COURT, COUNTY OF

Saratoga

Index No: \_\_\_\_\_

**For use when additional space is needed to provide party or related case information.**

**PARTIES:** For parties without an attorney, check "Un-Rep" box AND enter party address, phone number and e-mail address in "Attorneys" space.

Un-Rep	Parties:	Attorneys and/or Unrepresented Litigants:	Issue Joined (Y/N):	Insurance Carrier(s):
<input type="checkbox"/>	Governor State of New York Last Name  First Name Primary Role: Defendant  Secondary Role (if any):	NYS Atty General Justice Building, Capital Albany N' Last Name First Name  Firm Name  Street Address City State Zip  Phone Fax e-mail	<input type="radio"/> YES  <input type="radio"/> NO	
<input type="checkbox"/>	Senate, State of New York Last Name  First Name Primary Role: Defendant  Secondary Role (if any):	unknown Last Name First Name  Firm Name Capital Building, Albany, NY 12247 Street Address City State Zip  Phone Fax e-mail	<input type="radio"/> YES  <input type="radio"/> NO	
<input type="checkbox"/>	Majority Leader & President Pro Tem NYS Last Name  First Name Primary Role: Defendant  Secondary Role (if any):	unknown Last Name First Name  Firm Name Capital Building, Albany, NY 12247 Street Address City State Zip  Phone Fax e-mail	<input type="radio"/> YES  <input type="radio"/> NO	
<input type="checkbox"/>	Minority Leader NYS Senate Last Name  First Name Primary Role: Defendant  Secondary Role (if any):	unknown Last Name First Name  Firm Name Capital Building, Albany, NY 12247 Street Address City State Zip  Phone Fax e-mail	<input type="radio"/> YES  <input type="radio"/> NO	
<input type="checkbox"/>	NYS Assembly Last Name  First Name Primary Role: Defendant  Secondary Role (if any):	unknown Last Name First Name  Firm Name Capital Building, Albany NY 12248 Street Address City State Zip  Phone Fax e-mail	<input type="radio"/> YES  <input type="radio"/> NO	
<input type="checkbox"/>	Speaker NYS Assembly Last Name  First Name Primary Role: Defendant  Secondary Role (if any):	unknown Last Name First Name  Firm Name Capital Building, Albany NY 12248 Street Address City State Zip  Phone Fax e-mail	<input type="radio"/> YES  <input type="radio"/> NO	

**RELATED CASES:** List any related actions. For Matrimonial actions, include any related criminal and/or Family Court cases.

Case Title	Index/Case No.	Court	Judge (if assigned)	Relationship to Instant Case

# Request for Judicial Intervention Addendum

FD-101 (FORM 1)  
UCS-840A (7/2012)

Supreme

COURT, COUNTY OF Saratoga

Index No: \_\_\_\_\_

**For use when additional space is needed to provide party or related case information.**

<b>PARTIES:</b> For parties without an attorney, check "Un-Rep" box AND enter party address, phone number and e-mail address in "Attorneys" space.				
Un-Rep	Parties:	Attorneys and/or Unrepresented Litigants:	Issue Joined (Y/N):	Insurance Carrier(s):
<input type="checkbox"/>	Minority Leader NYS Assembly Last Name  First Name Primary Role:  Secondary Role (if any):	unknown Last Name  First Name  Firm Name  Capital Building, Albany, NY 12248 Street Address  City  State  Zip  Phone  Fax  e-mail	<input type="radio"/> YES    <input type="radio"/> NO	
<input type="checkbox"/>	Majority leader NYS Assembly Last Name  First Name Primary Role:  Secondary Role (if any):	unknown Last Name  First Name  Firm Name  Capital Building, Albany, NY 12248 Street Address  City  State  Zip  Phone  Fax  e-mail	<input type="radio"/> YES    <input type="radio"/> NO	
<input type="checkbox"/>	Last Name  First Name Primary Role:  Secondary Role (if any):	Last Name  First Name  Firm Name  Street Address  City  State  Zip  Phone  Fax  e-mail	<input type="radio"/> YES    <input type="radio"/> NO	
<input type="checkbox"/>	Last Name  First Name Primary Role:  Secondary Role (if any):	Last Name  First Name  Firm Name  Street Address  City  State  Zip  Phone  Fax  e-mail	<input type="radio"/> YES    <input type="radio"/> NO	
<input type="checkbox"/>	Last Name  First Name Primary Role:  Secondary Role (if any):	Last Name  First Name  Firm Name  Street Address  City  State  Zip  Phone  Fax  e-mail	<input type="radio"/> YES    <input type="radio"/> NO	
<input type="checkbox"/>	Last Name  First Name Primary Role:  Secondary Role (if any):	Last Name  First Name  Firm Name  Street Address  City  State  Zip  Phone  Fax  e-mail	<input type="radio"/> YES    <input type="radio"/> NO	

<b>RELATED CASES:</b> List any related actions. For Matrimonial actions, include any related criminal and/or Family Court cases.				
Case Title	Index/Case No.	Court	Judge (if assigned)	Relationship to Instant Case



SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF SARATOGA

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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,

Index No. 2023-2399

Hon. James E. Walsh

Petitioners/Plaintiffs,

v.

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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**MEMORANDUM OF LAW IN SUPPORT OF THE STATE OF NEW YORK'S AND  
GOVERNOR KATHY HOCHUL'S MOTION TO DISMISS AND IN OPPOSITION TO  
PETITIONERS' APPLICATION FOR A PRELIMINARY INJUNCTION**

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Attorney for Respondents/Defendants  
State of New York and Governor Kathy  
Hochul  
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Respondents/Defendants<sup>1</sup> State of New York and Governor Kathy Hochul (“Governor Hochul”), in her official capacity as Governor of the State of New York respectfully submit this Memorandum of Law in opposition to Petitioners’ Order to Show Cause (“OSC”) signed by Justice James E. Walsh on September 8, 2023 and in support of their Motion to Dismiss pursuant to CPLR 3211(a).

### **PRELIMINARY STATEMENT**

Petitioners, the New York State Republican and Conservative Parties and the Chairmen of those parties, as well as the Saratoga Republican Committee, the Chairman of the Saratoga Republican Party, the Commissioner of the Erie County Board of Elections, the Commissioner of the Dutchess County Board of Elections, the Commissioner of the Ulster County Board of Elections, a current New York State Assembly Member, a candidate for New York State Senate, and a voter in Saratoga County, seek declaratory and injunctive relief related to duly enacted statutory provisions authorizing absentee voting. Petition/Complaint (hereafter “Petition”), ¶¶ 2, 4-6.

Specifically, Petitioners seek a declaration that Chapter 763 of New York Laws 2021 is unconstitutional on the grounds that Chapter 763 (1) conflicts with and violates various provisions of the Election Law and the New York State Constitution and (2) interferes with various constitutionally protected rights of citizens. *Id.*, ¶¶ 2-3.

Petitioners also seek a preliminary injunction enjoining enforcement of the alleged unconstitutional provisions of the challenged Chapter laws. *Id.*, ¶ 4.

---

<sup>1</sup> For ease of reading, this memorandum of law will refer to Petitioners/Plaintiffs as “Petitioners” and Respondents/Defendants as “Respondents”.

Because this hybrid proceeding has been commenced under Article 16 of the Election Law (“Article 16”), Article 78 of the CPLR (“Article 78”) and CPLR 3001, *id.*, ¶ 1, it is unclear whether the OSC seeks ultimate relief under Article 16 and/or Article 78, a preliminary injunction for the pendency of all claims, or both. Notwithstanding, Petitioners are entitled to none of this relief. The Petition fails to state a claim, and Petitioners fail to demonstrate their entitlement to a preliminary injunction.

## **BACKGROUND**

### **A. The New York State Constitution authorizes the Legislature to allow absentee voting.**

The Constitution of the State of New York confers upon “[e]very citizen” the right to vote in elections for public office, subject to qualifications based upon age and residence. N.Y. Const., art. II, § 1. For a time, the Constitution expressly required that qualified individuals wishing to vote had to do so in person at a polling place located in the “town or ward,” N.Y. Const., art. II, § 1 (1821), and later the “election district,” N.Y. Const., art. II, § 1 (1846), in which they resided, “and not elsewhere.” *See id.* That express requirement no longer exists, N.Y. Const., art. II, § 1, amend. of Nov. 8, 1966, but the Constitution has generally been regarded as implicitly continuing to retain the requirement.

For more than 150 years, however, the Constitution has also expressly authorized the Legislature to allow certain categories of qualified individuals, for whom in-person voting would be impracticable, to vote by other means. The first such authorization, prompted by the Civil War, was added in 1864 and covered soldiers in federal military service who were absent from their election districts during wartime. N.Y. Const., art. II, § 1, amend. of Mar. 8, 1864.

Over time, the Constitution's express authorization for the Legislature to permit "absentee voting" has been expanded. Notably, in 1955, the Constitution was amended to authorize the Legislature to allow absentee voting for "qualified voters who, on the occurrence of any election, may be unable to appear personally at the polling place because of illness or physical disability." N.Y. Const., art. II, § 2, amend. of Nov. 8, 1955. This amendment was adopted at the general election of 1955 after having been passed by the Legislature.

The amendment had been recommended to the Legislature by a committee consisting of members of the Assembly and Senate. The committee was tasked with finding ways "to afford to the people a maximum exercise of the elective franchise and a maximum expression of their choice of candidates for public office and party position." Majority Report, Affidavit of Jennifer J. Corcoran ("Corcoran Aff."), Ex. C, p. 3. The committee "approached the problems affecting the elective franchise in a manner designed to eliminate technicalities and to bring about a maximum exercise of the elective franchise by voters." *Id.*, p. 10. In recommending the subject amendment, the committee stated, "This amendment will permit qualified voters who may be unable to appear personally at the polling place on Election Day because of illness or physical disability, to apply for an absentee ballot." *Id.*, p. 18. "This amendment will afford to many persons an opportunity to exercise their right to vote who at the present time, through no fault of their own, are unable to do so." *Id.*

The Constitution's authorization for the Legislature to allow absentee voting on account of illness or physical disability remains in place today. The constitutional absentee-voting provision presently reads as follows:

The legislature may, by general law, provide a manner in which, and the time and place at which, qualified voters who, on the occurrence of any election, may be absent from the county of their residence or, if residents of the city of New York, from the city, and qualified

voters who, on the occurrence of any election, may be unable to appear personally at the polling place because of illness or physical disability, may vote and for the return and canvass of their votes.

N.Y. Const., art. II, § 2.

**B. The Legislature amends Election Law § 9-209 to expedite the process for canvassing absentee, military, special and affidavit ballots.**

In 2021, the Legislature amended the election law to update the process for canvassing absentee, military, special and affidavit ballots “in order to obtain the results of an election in a more expedited manner and to assure that every valid vote by a qualified voter is counted.” N.Y.S. Senate Introducer’s Memorandum in Support of § 9-209, Corcoran Aff. Ex. A (“§ 9-209 Sen. Intro. Mem”), p. 15. The Senate introducer’s memorandum explained that the amendments to § 9-209 were designed to expedite the process of counting absentee, military, special and affidavit ballots in the wake of the delays in obtaining election results after the 2020 election. § 9-209 Sen. Intro. Mem., p. 15. As such, the statute requires that the local boards of election review absentee, military and special ballots on a rolling basis as they are received, no matter if they are received prior to, during, or after the election. § 9-209 Sen. Intro. Mem., p. 16.

Previously, the canvassing of absentee ballots did not begin until a week after the election. Section 9-209, as amended, requires that the absentee ballot return envelopes be examined within four days after the ballot is received. There are three different dispositions of the ballot envelope:

- (1) The ballot envelope may be opened and the ballot removed in a manner to preserve secrecy to be placed in a special container to be scanned at a later time;
- (2) the ballot envelope may be found incurably invalid and laid aside unopened (albeit the voter if identifiable will be notified so they may vote in another manner);
- (3) the ballot envelope will be found to have a curable defect and a cure notice will be sent to the voter which if returned by the voter will result in the later canvassing of the ballot.

N.Y. Elec. Law ¶ 9-209.

The initial review of the ballot looks at whether the individual whose name is on the ballot is a voter, whether the ballot is timely received, and whether the envelope is sufficiently sealed. N.Y. Elec. Law § 9-209 (2)(a). During this review, “such ballot shall be set aside unopened for review . . . [post election] with a relevant notation indicated on the ballot envelope notwithstanding a split among the central board of canvassers as to the invalidity of the ballot . . . .” N.Y. Elec. Law § 9-209(2)(a). At this juncture, a single commissioner can cause a ballot to be set aside for post-election review. However, at the post-election review stage, “[e]ach such candidate, political party, and independent body shall be entitled to object to the board of elections’ determination that a ballot is invalid.” N.Y. Elec. Law § 9-209(2)(a).

After the initial ballot review, the board of canvassers undergoes a signature match, where the voter’s signature on file is compared to the signature on the returned ballot. “If the central board of canvassers splits as to whether a ballot is valid, it shall prepare the ballot to be cast and canvased pursuant to this subdivision.” N.Y. Elec. Law § 9-209 (2)(g).

Newly instituted cure provisions act as a fraud deterrence, allowing the board “to seek an affidavit from a voter reaffirming their ballot when there is a finding by the board that the voter’s signature on the ballot envelope does not seem to match the signature of the voter on file with the board of elections.” N.Y. Elec. Law § 9-209 (3). Other defects that can be cured include an unsigned envelope, no required witness, missing envelope, or incorrect signature of another voter. *Id.* Although ballots are scanned prior to election day, “the aggregated tabulated results from those ballots may be obtained not earlier than ‘one hour before the scheduled close of polls on election day.’” N.Y. Elec. Law § 9-209 (6)(e).



## ARGUMENT

### POINT I

#### THE PETITION FAILS TO STATE A CLAIM UNDER ARTICLE 16 OF THE ELECTION LAW

“Election Law § 16–106(1) provides courts with authority to review ‘[a] board's decision to canvass or refuse to canvass a particular ballot during the canvass.’” *Carr v. Kevi*, 198 A.D.3d 847 (2d Dep’t 2021). Here, Petitioners do not cite to a specific boards’ decision to canvass or refuse to canvass a specific ballot because the entirety of the Petition is speculative. Indeed, Petitioners do not even name a particular county board of elections as a party to this action. As it stands, there is no error by a county board of elections for the Court to correct under Article 16 of the Election Law. *Stewart v. Rockland Cnty. Bd. of Elections*, 41 Misc. 3d 1238(A), 983 N.Y.S.2d 206 (Sup. Ct. Rockland Cty. 2013), *aff’d*, 112 A.D.3d 866 (2d Dep’t 2013) (“Furthermore, it is well-settled that in a summary proceeding such as this one, brought pursuant to Election Law Article 16, the [Supreme Court's] only powers are (1) to determine the validity of protested, blank or void paper ballots and protested or rejected absentee ballots and to direct a recanvass or correction of any error in the canvass of such ballots . . . and (2) to review the canvass and direct a recanvass or correction of an error or performance of any required duty by the board of canvassers.”). As such, this action is improperly before the Court under Article 16.<sup>2</sup>

Accordingly, the relief sought by Petitioners pursuant to Article 16 should be denied, and the Petition should be dismissed.

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<sup>2</sup> Even if, *arguendo*, this proceeding was properly brought pursuant to Article 16, the relief sought in the Petition should still be denied, and the Petition dismissed, for the reasons discussed at Point II below.

## POINT II

### PETITIONERS ARE NOT ENTITLED TO PRELIMINARY INJUNCTIVE RELIEF AND THE PETITION SHOULD BE DISMISSED

To the extent that the OSC seeks a preliminary injunction within the context of Petitioners' alleged declaratory judgment claim commenced pursuant to CPLR 3001, Petitioners are not entitled to such relief. For the same reasons, the Petition should be dismissed as against the State of New York and Governor Hochul.

A preliminary injunction is a "drastic remedy" that should be issued "sparingly." *Kuttner v. Cuomo*, 147 A.D.2d 215, 218 (3d Dep't 1989). To prevail on a motion for a preliminary injunction, the moving party must establish by clear and convincing evidence: "(1) the likelihood of success on the merits; (2) irreparable injury absent granting the preliminary injunction; and (3) a balancing of the equities." *Id.*; *County of Suffolk v. Givens*, 106 A.D.3d 943, 944 (2d Dep't 2013). "To warrant preliminary injunctive relief, the irreparable harm alleged must be immediate, specific, nonspeculative and nonconclusory." *Grumet v. Cuomo*, 162 Misc. 2d 913, 929-930 (Sup. Ct. Albany Cty. 1994) (citing *Matter of New York State Inspection, Sec. & Law Enforcement Employees v. Cuomo*, 64 N.Y.2d 233 (1984)).

Petitioners "who seek preliminary relief providing all the relief sought as final judgment bear an even heavier burden in demonstrating their entitlement to such relief." *Grumet*, 162 Misc. 2d at 929 (quoting, *Russian Church of Our Lady of Kazan v. Dunkel*, 34 A.D.2d 799, 801 (2d Dep't. 1970)). Such injunctions, "if granted at all, are granted with great caution and only when required by urgent situations or grave necessity, and then only on the clearest of evidence. It is the policy of this court not to grant such relief when the plaintiff's ultimate right involved is in doubt." *Id.* at 929 (quoting, *Russian Church of Our Lady of Kazan*, 34 A.D.2d at 801). Here, Petitioners fail to carry their burden. First, Petitioners fail to demonstrate a likelihood of success on the merits.

Second, Petitioners' claims of irreparable injury are speculative and conclusory. Third, the balance of equities does not tip in its favor.

For the same reasons that Petitioners cannot establish a likelihood of success on the merits, see Point II(A), *infra*, the Petition should be dismissed as against Defendants State of New York and Governor Hochul pursuant to CPLR 3211 (a)(7) & (8).

**A. Petitioners Fail to Demonstrate that they are Likely to Succeed on the Merits.**

Petitioners fail to establish, by “clear and convincing evidence,” a likelihood of success on the merits. Instead, as set forth below, (1) the Court lacks personal jurisdiction over the State of New York and Governor Hochul; (2) Governor Hochul is immune from suit; (3) the doctrine of laches bars Petitioners' claims; and (4) Petitioners fail to allege that the amendments to the election law are unconstitutional. For these reasons, the Petition should be dismissed as to the State of New York and Governor Hochul.

*1. The Court Does Not Have Personal Jurisdiction Over the State of New York or Governor Hochul on Petitioner's Declaratory Judgment Claim.*

Petitioners have not obtained personal jurisdiction over the State of New York or Governor Hochul for purposes of their plenary action because they have not been served with a summons, summons with notice or complaint. A plenary action, such as a declaratory judgment action, is commenced by the filing of a summons and complaint or summons with notice. CPLR 304(a). No summons, summons with notice or complaint has been served on the State of New York or Governor Hochul. Affidavit of Danny McDonald, ¶ 4. As a result, Petitioners have failed to obtain personal jurisdiction over these Defendants and therefore no declaratory judgment action is presently proceeding against them. *Collins v. Village of Head-of-the-Harbor*, 2018 N.Y. Misc. LEXIS 1409, \*\*14-15 (Sup. Ct. Suffolk Cty. Feb. 15, 2018) (“in hybrid actions-proceedings the pleading [should] be served with both a summons and notice of petition...The summons invokes

jurisdiction for the declaratory-judgment-action component while the notice of petition performs the same function for the Article 78 aspect of the case” (quoting Alexander, Practice Commentary, McKinney’s Cons Laws of NY, 2016 Electronic Update, CPLR 7804)).

Accordingly, Petitioners have failed to obtain personal jurisdiction over the State of New York or Governor Hochul for purposes of their plenary action. As a result, to the extent that Petitioners seek a preliminary injunction in connection with that action, such relief is not available. Additionally, the Petition is currently subject to dismissal pursuant to CPLR 3211(a)(8), making Petitioners not likely to succeed on the merits of any of their claims.

*2. Governor Hochul is Entitled to Legislative Immunity.*

“[T]he United States Supreme Court has ruled that there is a common law immunity applicable to state and local legislators, similar to that provided to members of Congress under the United States Constitution (Art. I, § 6), that also grants immunity to members of the executive branch ‘when they perform legislative functions.’” *Larabee v. Spitzer*, 19 Misc. 3d 226, 237 (Sup. Ct. New York Cty. 2008), *aff’d sub nom.*, 65 A.D.3d 74 (1<sup>st</sup> Dep’t 2009). Here, the Petition’s only reference to Governor Hochul is her signing into law the challenged sections of Election Law, Petition ¶ 23, which is clearly a legislative function. *Id.* (referring to the signing of a bill as a “legislative function” which would require dismissal on immunity grounds). Accordingly, Petitioner’s claims against Governor Hochul are barred and should be dismissed pursuant to CPLR 3211(a)(7). As a result, Petitioners are not likely to succeed on the merits of their claims against Governor Hochul.

*3. The Present Application is Barred by the Doctrine of Laches.*

Petitioners’ challenges to the constitutionality of Chapter 763 (and the other attendant extraordinary relief they seek herein) is barred by the doctrine of laches. “Laches bars recovery

where a plaintiff's inaction has prejudiced the defendant and rendered it inequitable to permit recovery." *Airco Alloys Division, Airco Inc. v. Niagara Mohawk Power Corp.*, 76 A.D.2d 68, 82 (4th Dept 1980).

Laches is "an equitable bar, based on a lengthy neglect or omission to assert a right and the resulting prejudice to an adverse party." *Amedure, et al. v. State of New York*, CV-22-1955 (3d Dept. Nov. 1, 2022), *Reif v. Nagy*, 175 A.D.3d 107, 130 (1st Dep't 2019) (quoting *Saratoga County Chamber of Commerce v. Pataki*, 100 N.Y. 2d 801, 816 (2003)). To show prejudice, a defendant must show reliance and change of position from the delay. *Id.* Here, the prejudice that would stem from Petitioners' belated challenge to the amendments to the Election Law for canvassing is manifest.

If Petitioners' challenge was allowed, thousands of voters would be disenfranchised, and it is unclear if any pending election could timely move forward. Petitioners fail to provide any explanation as to why they sat on their "rights".

Further, Petitioners waited for nearly two (2) years after the Governor signed the 2021 amendment to Election Law § 9-209 before commencing this action. As the Third Department recently observed in another election case, "[s]uch delay was entirely avoidable and undertaken without any reasonable explanation." *Matter of League of Women Voters*, 206 A.D.3d 1227, 1230 (3d Dep't 2022) (dismissing, based on laches, petition/complaint challenging constitutionality of redrawn map of assembly districts, which was commenced five weeks before primary); *see also Matter of Nichols v. Hochul*, 206 A.D.3d 463, 464 (1st Dep't June 10, 2022), *lv. dismissed*, 38 N.Y.3d 1053 (2022) (same). "[E]lection matters are exceedingly time sensitive and protracted delays of this nature impose impossible burdens upon respondent [the State Board of Elections], who is obligated to comply with the strict timelines set forth in the Election Law." *Matter of*

*League of Women Voters*, 206 A.D.3d at 1230. Having failed to act promptly in bringing this claim, Petitioners are not entitled to force last-minute changes to election procedures.

Indeed, the Third Department found that the Petitioners' previously filed case making nearly identical allegations was barred by laches after a nine month delay, much less a delay of nearly two years. See generally, *Amedure, et al. v. State of New York*, CV-22-1955 (3d Dept. Nov. 1, 2022).

The proposed relief would cause yet more delay and add to the already formidable logistical challenges faced by the State and local boards of elections associated with the updated canvassing and absentee ballot process. Therefore, Petitioners are not likely to succeed on the merits of their claims based on an application of the doctrine of laches.

*4. Petitioners Fail to Present a Constitutional Challenge to the Amendments of Election Law § 9-209.*

Petitioners offer a series of challenges to the constitutionality of the amendments to § 9-209, arguing that the statute, as amended, impermissibly interferes with the constitutionally protected rights of citizens, electors, candidates, and political parties to engage in the political process, and contends that the statute is unconstitutional on its face and as applied on the basis that (1) the Legislature exceeded its authority in enacting the statute; (2) the statute is inconsistent with and in direct conflict with the New York State Constitution and other provisions of the Election Law; (3) the statute impermissibly interferes with Petitioners' rights to free speech and free association as guaranteed by the New York State Constitution; (4) the statute impermissibly opens the election process to the counting of "invalid and improper" votes; and (5) the statute is unconstitutionally vague. See generally *Petition*.

Petitioners spend a greater part of their Petition reiterating the same conclusory arguments, insisting that the amendments to § 9-209 unconstitutionally impair the rights of voters, candidates,

political parties, and commissioners of elections. Petition, ¶¶ 48-128. They also contend that the statute infringes on the power of judicial oversight. *Id.*, ¶¶ 129-144. Indeed, many of Petitioners' allegations represent mischaracterizations or misunderstandings of the law coupled with theoretical scenarios not based in reality. Nearly all of Petitioners' allegations are speculative and prospective, and there is no indication in the current record before the Court that any of the scenarios (fraudulent votes, dead voters, etc.) are grounded in fact.

First, with respect to the right of the voter, Petitioners allege that § 9-209 “interferes with the voters’ ability to exercise their rights of Free Speech and Free Association guaranteed by the New York State Constitution under . . . Article I, §§ 8, 9 by [ ] not allowing them to change their minds on the day of the election.” Petition, ¶ 57. This is patently false. While sections 8 and 9 of the Constitution do protect an individual’s rights to free speech and free association, there is no constitutionally protected right to change your mind. Section 9-209 simply sets forth a procedure providing that, if an individual requests an absentee ballot and uses that absentee ballot, he or she cannot then show up on a polling place and vote a second time. N.Y. Elec. Law § 9-209(2)(d). Indeed, § 9-209 aims to protect against the “fraudulent actions” Petitioner argues is “assured” by the new provision. To be sure, [o]ther states follow New York’s rule that once a voter opts to vote by absentee, the voter cannot then validly vote on election day on a voting machine in person.”

*Id.* Petitioners fail to allege that § 9-209 infringes upon voters’ rights.

Second, as to the rights of candidates and political parties, Petitioners contend that § 9-209 deprives political candidates and political parties of due process as poll watchers are unable to object and be heard. Petition, ¶ 94. To the contrary, however, Section 9-209 provides for two occasions wherein watchers may object to the validity of a ballot: (1) “[a]t the meeting required pursuant to paragraph (a) of subdivision eight of this section, each candidate, political party, and

independent body shall be entitled to object to the board of elections' determination that an affidavit ballot is invalid"; and (2) at post-election review, where "[e]ach such candidate, political party, and independent body shall be entitled to object to the board of elections' determination that a ballot is invalid. Such ballots shall not be counted absent an order of the court." N.Y. Elec. Law § 9-209 (7)(j), (8)(c).

Third, Petitioner alleges that § 9-209 prevents commissioners of elections from performing their duties of "ruling on a poll watcher' s objection [ ] as to the result in the invalidation of any ballot" and "investigat[ing] the validity of applications and ballots issued." Petition, ¶ 105. "Every commissioner in each board of elections except for commissioners of the board of elections of the city of New York, may approve and at pleasure remove a deputy, establish his title and **prescribe his duties.**" N.Y. Elec. Law § 3-300 (emphasis added). Accordingly, per statute, a local elections commissioner sets his or her own duties; they are not prescribed by law. To the extent that Petitioner argues that the statute goes against an election commissioner's preferred moral code, because an individual is unhappy with a change in law does not automatically translate to a constitutional violation. Even so, the alleged inability to make a ruling and/or "associate him/herself with the arguments advanced by a poll watcher/objector" does not amount to a constitutional violation.

Fourth, Petitioners allege that § 9-209 "impermissibly comprises voters' rights to have a secret ballot." Petition, ¶ 112. Petitioners' allegations are nonsensical and not based in reality. Section 9-209 sets forth extensive procedures to ensure the secrecy of the ballots, and the sheer fact that ballots are canvassed on a rolling basis does not stray from that goal. Petitioners contend that 'nothing can stop poll watchers (or election personnel present at canvass) from keeping a tally



of the votes”, Petition, ¶ 121, but specific processes are mandated by the statute to ensure a voter’s vote is private.

Fifth, Petitioners argue that the “Legislature has, in contravention of the Constitution and statute, prohibited the Courts from performing their duty by the statute’s dictate: ‘in no event may a court order a ballot that has been counted to be uncounted.’” Petition, ¶ 142 (quoting N.Y. Elec. Law §§ 9-209 (7)(j) and (8)(e)). However, Petitioners fail to take into account that judicial review of the validity of a ballot has always been limited. *Tenney v. Oswego Cnty. Bd. of Elections*, 71 Misc. 3d 400, 416 (Sup. Ct. Oswego Cty. 2021) (“Judicial review of a Board of Elections’ ruling on the validity of an affidavit ballot under Election Law § 16-106(1) is limited to determining whether the Board, based upon the affiant's oath and the Board's own records, committed a ministerial error when it decided to cast, or not cast, that ballot.”). Further, per the statute, a court may direct that an uncounted ballot be counted. N.Y. Elec. Law §§ 9-209 (7)(j), (8)(e).

Petitioners are correct that the provisions of Article 9 are linked to that of Article 16, Petition, ¶ 137, but commentary on the amendments suggest that judicial review still allows for a recanvassing or the correction of an error. *See* 22 Carmody-Wait 2d § 137:90 (“Elec. Law § 16-106(4)), amended effective January 1, 2022, now provides that the court must ensure the strict and uniform application of the election law and must not permit or require the altering of the schedule or procedures in Election Law § 9-209, but may direct a recanvass or the correction of an error, or the performance of any duty imposed by the election laws on such a state, county, city, town, or village board of inspectors, or canvassers.”). Again, Petitioners’ contention that § 9-209 no longer allows an individual to contest a determination by the Board of Elections is false. N.Y. Elec. Law § 9-209 (7)(j) (“At the meeting required pursuant to paragraph (a) of subdivision eight of this section, each candidate, political party, and independent body shall be entitled to object to the

board of elections' determination that an affidavit ballot is invalid”) and § 9-209 (8)(e) (“Each such candidate, political party, and independent body shall be entitled to object to the board of elections' determination that a ballot is invalid.”). Accordingly, Petitioners’ allegations that § 9-209 removes the power of judicial oversight is inaccurate.

Sixth, Petitioners argue that § 9-209 violates the doctrine of separation of powers as the “Legislature has usurped the role of the judiciary.” Petition, ¶ 148. The separation of powers doctrine “is the bedrock of the system of government adopted by this State in establishing three coordinate and coequal branches of government, each charged with performing particular functions.” *Matter of LeadingAge New York, Inc.*, 32 N.Y.3d 249, 259 (2018).

Petitioners fail to expressly state how, in enacting § 9-209, the Legislature has violated the doctrine of separation of powers. Petition, ¶¶ 146-150. To the extent that Petitioners refer to the alleged lack of judicial oversight as evidence of the violation, as indicated above, it is clear that the judiciary’s powers under the amended § 9-209 with respect to ballots are consistent with the old version of the statute. Moreover, as the statute prescribes that the judiciary retain the ability to direct recanvassing or the correction of an error, it cannot be said that the Legislature “arrogate[d] unto itself powers residing entirely in another branch.” *Soares v. State*, 68 Misc.3d 249, 271 (Sup. Ct. Albany Cty. 2020). As such, the Petition fails to state a separation of powers claim, and Petitioners are not likely to succeed on the merits of such a claim.

Seventh, Petitioners set forth a combination of arguments previously set forth, arguing that the statute, as amended, “precludes poll watchers appointed by [the] [ ] Petitioners from making objections.” Petition, ¶ 152. Petitioners contend that this is a violation of due process, free speech, and free associational rights, as well as other provisions of the election law. *Id.*, ¶ 157. As argued above, this is simply not the case. The statute does not wholesale remove an individual’s ability

to object. N.Y. Elec. Law § 9-209 (7)(j), (8)(e). Nor does it impermissibly conflict with other areas of the election law, as Petitioners allege in the ninth cause of action.

Petitioners have failed to bring this action against any board of elections official whose actions are sought to be enjoined or name a proper party with respect to this allegation as no county boards of elections officers are specifically sought to be enjoined as a party to this action. There is nothing preventing an entity from providing voters with an application for an absentee ballot, and it has been done by both political parties for many years. This is not a new practice initiated by a particular party in the wake of the § 9-209 amendments. Accordingly, Petitioners are not likely to succeed on their constitutional claims, and they should be dismissed.

**B. Petitioners Cannot Establish Irreparable Harm.**

A party seeking a preliminary injunction must establish irreparable harm that is immediate, specific, nonspeculative, and nonconclusory. *Matter of New York State Inspection, Sec. & Law Enforcement Empls. v. Cuomo*, 64 N.Y.2d 233, 240 (1984). A party must show, by clear and convincing evidence, not just a possibility that it will be irreparably harmed, but that it is likely to suffer irreparable harm if equitable relief is denied. *Bank of Am., N.A. v. PSW NYC LLC*, 918 N.Y.S.2d 396 (Sup. Ct. New York Cty. 2010).

The entire Petition is speculative and prospective in nature, focusing on alleged fraud that *may* occur should the challenged sections of the Election Law remain enforceable. Petitioners cannot demonstrate any harm, whatsoever, as the current canvassing procedures set forth in § 9-209 have been employed and functioning for nearly two years in general, primary and at special elections. Indeed, § 9-209 acts as a fraud deterrent, with cure provisions allowing the board to seek an affidavit from a voter reaffirming their ballot when there is a finding by the board that the voter's signature on the ballot envelope does not seem to match the signature of the voter on file

with the board of elections. N.Y. Elec. Law § 9-209 (3). As such, any threat of fraud is highly speculative, and not supported by any evidence, whatsoever. Therefore, Petitioners fail to establish that they will suffer irreparable harm and their motion for a preliminary injunction should be denied. *Clark v. Cuomo*, 103 A.D.2d 244, 246 (3d Dept 1984) (alleged injury raised in Election Law challenge was “more theoretical than real” and failed to satisfy the standard for irreparable harm); *League of Women Voters of N.Y.S. v. N.Y.S. Bd. of Elections*, 2020 N.Y. Misc. LEXIS 10084, \*\*3-4 (Sup. Ct. New York Cty. Sept. 25, 2020) (claim that “tens of thousands of New Yorkers will miss the registration deadline for a critical election...” was “unsupported,” “remote” and “speculative” and not sufficient to satisfy the standard for irreparable harm).

Further, § 9-209, as amended, is not a significant departure from the prior law. With respect to Petitioners’ allegations about an inability to object, as indicated above, there is no requirement that an interested party be able to “participate” in the process before an election official opens a ballot envelope.

Accordingly, Petitioners fail to demonstrate, by “clear and convincing evidence,” that they will suffer irreparable harm in the absence of their requested preliminary relief. On this ground alone, Petitioners’ application for a preliminary injunction should be denied. *Tenney*, 71 Misc.3d at 426-427 (preliminary injunctive relief denied based on lack of showing of irreparable harm alone).

**C. A Balancing of the Equities Does Not Tip in Petitioners’ Favor and Injunctive Relief is Not in the Public Interest.**

In addition to showing a likelihood of success on the merits and irreparable harm, Petitioners must show that a balance of the equities tips in their favor, and that their interests outweigh the public interest. *Matter of Riccelli Enters., Inc. v State of New York Workers’ Comp. Bd.*, 2012 N.Y. Misc. LEXIS 2241, at \* 244-246 (Sup. Ct., Onondaga Cty., Apr. 30, 2012).

Petitioners fail to do so here. Halting the voting process, when absolutely no evidence has been provided by Petitioners that it is necessary, would create the chaos and uncertainty that the statute itself aimed to combat.

Consequently, the equities do not tip in Petitioners' favor and the alleged harm to Petitioners' interests is far outweighed by the compelling public interest in preventing the disenfranchisement of thousands of voters.

### CONCLUSION

For the reasons discussed above, the relief sought by Petitioners pursuant to Election Law Article 16 should be denied, Petitioners' application for a preliminary injunction should be denied, and Respondents' motion to dismiss the Petition in its entirety should be granted.

Dated: September 18, 2023  
Albany, New York

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Attorney General  
State of New York  
Attorney for Respondents State of New  
York and Governor Kathy Hochul  
The Capitol  
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TO: All Counsel of Record

**STATEMENT PURSUANT TO 22 NYCRR 202.8-b**

I, Jennifer J. Corcoran, affirm under penalty of perjury pursuant to CPLR 2106 that the total number of words in the foregoing memorandum of law, inclusive of point headings and footnotes and exclusive of pages containing the caption, table of contents, table of authorities, and signature block, is 5,605. The foregoing memorandum of law complies with the word count limit of 10,000 words approved by the Court on August 20, 2021, which is in excess of the word count limit set forth in 22 NYCRR 202.8-b. In determining the number of words in the foregoing memorandum of law, I relied upon the word count of the word-processing system used to prepare the document.

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Jennifer J. Corcoran

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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF SARATOGA

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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,

**NOTICE OF MOTION<sup>1</sup>**

Index No. 2023-2399

*Petitioners/Plaintiffs,*

v.

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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PLEASE TAKE NOTICE that upon the annexed Affirmation of Jennifer J. Corcoran,  
Assistant Attorney General; Affidavit of Danny McDonald; and Memorandum of Law,  
Respondents-Defendants State of New York and Governor Kathy Hochul will move at a Term of

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<sup>1</sup> To the extent that the governing Order to Show Cause is deemed a motion for a preliminary injunction, and this application should be brought by cross-motion and/or with the notice required by CPLR 2214(b) (instead of in compliance with CPLR 403(b)), the State of New York and Governor Kathy Hochul respectfully request that the Court set a briefing schedule as it deems appropriate.

the Supreme Court, held in and for the County of Saratoga, at the Saratoga County Court House, Ballston Spa, New York on September 20, 2023 at 2:30 p.m., as directed by Order to Show Cause dated September 8, 2023, for an order pursuant to CPLR 403(b) and CPLR 3211(a)(8), dismissing the Petition-Complaint in its entirety and for any further relief that the Court deems just, proper and equitable.

Dated: Albany, New York  
September 18, 2023

LETITIA JAMES  
Attorney General, State of New York  
Attorney for Respondents-Defendants State of  
New York and Governor Kathy Hochul  
The Capitol  
Albany, New York 12224

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