

NEW YORK STATE SUPREME COURT
SARATOGA COUNTY

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 and 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.

Case No: 20232399

RJI No: 45-1-2023-1089

VERIFIED ANSWER

Respondent, NEW YORK STATE BOARD OF ELECTIONS, is comprised of four commissioners pursuant to Election Law § 3-100 and when the commissioners do not agree they may appear in litigation by separate counsel,¹ to

¹ See e.g. *Elgin v Smith*, 10 AD 3d 483 (4th Dept 2004) (holding permitting Answer to be filed by only one commissioner of a split board where commissioners disagree); *Marsh v Hale*, 2019 NY Slip Op 50903 (Sup. Ct. Cattaraugus County) (holding “[a] single Commissioner from a split Respondent Board of Elections may properly appear....”); *Cahill v Kellner*, 121 A.D.3d 1160 (Third Dept 2014) (State Board appeared on appeal by separate

wit Commissioner DOUGLAS A. KELLNER, co-Chair of the New York State Board of Elections and Commissioner ANDREW J. SPANO as and for their Verified Answer to the Petition and Complaint in the above-entitled proceeding, respectfully allege as follows:

1. With respect to ¶1, of the Verified Petition deny each and every allegation therein.
2. With respect to ¶2, deny each and every allegation therein.
3. With respect to ¶3, deny each and every allegation therein.
4. With respect to ¶4, deny each and every allegation therein.
5. With respect to ¶5, deny each and every allegation therein.
6. With respect to ¶6, deny each and every allegation therein.
7. With respect to ¶7, deny knowledge or information sufficient to form a belief except admit that New York State Republican Party is a political party organized under the Election Law.

counsel for the Democratic and Republican commissioners, respectively, in a case commenced against commissioners “constituting the New York State Board of Elections”) *Bothwell v Bernstein*, 2019 NY Slip Op 50966 (Sup. Ct. Cattaraugus County) (holding “[t]he Board, and the Commissioners thereof, have a distinct interest in compliance with the mechanics of the and the statutory mandate as to content under the provisions of the Election Law...Any case where such statutory requirements are at issue is of legal interest to a Board and to the individual Commissioners thereof. When properly included as a party, a board of elections or an individual commissioner thereof, has the right to participate in an Election Law court proceeding...”); *Matter of Connolly v Chenot*, 275 AD 2d 583 (Third Depart. 2003) (observing “we reject petitioners' assertion that [Commissioner] Wade was without authority to bring the underlying motion to dismiss.”).

8. With respect to ¶8, deny knowledge or information sufficient to form a belief.

9. With respect to ¶9, deny knowledge or information sufficient to form a belief except admit that the New York State Conservative Party is a political party organized under the Election Law.

10. With respect to ¶10, deny knowledge or information sufficient to form a belief.

11. With respect to ¶11, deny knowledge or information sufficient to form a belief.

12. With respect to ¶12, deny knowledge or information sufficient to form a belief except admit that the Saratoga County Republican Committee is a political party committee organized under the Election Law.

13. With respect to ¶13, admit the allegation therein.

14. With respect to ¶14, admit the allegation therein.

15. With respect to ¶15, admit the allegation therein.

16. With respect to ¶16, deny knowledge or information sufficient to form a belief, except admit that Robert Smullen is a Member of the New York State Assembly representing the 118th Assembly District.

17. With respect to ¶17, deny knowledge or information sufficient to form a belief, except admit that Rich Amedure was previously a candidate for New York State Senator.

18. With respect to ¶18, deny knowledge or information sufficient to form a belief.

19. With respect to ¶19, deny each and every allegation therein.

20. With respect to ¶ 20, admit the allegation therein that the New York State Board of Elections is a bipartisan agency and has certain jurisdiction to administer aspects of and enforce provisions related to, election administration, but otherwise deny.

21. With respect to ¶21, admit the allegation therein that the New York State Board of Elections is a bipartisan agency and has certain jurisdiction to administer aspects of and enforce provisions related to, election administration, but otherwise deny.

22. With respect to ¶22, admit the allegation therein that the New York State Board of Elections is a bipartisan agency and has certain jurisdiction to administer aspects of and enforce provisions related to, election administration, but otherwise deny.

23. With respect to ¶23, admit the allegation therein that Kathy Hochul is the Governor of the State of New York with powers and duties prescribed by the Constitution and laws of the State, otherwise deny.

24. With respect to ¶24, admit the State Senate is a house of the legislature with powers and duties prescribed by the Constitution and laws of the State, otherwise deny.

25. With respect to ¶25, deny knowledge or information sufficient to form a belief.

26. With respect to ¶26, deny knowledge or information sufficient to form a belief.

27. With respect to ¶27, admit the State Assembly is a house of the legislature with powers and duties prescribed by the Constitution and laws of the State, otherwise deny.

28. With respect to ¶28, deny knowledge or information sufficient to form a belief.

29. With respect to ¶29, deny knowledge or information sufficient to form a belief.

30. With respect to ¶30, deny each and every allegation therein.

31. With respect to ¶31, deny each and every allegation therein.

32. With respect to ¶32, deny each and every allegation therein.

33. With respect to ¶33, deny each and every allegation therein.
34. With respect to ¶34, deny each and every allegation therein.
35. With respect to ¶35, deny knowledge or information sufficient to form a belief.
36. With respect to ¶36, deny knowledge or information sufficient to form a belief.
37. With respect to ¶37, deny knowledge or information sufficient to form a belief.
38. With respect to ¶38, deny knowledge or information sufficient to form a belief.
39. With respect to ¶39, deny each and every allegation therein.
40. With respect to ¶40, deny each and every allegation therein.
41. With respect to ¶41, deny each and every allegation therein.
42. With respect to ¶42, deny each and every allegation therein.
43. With respect to ¶43, deny each and every allegation therein.
44. With respect to ¶44, deny each and every allegation therein.
45. With respect to ¶45, deny each and every allegation therein.
46. With respect to ¶46, deny absence of a severability clause renders an enactment incapable of severance.
47. With respect to ¶47, deny each and every allegation therein.

48. With respect to ¶48, deny each and every allegation therein to the extent it alleges the legislature has done so.

49. With respect to ¶49, deny each and every allegation therein to the extent it alleges the legislature has done so.

50. With respect to ¶50, deny each and every allegation therein.

51. With respect to ¶51, citation is made to the law of New York which speaks for itself; deny each and every allegation therein.

52. With respect to ¶52, citation is made to the law of New York which speaks for itself; deny each and every allegation therein.

53. With respect to ¶53, citation is made to the law of New York which speaks for itself; deny each and every allegation therein.

54. With respect to ¶54, citation is made to the law of New York which speaks for itself; deny each and every allegation therein.

55. With respect to ¶55, deny each and every allegation therein.

56. With respect to ¶56, admit to the extent absentee voters are not permitted to vote on voting machines on Election Day.

57. With respect to ¶57, deny each and every allegation therein.

58. With respect to ¶58, deny each and every allegation therein.

59. With respect to ¶59, deny each and every allegation therein.

60. With respect to ¶60, deny each and every allegation therein.

61. With respect to ¶61, deny each and every allegation therein.
62. With respect to ¶62, deny each and every allegation therein.
63. With respect to ¶63, deny each and every allegation therein.
64. With respect to ¶64, the case cited speaks for itself.
65. With respect to ¶65, deny each and every allegation therein.
66. With respect to ¶66, the case cited speaks for itself.
67. With respect to ¶67, the case cited speaks for itself.
68. With respect to ¶68, the case cited speaks for itself.
69. With respect to ¶69, the case cited speaks for itself.
70. With respect to ¶70, the case cited speaks for itself.
71. With respect to ¶71, the case cited speaks for itself.
72. With respect to ¶72, deny each and every allegation therein.
73. With respect to ¶73, deny each and every allegation therein.
74. With respect to ¶74, the case cited speaks for itself.
75. With respect to ¶75, the case cited speaks for itself.
76. With respect to ¶76, the case cited speaks for itself.
77. With respect to ¶77, deny each and every allegation therein.
78. With respect to ¶78, deny each and every allegation therein.
79. With respect to ¶79, deny each and every allegation therein.
80. With respect to ¶80, deny each and every allegation therein.

81. With respect to ¶81, deny Chapter 763 results in vote dilution.
82. With respect to ¶82, deny each and every allegation therein.
83. With respect to ¶83, deny each and every allegation therein.
84. With respect to ¶84, deny each and every allegation therein.
85. With respect to ¶85, deny each and every allegation therein.
86. With respect to ¶86, deny each and every allegation therein.
87. With respect to ¶87, deny each and every allegation therein.
88. With respect to ¶88, deny each and every allegation therein.
89. With respect to ¶89, the State Constitution's text speaks for itself.
90. With respect to ¶90, deny any abrogation of Due Process occurred as a result of Chapter 763.
91. With respect to ¶91, deny any abrogation of Due Process occurred as a result of Chapter 763.
92. With respect to ¶92, paragraph states a legal conclusion to which no response is required.
93. With respect to ¶93, deny each and every allegation therein insofar as the implication is the challenged statute violates any constitutional provision.
94. With respect to ¶94, deny each and every allegation therein.
95. With respect to ¶95, deny each and every allegation therein.
96. With respect to ¶96, deny each and every allegation therein.

97. With respect to ¶97, deny each and every allegation therein.

98. With respect to ¶98, deny each and every allegation therein.

99. With respect to ¶99, deny each and every allegation therein to the extent the allegation is that limiting impoundment orders is unlawful.

100. With respect to ¶100, deny each and every allegation therein.

101. With respect to ¶101, deny each and every allegation therein.

102. With respect to ¶102, admit each and every allegation therein.

103. With respect to ¶103, deny each and every allegation therein.

104. With respect to ¶104, deny each and every allegation therein, except admit Commissioners are public officials who have taken an oath and do uphold the Constitution.

105. With respect to ¶105, deny each and every allegation therein.

106. With respect to ¶106, deny each and every allegation therein.

107. With respect to ¶107, deny each and every allegation therein.

108. With respect to ¶108, deny each and every allegation therein.

109. With respect to ¶109, deny each and every allegation therein.

110. With respect to ¶110, deny each and every allegation therein.

111. With respect to ¶111, deny to each and every allegation, and object on the basis that counsel is not a competent witness in this proceeding.

112. With respect to ¶112, deny each and every allegation therein.

113. With respect to ¶113, deny each and every allegation therein.
114. With respect to ¶114, deny each and every allegation therein as there is no such violation.
115. With respect to ¶115, deny each and every allegation therein.
116. With respect to ¶116, deny each and every allegation therein.
117. With respect to ¶117, deny each and every allegation therein.
118. With respect to ¶118, deny each and every allegation therein.
119. With respect to ¶119, deny each and every allegation therein.
120. With respect to ¶120, deny each and every allegation therein.
121. With respect to ¶121, deny each and every allegation therein.
122. With respect to ¶122, deny each and every allegation therein.
123. With respect to ¶123, deny each and every allegation therein.
124. With respect to ¶124, deny except that there are some such persons in these roles.
125. With respect to ¶125, deny each and every allegation therein as it assumes knowledge which is not obtained and if such information were obtained it is protected against disclosure by criminal penalties.
126. With respect to ¶126, deny each and every allegation therein.
127. With respect to ¶127, deny each and every allegation therein.
128. With respect to ¶128, deny each and every allegation therein.

129. With respect to ¶129, deny each and every allegation therein.
130. With respect to ¶130, admit.
131. With respect to ¶131, deny each and every allegation therein.
132. With respect to ¶132, deny each and every allegation therein.
133. With respect to ¶133, deny each and every allegation therein except admit the Election Law speaks for itself.
134. With respect to ¶134, deny each and every allegation therein.
135. With respect to ¶135, the decision cited speaks for itself.
136. With respect to ¶136, deny each and every allegation therein, except admit the Election Law speaks for itself.
137. With respect to ¶137, deny each and every allegation therein, except admit the Election Law speaks for itself.
138. With respect to ¶138, deny each and every allegation therein, except admit the Election Law speaks for itself.
139. With respect to ¶139, deny each and every allegation therein.
140. With respect to ¶140, deny each and every allegation therein.
141. With respect to ¶141, deny each and every allegation therein.
142. With respect to ¶142, deny each and every allegation therein.
143. With respect to ¶143, deny each and every allegation therein.
144. With respect to ¶144, deny each and every allegation therein.

145. With respect to ¶145, deny each and every allegation therein.
146. With respect to ¶146, admit.
147. With respect to ¶147, deny each and every allegation therein.
148. With respect to ¶148, deny each and every allegation therein.
149. With respect to ¶149, deny each and every allegation therein.
150. With respect to ¶150, deny each and every allegation therein.
151. With respect to ¶151, deny each and every allegation therein.
152. With respect to ¶152, deny each and every allegation therein.
153. With respect to ¶153, deny each and every allegation therein.
154. With respect to ¶154, deny each and every allegation therein.
155. With respect to ¶155, deny each and every allegation therein.
156. With respect to ¶156, deny each and every allegation therein.
157. With respect to ¶157, deny each and every allegation therein.
158. With respect to ¶158, deny each and every allegation therein.
159. With respect to ¶159, deny each and every allegation therein.
160. With respect to ¶160, deny each and every allegation therein.
161. With respect to ¶161, deny each and every allegation therein.
162. With respect to ¶162, deny each and every allegation therein.
163. With respect to ¶163, deny each and every allegation therein.
164. With respect to ¶164, deny each and every allegation therein.

165. With respect to ¶165, deny each and every allegation therein.
166. With respect to ¶166, deny each and every allegation therein.
167. With respect to ¶167, deny each and every allegation therein.
168. With respect to ¶168, deny each and every allegation therein.
169. With respect to ¶169, deny each and every allegation therein and observe when a later enactment contradicts a prior enactment, the prior enactment yields.

170. With respect to ¶170, deny each and every allegation therein.
171. With respect to ¶171, deny each and every allegation therein.
172. With respect to ¶172, deny each and every allegation therein.
173. With respect to ¶173, deny each and every allegation therein.
174. With respect to ¶174, deny each and every allegation therein.
175. With respect to ¶175, deny each and every allegation therein.
176. With respect to ¶176, deny each and every allegation therein.

**OBJECTION ONE IN POINT OF LAW:
(Petitioners' Claims With Respect to the
2023 General Election Are Barred By Laches)**

177. The challenged statute, Chapter 763 of the Laws of 2021 (“Canvass Law”), provides for the canvassing of absentee ballots, including a cure process

which must be administered timely to be meaningful (to provide voters time to cure the defects and secure their franchise).

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

179. The Canvass Law was used at the 2022 June and August primaries, the 2022 General Election, the 2023 June primary, and at eight Special Elections held since January 2022.

180. The Canvass has proven workable and effective.

181. Boards of Elections have sent notices to stakeholders informing them of the canvass schedule for 2023.

182. To date three boards of elections have already issued military and overseas ballots.

183. The plaintiffs were well aware of, or can be charged with notice of, the statutory changes at issue and the New York State Political Calendar located at <https://www.elections.ny.gov/NYSBOE/law/2023PoliticalCalendar.pdf>

184. Well knowing that the late tender of this litigation would cause tremendous disruption to the orderly unfolding of the election process, the plaintiffs commenced this litigation.

185. By having waited to commence the instant litigation until September 2023, the plaintiffs are guilty of laches with respect to any request for preliminary relief.

186. The contents of the Affidavit of Kristen Zebrowski Stavisky dated September 18, 2023 submitted in this matter are incorporated herein.

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

**OBJECTION TWO IN POINT OF LAW:
(Failure to Join Necessary Parties)**

188. Under New York law, county boards of elections process absentee ballot applications, receive returned absentee ballots and canvass such ballots.

189. In canvassing litigation, county boards of elections are necessary parties under controlling state law.

190. No county board of elections is a party to this litigation.

191. The instant proceeding must be dismissed for failure to name necessary parties.

**OBJECTION THREE IN POINT OF LAW:
(Fraud Has Not Been Plead With Particularity)**

192. The instant petition alleges fraud without having identified any particular instance, specifically or categorically, of such alleged fraud.

193. Petitioners have identified not one wrongfully cast ballot on account of the new Canvassing Law at any of the past nine elections at which it has been in effect.

194. For failure to particularize allegations of fraud, the instant petition must be dismissed.

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

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

We have previously recognized in the context of the Election Law that where, as here, the Legislature "erects a rigid framework of regulation, detailing . . . specific particulars," there is no invitation for the courts to exercise flexibility in statutory interpretation (*Matter of Higby v Mahoney*, 48 NY2d 15, 20 n 2 [1979]). Rather, when elective processes are at issue, "the role of the legislative branch must be recognized as paramount" (*id.* at 21).

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

196. Petitioners have pleaded no cognizable injury that is not purely speculative and such speculative injury is supported by no plead facts.

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

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

198. Petitioners have not shown beyond a reasonable doubt or clearly and convincingly that the challenged statutes are unconstitutional.

**OBJECTION SEVEN IN POINT OF LAW
(Improper Pleading)**

199. The petition purports to challenge a Chapter Law of 2021 which amended several provisions of the Election Law.


200. In challenging provisions of the codified Election Law, the petitions are obliged to specify with particularity the sections of the codified law they are challenging.

201. Petitioners have failed to properly plead their Constitutional challenge by not identifying adequately the specific provisions of the Election Law they are challenging.

WHEREFORE, the instant petition should be dismissed.

Dated: September 18, 2023
Albany, New York

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



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

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**NEW YORK STATE SUPREME COURT
SARATOGA COUNTY**

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 and JOHN QUIGLEY,

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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.

Case No: 20232399

RJI No: 45-1-2023-1089

VERIFICATION

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

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

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

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

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

This Verification is authorized by NYCRR § 6205.1.

DATED: September 18, 2023
Albany, New York

Affirmed:



Brian L. Quail

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