

STATE OF NEW YORK
SUPREME COURT 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, 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.

BENJAMIN F. NEIDL, an attorney admitted to practice law in the State of New York,
affirms under penalty of perjury the following:

1. I am an attorney with the law firm of E. Stewart Jones Hacker Murphy LLP,
attorneys for “Respondents/Defendants”¹ SENATE OF THE STATE OF NEW YORK, and the
MAJORITY LEADER AND PRESIDENT PRO TEMPORE OF THE SENATE (collectively, the
“**Senate Movants**”) in the above-referenced matter. I respectfully submit this Affirmation: (i) in

¹ Although the pleading is entitled “Petition” it calls the responding parties
“Respondents/Defendants.”

**ATTORNEY AFFIRMATION
OF BENJAMIN F. NEIDL**

**ON BEHALF OF
RESPONDENTS/PETITIONERS
SENATE OF THE STATE OF
NEW YORK AND THE
MAJORITY LEADER AND
PRESIDENT PRO TEMPORE
OF THE SENATE OF THE
STATE OF NEW YORK**

**In Opposition to the
Petition/Complaint and in
Support of Cross-Motion to
Dismiss Same**

Index No.: 20232399

opposition to the Petition and Petitioners/Plaintiffs’ motion for injunctive relief; and (ii) in support of the Senate Movants’ cross-motion to dismiss the Petition.

2. This Affirmation is accompanied by the *Memorandum of Law by Respondents/Defendants NYS Senate and Senate Majority Leader and President Pro Tempore In Opposition to the Petition/Complaint and in Support of Cross-Motion to Dismiss* dated September 18, 2023 (the “**Memorandum of Law**”), which I respectfully incorporate herein by reference.

3. Annexed hereto are true and accurate copies of certain documents referred to from time to time in the Memorandum of Law:

Exhibit 1: The Verified Petition in this proceeding, filed on September 1, 2023.

Exhibit 2: A historical version of N.Y. Election Law §9-209 as it existed *before* it was amended in 2021. This version of §9-209 does not govern the upcoming 2023 election, because it was superseded by the amended version in 2021. But this prior version is included for reference, because the Petition makes frequent comparisons between the old version and the current version.

Exhibit 3: A copy of a Petition/Complaint filed last year, on September 27, 2022, by most of the same Petitioners in this case, entitled *Rich Amedure et. al. v. State of New York et. al.*, Supreme Court, Saratoga County, Index No. 2022145 (“**Amedure I**”). As discussed below and in the Memorandum of Law, the Appellate Division ultimately dismissed *Amedure I* as untimely under the doctrine of *laches*.

Exhibit 4: A copy of a Complaint filed on *July 20, 2022* last year in *Richad Cavalier et. al. v. Warren County Board of Elections et. al.*, Supreme Court, Warrant County Index No. EF2022-70359, asserting claims objecting to absentee voting procedures ahead of the 2022 election. As discussed in the Memorandum of Law, the Appellate Division ultimately dismissed *Cavalier* as untimely under the doctrine of *laches*.

4. The merits of the Senate Movants’ opposition to the Petition and the grounds for dismissal are set forth in the accompanying Memorandum of Law, which I incorporate by

reference and respectfully refer the Court thereto in lieu of repeating all of those arguments in full here. For record purposes only, however, I will briefly inventory what is in the Memorandum of Law, to demonstrate for any future record that these issues and arguments have been preserved for review.

5. First, as a general proposition, by focusing only on Election Law §9-209, the Petition substantially downplays the security measures surrounding absentee ballots that are codified in various other sections of the Election Law. There is a whole process involved with a voter's application for the absentee ballot and the County Board of Election's verification of the voter's eligibility *bona fides* that occurs well before absentee ballots are canvassed under §9-209. Petitioners' complaints that §9-209 does not entail enough scrutiny of voter eligibility is a red herring, because the eligibility review occurs before the voter is even granted an absentee ballot form to submit. This summary of the other pertinent provisions of the Election Law is at pages 2-10 of the Memorandum of Law.

6. Second, this proceeding is barred by the doctrine of laches, as set forth in Point I of the Memorandum of Law. On very similar records in *Amedure I* and *Cavalier*, the Appellate Division dismissed challenges to absentee ballot procedure for *laches*.

7. Third, as discussed in Point II of the Memorandum of Law, the Petition is without merit as a matter of law and, therefore, the Petitioners' prayers for injunctive relief must be denied (they are not likely to succeed on the merits) and the Petition must be dismissed.

a. As discussed in Point II.A of the Memorandum of Law, the Petition fails to account for three over-arching propositions of law that are dispositive of the various causes of action: (i) there is a strong presumption of constitutionality in State statutes (like Election Law §9-209), and courts may only strike them down if every reasonable mode of

reconciliation of the statute with the Constitution has been resorted to, and reconciliation has been found impossible; (ii) a citizen does not have any constitutional right to retain a particular statutory scheme—the Legislature is free to amend its own enactments (like Election Law §9-209), and no constituency has a fundamental or constitutional right to doing things the “old way”; and (iii) Election Law §9-209 does not and cannot “violate” other Election Law statutes concerning vote canvassing, generally—the Legislature is free to make (and has made) different rules for different circumstances, such as having different procedures for canvassing absentee ballots versus in-person ballots. Many of the Petition’s claims hinge on the fallacy that Election Law §9-209 is “invalid” because it does not conform to *older statutes*’ rules about vote canvassing generally. A statute is defeated only if it offends the *Constitution*, it is not defeated by its differences from other statutes.

b. As discussed in Point II.B of the Memorandum of Law, the First Cause of Action is meritless because Election Law §9-209 does not offend the “rights of voters.” Voters do not have a right to “change their minds” after voting absentee. Nor does §9-209 subject voters to “vote dilution” (by permitting fraudulent votes). The argument that it does turns a blind eye to the processes in place to verify absentee voter eligibility well before canvassing even begins. Moreover, Petitioners present no evidence that §9-209, as amended since 2021, has permitted voter fraud.

c. As discussed in Point II.C of the Memorandum of Law, the Second Cause of Action is meritless because Election Law §9-209 does not offend the rights of candidates or political parties. The main focus of this claim is that under the old version of §9-209 (Exhibit 2), anyone lawfully present during the canvassing of absentee ballots could unilaterally banish an absentee ballot to a “limbo” pile for three days (delaying its counting)

by raising any objection about whether “a properly qualified voter of the election district.” (See Exhibit 2 subdivision 2[D].) In light of the ample vetting of the voter’s qualifications that occurs before canvassing, during the application stage, the current version of §9-209 dispenses with that “lone objector” rule, instead requiring action by both Commissioners (or their clerks) to set aside absentee ballots. That is a legislative decision, and the Petitioners have no right to have things done “the old way.” Moreover, the elimination of the lone objector rule does not offend First Amendment rights because it does not prohibit speech or association, or impose any penalty for exercising speech or association. Individuals can still talk to their Commissioners or the press (or anyone else) about their concerns, and Commissioners can speak with each other about their concerns, they simply no longer have “lone objector” veto status. The First Amendment guarantees the right to speak, it does not guarantee the right to veto.

d. As discussed in Point II.D of the Memorandum of Law, the Third Cause of Action is meritless because it does not impair the rights of County Elections Commissioners or prevent them from doing their jobs. The Commissioners are creatures of State law, with duties prescribed by State law. Their jobs are whatever the statutes say they are and, therefore, Commissioners have no “right” to deviate from Election Law §9-209. Secondly, the statute does not offend First Amendment rights for reasons already explained.

e. As discussed in Point II.E of the Memorandum of Law, the Fourth Cause of Action is meritless because Election Law §9-209 does not compromise a voter’s right to have a secret ballot. This entire argument is based on a risible, worst-case-scenario “what if” story in which Petitioner’s counsel wonders whether canvassing small batches of absentee ballots every four days in rural locations might make it easier for the canvassers to catch a

glimpse of (and remember) the secret part of a voter's ballot when opening it and putting it into the ballot box. This hypothetical concern does not even remotely approach the standard for a facial challenge to the validity of a statute.

f. As discussed in Point II.F of the Memorandum of Law, the Fifth Cause of action is meritless because it does not remove the power of judicial oversight from absentee ballot voting. If political parties or candidates want to challenge the eligibility of any absentee voter, their opportunity to do that is in response to the granting of a voter's absentee *ballot application*. Under the application statutes, the political parties are entitled to up-to-date records of applications and grants upon request, and there is absolutely nothing prohibiting them from bringing actions in court to challenge the grant of ballots to ineligible or fraudulent voters. Moreover, Election Law §9-209 also explicitly preserves judicial review for ballots that are rejected for uncured or non-curable defects. A party or candidate also always has the option of suing an "as applied" constitutional challenge if the authorities are not discharging the Election Laws properly. The statute does not prohibit anyone from suing for anything.

g. As discussed in Point II.G of the Memorandum of Law, the Sixth Cause of Action, under the heading of "separation of powers" is merely a retread of the Fifth Cause of Action, and is without merit for the same reasons.

h. As discussed in Point II.H of the Memorandum of Law, the Seventh Cause of Action is yet another retread of the Fifth Cause of Action, and is without merit for the same reasons.

i. As discussed in Point II.I of the Memorandum of Law, the Eighth Cause of Action is a retread of the Third Cause of Action, and without merits for the same reasons.

j. As discussed in Point II.J of the Memorandum of Law, the Ninth Cause of Action is a retread of the Second Cause of Action, and without merit for the same reasons.

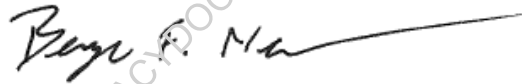
8. Thus, Petitioners are not likely to succeed on the merits (and are not entitled to injunctive relief) and fail to state a claim upon which relief can be granted.

WHEREFORE, the Petition should be dismissed in its entirety and the motion for injunctive relief must be denied.

Dated: Schenectady, New York
September 18, 2023

Respectfully submitted,

E. STEWART JONES HACKER MURPHY LLP



By: Benjamin F. Neidl

James C. Knox

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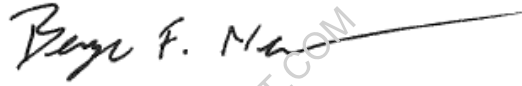
CERTIFICATION PURSUANT TO RULE 202.8-B

I Benjamin F. Neidl hereby certify pursuant to Rule 202.8-b of the Uniform Rules of the Supreme Courts, that the length of this Affirmation, exclusive of the case caption and the signature block, and exclusive of this certification itself, is **1,762 words**. In making this certification, I have relied on the word count tool in the word processing program that I used to compose this document, Microsoft Word.

Dated: Schenectady, New York
September 18, 2023

Respectfully submitted,

E. STEWART JONES HACKER MURPHY LLP



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Exhibit 1

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,

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 judgement 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 78th 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, 118th 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 (2nd 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,

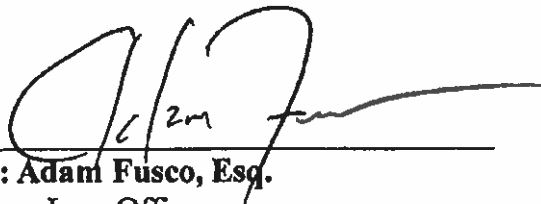
Together with such other, further and different relief as this Court may deem to be just and proper in the premises.

DATED: August 31, 2023

Respectfully submitted,



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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-

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.

INDEX NO.

EMERGENCY
AFFIRMATION

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 "C".

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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.

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IAS Entry Date

Judge Assigned

RJI Filed Date

against- _____
THIS SPACE IS RESERVED FOR THE PLAINTIFF'S ATTORNEY TO FILE A WRIT OF HABEAS CORPUS. IF YOU ARE FILING A WRIT OF HABEAS CORPUS, YOU MUST FILE THIS FORM WITH THE WRIT. IF YOU ARE NOT FILING A WRIT OF HABEAS CORPUS, YOU MAY IGNORE THIS SPACE.

RJI (REQUEST FOR JUDICIAL INTERVENTION)



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Plaintiff(s)/Petitioner(s)

Defendant(s)/Respondent(s)

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

COMMERCIAL

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 - 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).*

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): _____

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): _____

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

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): _____

STATUS OF ACTION OR PROCEEDING Answer YES or NO for every question and enter additional information where indicated.

- | | | | |
|-----------------------------------------------------------------|-----------------------|----------------------------------|------------------------------|
| Has a summons and complaint or summons with notice been filed? | YES | NO | |
| | <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: _____ Return Date: _____
- 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 RJJ ADDENDUM (UCS-840A).				
Case Title	Index/Case Number	Court	Judge (if assigned)	Relationship to instant case

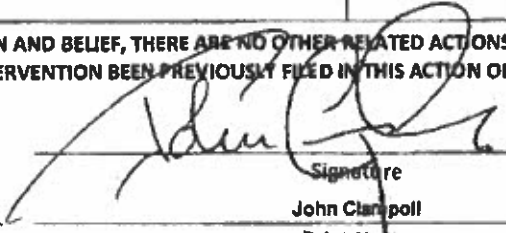
PARTIES For parties without an attorney, check the "Un-Rep" box and enter the party's address, phone number and email in the space provided. If additional space is required, complete and attach the RJJ ADDENDUM (UCS-840A).

Un-Rep	Parties List parties in same order as listed in the caption and indicate roles (e.g., plaintiff, defendant, 3 rd 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 Saratogee

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: List parties in caption order and indicate party role(s) (e.g. defendant; 3rd-party plaintiff).	Attorneys and/or Unrepresented Litigants: Provide attorney name, firm name, business address, phone number and e-mail address of all attorneys that have appeared in the case. For unrepresented litigants, provide address, phone number and e-mail address.	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

PL1111 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.

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):
	List parties in caption order and indicate party role(s) (e.g. defendant; 3rd-party plaintiff).	Provide attorney name, firm name, business address, phone number and e-mail address of all attorneys that have appeared in the case. For unrepresented litigants, provide address, phone number and e-mail address.			
<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

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Exhibit 2

PRE-AMENDMENT ELECTION LAW §9-209 (BEFORE 2021 AMENDMENT)

McKinney's Consolidated Laws of New York Annotated
Election Law (Refs & Annos)
Chapter Seventeen. Of the Consolidated Laws (Refs & Annos)
Article 9. Canvass of Results (Refs & Annos)
Title II. Canvass by Board of Elections

This section has been updated. Click [here](#) for the updated version.

McKinney's Election Law § 9-209

§ 9-209. Canvass of absentee, military and special ballots and ballots cast by voters with registration poll records missing on days of election or voters who have not had their identity previously verified or who have moved after registering

Effective: July 16, 2021 to March 31, 2022

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 cast and canvass any absentee, military, special presidential, special federal or other special ballots and any ballots voted by voters who moved within the state after registering, voters who are in inactive status, voters whose registration was incorrectly transferred to another address even though they did not move, voters whose registration poll records were missing on the day of such election, voters who have not had their identity previously verified, voters who submitted a voter registration application through the electronic voter registration transmittal system but did not provide the required exemplar signature, and voters whose registration poll records did not show them to be enrolled in the party in which they claimed to be enrolled and voters incorrectly identified as having already voted. 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 cast and canvassed.

1. (a) The board of elections shall designate itself or such of its employees as it shall deem appropriate as a set of poll clerks to cast and canvass such ballots, and fix a time and place for their meeting for such purpose, provided that such meeting shall be no more than fourteen days after a general or special election and no more than eight days after a primary election at which such ballots are voted. 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 all such 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 inspectors for purposes of this section.

(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 canvass.

(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 inspectors as such candidate, political party, or independent body was entitled to appoint at such election in any one election district for which such central board of inspectors is designated to act.

2. (a)(i) Upon assembling at the time and place fixed for such meeting, each central board of inspectors shall examine, cast, and canvass the envelopes and the ballots therein contained as nearly as practicable in the following manner:

(A) If a person whose name is on an envelope as a voter has already voted in person at such election, or if his or her name and residence as stated on the envelope are not on a registration poll record, or the computer generated list of registered voters or the list of special presidential voters, or if there is no name on the envelope, or if the envelope is not sealed, such envelope shall be laid aside unopened.

(B) If there is more than one 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 envelope bears the later date, then all such envelopes shall be rejected.

(C) If such person is found to be registered and has not voted in person, an inspector shall compare the signature, if any, on each 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 inspector shall certify thereto by placing his or her initials in the space provided in the computer generated list of registered voters.

(D) If such person is found to be registered and has not voted in person, and if no challenge is made, or if a challenge made is not sustained, the envelope shall be opened, the ballot or ballots withdrawn without unfolding, and the ballot or ballots deposited in the proper ballot box or boxes, or envelopes, provided however that, 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 envelope which shall be endorsed "not enrolled." At the time of the deposit of such ballot or ballots in the box or envelopes, the inspectors shall enter the words "absentee vote" or "military vote" in the space reserved for the voter's signature on the aforesaid list or in the "remarks" space as appropriate, and shall enter the year and month of the election on the same line in the spaces provided therefor.

(E) As each envelope is opened, if one or more of the different kinds of ballots to be voted at the election are not found therein, the clerks, or inspectors, 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 envelope shall be rejected. When the casting of such ballots shall have been completed the clerks or inspectors shall ascertain the number of such ballots of each kind which have been

deposited in the ballot box by deducting from the number of envelopes opened the number of missing ballots, and shall make a return thereof. The number of absentee 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.

(ii) If the board of inspectors determines that a person was entitled to vote at such election it shall cast and canvass such ballot 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.

(iii) If the board of elections determines that a person was entitled to vote at such election, the board shall cast and canvass such 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.

(iv) If the board of elections finds that a voter submitted a voter registration application through the electronic voter registration transmittal system and signed the affidavit ballot, the board shall cast and canvass such ballot.

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

(vi) If the board of elections finds that the statewide voter registration list supplies sufficient information to identify a voter, failure by the voter to include on the envelope the address where such voter was previously registered shall not be a fatal defect and the board shall cast and canvass such ballot.

(vii) [Eff. Jan. 1, 2023.] If the board of elections 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 counted if the voter is otherwise qualified to vote in such election.

(b)(i) Such board of inspectors shall also cast and canvass 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 board of inspectors shall also cast and canvass 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.

(ii) Federal write-in absentee ballots shall be cast and canvassed only if: (A) an application for an absentee, military or special federal ballot was received from the absentee, military or special federal voter at least thirty days before election day; (B) 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; (C) 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 (D) 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.

(iii) If such a federal write-in absentee ballot is received after election day, the envelope in which it is received must contain: (A) a cancellation mark of the United States postal service or a foreign country's postal service; (B) a dated endorsement of receipt by another agency of the United States government; or (C) 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.

(iv) 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 intention can be ascertained.

(c) The following provisions shall apply to casting and canvassing of all such ballots which are counted by machine and all other provisions of this chapter with respect to casting and canvassing such ballots which are not inconsistent with this paragraph shall be applicable to such ballots.

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

(ii) Any write-in ballots and any ballots which cannot be counted by the machine shall be counted manually subject to all the applicable provisions of this chapter with respect to counting of ballots.

(iii) The record of the vote counted by machine 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.

(d) Any person lawfully present may object to the refusal to cast or canvass any ballot

on the grounds that the voter is a properly qualified voter of the election district, or in the case of a party primary duly enrolled in such party, or to the casting or canvassing of any ballot on the grounds that the voter is not a properly qualified voter of the election district, or in the case of a party primary not duly enrolled in such party, or otherwise not entitled to cast such ballot. When any such objection is made, the central board of inspectors shall forthwith proceed to determine such objection and reject or cast such ballot according to such determination. If the board cannot agree as to the validity of the ballot it shall set the ballot aside, unopened, 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.

(e) Upon completing the casting and canvassing of ballots as hereinabove provided for any election district, the central board of inspectors shall thereupon, as nearly as practicable in the manner provided in this chapter for absentee 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 announce the result.

3. (a) Upon the board of elections determination at or before the time of canvass that an absentee ballot affirmation envelope is unsigned or that an affirmation ballot envelope signature does not correspond to the registration signature or there is no required witness to a mark or that the envelope is returned without an affirmation envelope in the return envelope, the board shall, within one day of such determination, send to the absentee voter's address indicated in the registration records and, if different, the mailing address indicated on the absentee 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.

(b) The voter may cure the aforesaid defects by filing a duly signed affirmation attesting to the same information required by the affirmation envelope and attesting that the signer of the affirmation is the same person who submitted such absentee 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.

(c) 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. Provided the board determines that such affirmation addresses the curable defect, the rejected ballot shall be reinstated and duly canvassed. If the board of elections is split as to the sufficiency of the cure affirmation, such envelope shall be set aside for three days and then canvassed unless the board is directed otherwise by court order.

(d) When the board of elections invalidates a ballot envelope and the defect is not curable, the voter shall be notified by mail sent within three business days of such rejection.

3-a. If an absentee ballot affirmation envelope is received by the board of elections prior to the election and is found to be unsealed and thus invalid, the board shall forthwith notify the voter of such defect and notify the voter of other options for voting, and, if time permits, provide the voter with a new absentee ballot.

Credits

(L.1976, c. 233, § 1. Amended L.1978, c. 9, § 85; L.1981, c. 573, § 3; L.1984, c. 251, § 4; L.1986, c. 352, § 12; L.1987, c. 94, § 1; L.1992, c. 79, § 22; L.1994, c. 155, §§ 2, 3; L.1994, c. 659, §§ 49, 50; L.2001, c. 381, § 3, eff. Oct. 29, 2001; L.2003, c. 256, § 2, eff. July 29, 2003; L.2005, c. 179, § 5, eff. Jan. 1, 2006; L.2005, c. 237, § 2, eff. July 19, 2005; L.2009, c. 165, § 2, eff. July 11, 2009; L.2009, c. 248, § 1, eff. July 28, 2009; L.2010, c. 104, § 5, eff. June 2, 2010; L.2010, c. 163, § 8-b, eff. July 7, 2010; L.2011, c. 308, § 2, eff. Aug. 3, 2011; L.2019, c. 3, § 6, eff. March 25, 2019; L.2019, c. 6, § 9, eff. Jan. 24, 2019; L.2019, c. 55, pt. XX, § 13, eff. April 12, 2019; L.2019, c. 55, pt. CCC, §§ 4, 5, eff. April 12, 2021; L.2019, c. 717, § 1, eff. Dec. 20, 2019; L.2020, c. 55, pt. XX, subpt. N, § 1, eff. Dec. 20, 2019; L.2020, c. 91, § 3, eff. June 7, 2020; L.2020, c. 141, § 1, eff. Aug. 21, 2020; L.2020, c. 350, § 4, eff. Jan. 1, 2023; L.2021, c. 250, § 2, eff. July 16, 2021.)

McKinney's Election Law § 9-209, NY ELEC § 9-209

Current through L.2022, chapters 1 to 571. Some statute sections may be more

current, see credits for details.

End of Document

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Exhibit 3

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF SARATOGA

X

In the matter of
RICH AMEDURE,
ROBERT SMULLEN , WILLIAM FITZPATRICK,
NICK LANGWORTHY,
THE NEW YORK STATE REPUBLICAN PARTY,
GERARD KASSAR,
THE NEW YORK STATE CONSERVATIVE PARTY,
CARL ZIELMAN,
THE SARATOGA COUNTY REPUBLICAN PARTY,
RALPH M. MOHR, AND ERIK HAIGHT,

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

202221460936

20222145
INDEX NUMBERS
09/27/2022 01:49:18 PM
Saratoga County Clerk FILED

VERIFIED PETITION /
COMPLAINT

af
9-27-22

PETITIONERS / PLAINTIFFS, as captioned hereinabove, do hereby complain of the above captioned Respondents' / Defendants' 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 and a declaratory judgment action brought pursuant to New York Civil Practice Law and Rules ("CPLR") 3001.
2. Plaintiffs in the declaratory judgment action seek a determination and order declaring that Chapter 763 of the New York Laws of 2021 A.7931 / S 1027-A (hereinafter "the Statute", "the Chapter" or "Chapter 763") passed by both the Senate and Assembly of New York, and then signed into law by the Governor, amending Section 9 – 209 and other related sections of the Election Law to accelerate the canvass of absentee and other paper ballots, is in conflict with other statutes and is violative of the New York State Constitution as is 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 judgment declaring the Statute unconstitutional on its face and as applied on the basis that:

(1) in enacting the Statute, the Legislature exceeded the authority granted to it by Article II, § 2 of the Constitution; (2) the Statute is inconsistent with and in direct conflict with the Constitution and other applicable statutes, such that it cannot be enforced without a violation thereof; (3) the Statute impermissibly interferes with Plaintiff's / Petitioner's 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, including fraudulent votes; (5) the Statute is unconstitutionally vague.

4. Plaintiffs in the declaratory judgment action further seek a determination and order declaring that Chapter 2 of the New York Laws of 2022 – authorizing absentee voting on the basis of fear of Covid - is violative of the New York State Constitution as is set forth herein.

5. Plaintiffs – Petitioners also seek, as set forth hereinafter, declaratory judgment declaring unconstitutional Chapter 2, new York laws of 2022.
6. Plaintiffs – Petitioners also seek injunctive relief as to certain absentee ballot applications which have the reason for said absentee application pre-completed without regard to the facts actually underlying the application.
7. Finally, Plaintiffs – Petitioners seek a preliminary injunction as against the Defendant – Respondents enjoining the enforcement of the unconstitutional provisions of New York State Chapter laws challenged herein.

THE PARTIES

8. 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 12210.
9. Plaintiff – Petitioner Nick Langworthy is Chairman and a member of the State Republican Party. He is a resident, elector, and taxpayer of

Niagara County and New York State. He resides in Niagara County, New York.

10. Plaintiff – Petitioner New York State Conservative Party is an unincorporated association and a political party organized under the prov. Its principal office is located at 486 78th Street, Brooklyn, New York 11209.

11. Plaintiff – Petitioner Gerard Kassar is Chairman and a member of the State Conservative Party. He is a resident, elector, and taxpayer of Kings County and New York State. Plaintiff Kassar resides in Kings County (Brooklyn), New York.

12. Plaintiff – Petitioner Carl Zielman, is Chairman of the Saratoga Republican Party and a member of the State Republican Party. He is a resident, elector, and taxpayer of Saratoga County and New York State. Plaintiff Zielman resides in Saratoga County, New York.

13. Plaintiff - Petitioner Saratoga Republican Committee is a political party committee and unincorporated association organized under the provisions of the Election Law to represent the party in the County of Saratoga.

14. Plaintiff – Petitioner Ralph M. Mohr, is a commissioner of Elections serving on the Erie County Board of Elections.

15. Plaintiff – Petitioner Erik Haight, is a commissioner of Elections serving on the Dutchess County Board of Elections.
16. Plaintiff – Petitioner Robert Smullen is a Member of the New York State Assembly, and a resident, elector, and taxpayer of Fulton County and New York State. He resides in Fulton County, New York. He is also a candidate for re-election to the New York State Assembly.
17. Plaintiff – Petitioner Rich Amedure is a candidate for New York State Senate, he is a resident, elector, and taxpayer of Albany County and New York State. He resides in Albany County, New York.
18. Plaintiff - Petitioner, William Fitzpatrick is a resident, elector, and taxpayer of Erie County and New York State. He resides in Erie County, New York and received the mass mailed pre-completed application for an absentee ballot complained of herein.
19. Defendant – Respondent State of New York, by the Attorney General, is the body bound by the Constitution, including but not limited to the Governor, Senate, Assembly, and Board.
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.

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 democratic process and election integrity.
22. Defendant-Respondent Board of Elections supervises the election process in each of the fifty-seven counties of the State and the five counties of the City of New York.
23. Defendant — Respondent Governor, Kathy Hochul, is head of the executive branch of the government of the State of New York. 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 Senate is the upper house of the New York State Legislature empowered under the Constitution to represent the will of the people of the State by drafting and approving changes to the laws of the State. The Senate adopted the Statute 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 the majority party members of the Senate.
26. Defendant – Respondent Minority Leader of the Senate, Robert Ortт is an officer and leader of the Senate. He is elected by the minority party members of the Senate.
27. Defendant – Respondent Assembly is the lower house of the Legislature empowered under the Constitution to represent the will of the people of the State by drafting and approving changes to the laws of the State. The Assembly adopted the Statute challenged herein.
28. Defendant – Respondent Speaker of the Assembly, Carl Heastie, is an officer and leader of the Assembly. He is elected by the majority party members of the Assembly.
29. Defendant-Respondent Minority Leader of the Assembly, William Barclay is an officer and leader of the Assembly. He is elected by the minority party members 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 of the New York Civil Practice Law and Rules (“CPLR”).
31. The within declaratory judgment action is brought pursuant to CPLR § 3001.
32. An actual justiciable controversy exists among Plaintiffs and Defendants within the meaning of CPLR § 3001.
33. Pursuant to CPLR § 503, venue of this action is proper in the County of Saratoga, State of New York.
34. Plaintiff – Petitioner Zeilman is a resident of Saratoga County, he and the Saratoga Republican Party hereby designate Saratoga County as venue for these proceedings.
35. Plaintiffs – Petitioners are all voters whose rights are adversely affected by the provisions of law put in place by Chapter 763 of the Laws of 2021.
36. Plaintiffs– Petitioners who are Political Party Committee Chairmen and the party committees they represent will and intend to have poll watchers appointed for the canvass of ballots in the 2022 General

Election, and are adversely affected by the provisions of law put in place by Chapter 763 of the Laws of 2021.

37. Plaintiffs – Petitioners who are candidates for public office will and intend to have poll watchers appointed for the canvass of ballots in the 2022 General Election, and are adversely affected by the provisions of law put in place by Chapter 763 of the Laws of 2021.

38. Plaintiffs – Petitioners who are Elections Commissioners will not be able to perform their statutory duties and are adversely affected by the provisions of law put in place by Chapter 763 of the Laws of 2021.

BACKGROUND – CONSTITUTIONAL PROVISIONS REGARDING ABSENTEE VOTING & EXTENT OF THIS CHALLENGE

39. While the right to vote is guaranteed by the United States and New York State Constitutions; there is no Constitutionally guaranteed right to vote by absentee ballot. The Constitution, in Article II, § 2 provides that:

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.** [NY Const. Art. II, § 2 (emphasis added).]

40. Thus, the Legislature is authorized to enact a general law to allow certain persons, in particular circumstances, consistent with Article II, § 2 of the Constitution, to vote by absentee ballot.
41. The Constitution expressly identifies the categories of persons qualified to vote by absentee ballot. Pursuant to Article II, § 2 of the Constitution, only persons who are “absent from the county of their residence” on Election Day or who are unable to appear at a polling place due to “illness or physical disability” are entitled to cast an absentee ballot.
42. Article II, § 2 of the Constitution authorizes the Legislature to enact laws only as to “**the manner** in which, and **the time and place** at which” such qualified persons may vote by absentee ballot. NY Const. Art. II § 2 (**emphasis added**).
43. Thus, with respect to absentee voting, the Constitution determines the “who” and the Legislature determines the “how,” “when,” and “where.”.
44. Petitioners – Plaintiffs make their claims under the New York State Constitution and the Laws of the State of New York. Any claims based upon the United States Constitution or Federal law are

expressly reserved for a Federal forum, see England v. Louisiana State board of Medical Examiners, 375 U.S. 411 (1964).

45. Petitioners – Plaintiffs’ challenge herein is to the entirety of the Chapters specified. The subject Chapter Laws of New York State do not carry a “severability clause” and, therefore, are void in their entirety upon a finding of unconstitutionality by this Court.

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

46. 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.

47. Moreover, the Legislature is **NOT** empowered by New York State Const. Art. II § 2 to protect illegal conduct, abridge due process, deprive the Judiciary of the ability to perform its duties, or to provide for ballots of persons who are not qualified to vote to be included in the votes that determine who our elected officials will be.

RELEVANT PROVISIONS OF THE ELECTION LAW

48. In addition to seeking declaratory judgment, Plaintiffs – Petitioners seek relief under the provisions of Article 16 Election law, and related sections of such law as are hereinafter referenced and relied upon.
49. 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.
50. Article Eight, Title Four of the Election Law (a general law) provides for absentee voting.
51. Article Eight, Title Five of the Election Law (a general law) provides for challenging voters.
52. Article Nine of the Election Law (a general law) provides for canvassing procedures.
53. The challenged Chapter of New York Laws (Ch. 763, Laws of 2021) materially interferes with the Plaintiffs’ – Petitioners’ rights under the Constitution and statutes of this State as hereinafter set forth.
54. Under the provisions of Chapter 763, New York Laws of 2021 if a voter's name appears in the poll book 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 only vote by affidavit ballot which will be invalidated where the Board has canvassed the absentee ballot prior to Election Day.

55. This deprives the voter of the right to change his / her mind on the day of election, which right was preserved by prior law that required an absentee ballot to be set aside and **NOT** canvassed if the voter appears at the polls and votes in person.

56. In fact, the new law challenged herein misleads the voter by permitting him / her to cast a provisional (affidavit) ballot on the days the polls are opened. Where the Board of Elections has received an application in the voter's name (authentic or fraudulent) and issued and canvassed a ballot (genuine or falsified) the Chapter requires the provisional ballot to be discarded.

57. It is respectfully submitted that Chapter 763 not only protects fraudulent votes over genuine ballots; but interferes with the voters' ability to exercise their 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 for them to change their mind on the days of the election.

58. The Chapter challenged herein actually promotes the canvassing of votes cast in contravention of the Law and the Constitution – including fraudulent and falsified ballots and ballots cast from those not qualified to vote, and even votes from persons who have died prior to the day of election.
59. The perpetrator of fraud is assured, under the provisions of this new law, from having the ballots illegally harvested and subject to review and invalidation by the Board of Elections.
60. Any person or persons choosing to affect the results of any election has an invitation - Chapter 763, Laws of 2021 – to illicitly affect the election process by flooding the ballot boxes with illegal absentee ballots which will be counted before Election Day (every four days).
61. Upon information and belief, based upon reports from local Boards of Elections, as applied in the recent 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.

62. The voters of this state are entitled to nothing less than to have their votes protected against vote dilution.
63. 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 election. Further, they should not be misled as to their ability to make a choice on any of the days set aside for balloting by being issued a provisional (affidavit) ballot that will certainly be discarded and declared to be invalid, while the ballot which does not reflect their will is canvassed.
64. This impermissibly impinges upon the Constitutional Rights of Free Speech and Free Association.
65. Accordingly, this Court must declare Chapter 763 to be unconstitutional and enjoin its enforcement by Respondent – Defendants.

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

66. Each and every allegation contained in the preceding paragraphs is hereby repeated and re-alleged as if fully set forth herein.
67. 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).
68. 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.
69. The right to due process applies to administrative proceedings.
70. 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.

71. 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.
72. 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.
73. By purporting to preclude any objections to ballots Chapter 763, Laws of 2021 deprives Plaintiffs – Petitioners of due process of law.
74. 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 actually improper or illegal.
75. 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 (2nd Dept., 2007).
76. 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. 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.
78. 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 commonly brought where the race is expected to be close; and are often brought with the consent of the party committees and candidates.)
79. These impermissible restrictions deprive Plaintiffs – Petitioners of their due process rights, and access to the Courts.
80. 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**

81. Each and every allegation contained in the preceding paragraphs is hereby repeated and re-alleged as if fully set forth herein.
82. 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.
83. In fact, each Commissioner of Elections has taken an oath to enforce the terms of the Constitution and the statute.
84. 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.
85. This effectively prohibits Elections Commissioners from performing their duties.
86. 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.

87. 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.

88. 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

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

90. 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.

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

92. 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.

93. This compromise of a fundamental right of the individual voters guaranteed by the Constitution is intolerable.
94. 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.
95. Concomitantly, voters who do not cast their votes as desired by political operatives will leave them vulnerable to retaliation.
96. 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.
97. Secondly, the new Statute requires the Boards of Elections to conduct a running, but “secret” canvass of the votes, see § 9 – 209 (6).
98. This provision is not only unworkable, but completely unrealistic. Poll watchers are 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).
99. Nothing can stop poll watchers (or election personnel present at the canvass) from keeping a tally of the votes (or identifying particular voters’ ballots).

100. 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.

101. Further, many of the election workers are party committee members or volunteers for candidates’ campaigns.

102. This state has party officers, including committee chairs, and party committee members, serving as commissioners, deputy commissioners and other election officers.

103. Accordingly, this bill contemplates the absolute absurdity of a person keeping the canvass results a secret from him or herself.

104. The inescapable conclusion here is that the sieve designed by the Legislature compromises the Constitutional right to a secret ballot in several ways.

105. 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 election is over.

106. 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

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

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

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

110. 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.

111. 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).

112. It is only logical to conclude that the administrative process of ballot review is subject to Court review.

113. 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”). 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).

114. Provisions for Judicial proceedings under the Election Law are set forth in Article 16 of the Election Law.

115. 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”.

116. 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”.

117. 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.

118. 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.

119. 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.

120. 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.

121. This precludes any meaningful proceeding to determine the validity of the ballot.

122. 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).

123. 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.

124. 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.

~~125 106.~~ Each and every allegation contained in the preceding paragraphs is hereby repeated and re-alleged as if fully set forth herein.

~~126 107.~~ The Constitution establishes the Judiciary as an independent co-equal branch of government.

~~127 108.~~ Here, Chapter 753, 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.

~~128 109.~~ The Legislature has clearly usurped the role of the Judiciary in enacting this new statute.

~~129 110.~~ This is an overreach by the Legislature which is a flagrant violation of the Doctrine of Separation of Powers.

130 ~~111~~. 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

131 ~~112~~. Each and every allegation contained in the preceding paragraphs is hereby repeated and re-alleged as if fully set forth herein.

132 ~~113~~. 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.

133 ~~114~~. 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.

134 ~~115~~. 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.

135 H6. 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.

136 H7. This deprives the Plaintiffs - Petitioners from seeking redress from the Supreme Court under Election Law §16 – 112.

137 H8. 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.

138 H9. 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

139 ~~119~~. Each and every allegation contained in the preceding paragraphs is hereby repeated and re-alleged as if fully set forth herein.

140 ~~120~~. 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.

141 ~~121~~. 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.

142 ~~122~~. 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

143 ~~123~~. Each and every allegation contained in the preceding paragraphs is hereby repeated and re-alleged as if fully set forth herein.

194. Poll watchers are defined by, and the authority to appoint watchers is established by, Title V of Article 8 of the Election Law.

195. The provisions of §8 – 502 allow for watchers to challenge “any person” as to their right to vote.

196. 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.

197. 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.

198. 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.

149. 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.

150. 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.

151. 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.

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

153. 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.

154. 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.

155. The Courts have an obligation to preserve the integrity of our election process and assure the public's confidence in the election process.

156. 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.

FIFTH CAUSE OF ACTION – BOARDS OF ELECTIONS SHOULD NOT BE ALLOWED TO BLINDLY ACCEPT MASS PRODUCED PRE-MARKED APPLICATIONS FOR ABSENTEE BALLOTS

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

158. It has come to the attention of Plaintiffs – Petitioners that certain political committees are flooding the mailboxes of voters with pre-filled applications for absentee ballots. EXHIBIT A.

159. Plaintiffs – Petitioners do not object to any program, partisan or non-partisan to provide voters with absentee ballot applications.

160. So long as the addresses pre-filled on the application reflect where the voter actually receives his / her mail; Plaintiffs – Petitioners do not object to the voters’ task in completing the application being eased.

161. Plaintiffs – Petitioners do, however, object to the voters being issued applications which delete the instructions (on the obverse of the form) for the proper completion of the application. This is particularly egregious where the instructions are replaced by a political message, see EXHIBIT A.

162. Plaintiffs – Petitioners further object to the voters being provided with an altered application form, see EXHIBIT A. (here the form was altered to add “COVID 19 Concern” which was circled and appears next to the pre-checked box for temporary illness.)

163. Particularly here, where the voter is not provided with instructions as to proper completion of the application, pre-filling the reason for the absentee application is likely to mislead the voter see <https://www.elections.ny.gov/NYSBOE/download/voting/AbsenteeBallot-English.pdf>

164. This pre-completed application can deceive the voter into making a false statement to obtain an absentee ballot.

165. We need not remind this Court that New York State is not a vote by mail state. The qualifications for an absentee ballot are set forth in the Constitution.
166. In fact, the voters of this state rejected a Constitutional amendment which would have moved New York to vote by mail / no excuse absentee ballots, see New York Proposal 4, 2021, see also Voters Reject Reforms Supported by Democrats, Rochester Democrat & Chronicle, <https://www.democratandchronicle.com/story/news/2021/11/03/ny-ballot-proposal-results/6249894001/>.
167. It is respectfully submitted that the prefilling of the reason for an application for an absentee ballot is particular to the voter signing the application and that the dissemination of such forms to the voters sans directions is likely to promote false applications.
168. Particularly offensive in this program to create vote by mail ballots in contravention of the Constitution is the fact that these pre-completed applications are, upon information and belief, based upon interviews with elections officials, being sent to “permanently disabled” voters who receive absentee ballots automatically by law.

169. Any voter duped into signing the pre-completed application form will, because they have signed an application based upon temporary illness, lose their status as a “permanent absentee voter”.
170. Clearly, the architects of this program are focused on harvesting ballots for this election without paying any mind to the fact that they may disenfranchise “permanent absentee voters” in the future.
171. Moreover, the Boards of Elections processing applications are not likely to devote the resources necessary to investigate each pre-completed application without an Order of this Court. This applies to verifying the pre-completed reason for the absentee request and checking as to whether a “permanent absentee voter” intends to give up that status.
172. The routine acceptance of these pre-filled applications will force the Plaintiffs – Petitioners to associate, against their will, with voters who are not truly entitled to an absentee ballot.
173. Accordingly, alternate relief is requested herein as follows: 1. requiring Respondent Board of Elections to direct local Boards to verify, prior to the date of election, as to whether the pre-completed reason for the request for an absentee ballot is accurate BEFORE issuing the ballot; or alternatively, 2. requiring Respondent Board of

Elections to direct local Boards to verify, prior to canvassing any ballot issued upon a pre-completed application (where the reason for the need for an absentee is pre-completed), to verify whether the pre-completed reason for the request for an absentee ballot is accurate, and advise the affected voters of the need to verify the pre-completed reason for the ballot to be valid.

174. Further, Plaintiffs – Petitioners request an order of this Court prohibiting Respondent Board of Elections from canvassing any ballot issued upon a pre-completed, mass produced application where the reason has been filled in by the entity producing the applications, rather than the information being inserted by the voter.

175. Finally, Plaintiffs – Petitioners request an order of this Court prohibiting the Respondent Board of Elections from allowing any local Board of Elections to revoke a voters “permanent absentee” status on the basis of these mass produced pre-completed applications for absentee ballots on a “temporary illness” basis.

ELEVENTH CAUSE OF ACTION – STATUTORY PROVISIONS ALLOWING FOR ISSUANCE OF ABSENTEE BALLOTS DUE TO A CONCERN OF CONTRACTING A DISEASE ARE UNCONSTITUTIONAL

176. Each and every allegation contained in the preceding paragraphs is hereby repeated and re-alleged as if fully set forth herein.
177. As set forth herein above the Constitution defines the reasons for issuance of an absentee ballot.
178. Fear of contracting an illness is NOT an illness as set forth in Article II, §2.
179. The Legislature, after the expiration of Executive Orders allowing for absentee ballots to be issued due to a voter’s concern that he / she would contract the COVID 19 virus, codified the prior executive order provisions in Chapter 2, Laws of 2022.
180. Plaintiffs – Petitioners in this cause of Action seek a declaratory judgment action against Defendants – Respondents making a determination that S.7565-B/A.8432-A, now Chapter 2 of the New York Laws of 2022, is unconstitutional.
181. This Statute, passed by both the Senate and the Assembly and signed into law by the Governor on January 21, 2022, amends

Election Law § 8-400 to permit any voter that perceives a risk of contracting or spreading a disease to vote by absentee ballot. The Legislature adds this category of voters to those permitted to vote by absentee ballot under the provisions of the State Constitution by amending Election Law § 8-400 to encompass both persons who are actually ill and persons who are not ill but “...who are concerned about the risk voting in-person would pose to their own or other's health”, see sponsors memo, S. 7565-B.

182. The definition is broad and imprecise and expands the definition of “illness” to cover nearly any imaginable circumstance.
183. 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.
184. It is clear from the Sponsor’s Memo associated with this legislation that the Sponsor’s intent was targeted to address COVID 19 pandemic concerns.

185. Even if this Court deems the predecessor statute to be constitutional; there has been a material change in facts that go to the heart of the Constitutionality question presented here.
186. That change of fact is that the state of emergency declared by New York’s Governors (Cuomo and Hochul) has expired.
187. Indeed, our government has declared the pandemic to be over, see <https://www.cnn.com/2022/09/19/politics/biden-covid-pandemic-over-what-matters/index.html>.
188. Accordingly, Petitioners seek a judgment declaring the Statute unconstitutional on its face and as applied on the basis that:
(1) in enacting the Statute, the Legislature exceeded the authority granted to it by Article II, § 2 of the Constitution; (2) the Statute is inconsistent with the Constitution such that it cannot be enforced without a violation thereof; and (3) the Statute is unconstitutionally vague.

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. Enjoining the Defendant-Respondent State Board of Election from allowing the acceptance of mass produced pre-marked and altered applications for absentee ballots (or alternatively, requiring the verification of the pre-completed reason for the absentee ballot request) on the basis of the TENTH CAUSE OF ACTION, and**
- 3. Declaring Chapter 2 of the New York Laws of 2022 to be unconstitutional on the basis of the ELEVENTH CAUSE OF ACTION, and**
- 4. Because the subject statutes do not have a severability clause, declaring the entirety of the statutes challenged herein to be invalid as unconstitutional, and**
- 5. 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: September 25, 2022

Respectfully submitted,



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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 plaintiff(s) - petitioner (s) in this action.
2. He has reviewed the contents of this document with his client(s), and / or their workers, and upon the conclusion of said review as to the facts alleged therein, believes same to be true.
3. He has personally reviewed originals or copies of the relevant documents, petitioners' records, and ancillary documents on file with Boards of Elections together with other papers relating thereto, 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 petitioners and counsel are in different counties. Counsel having offices in the County of Suffolk and Petitioner(s) residing in a County / Counties other than the County of Suffolk.

DATED: Sayville, New York
September 26, 2022



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Of counsel to
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perjury, as follows:

1. I am the attorney for the Plaintiffs - 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 a declaratory judgment action related to the General Election, and as such, this matter has a statutory preference over all other matters on the Court's calendar, see, Election Law Section 16 - 116. Elections matters are subject to an incredibly short statute of limitations. The last day to commence this proceeding is a mere seven 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.
4. This matter must be instituted immediately to prevent the harm that will come to the Plaintiffs - Petitioners by the application of the statutes challenged herein.
5. Further, the Court of Appeals has determined that Elections Matters are always to be given the highest priority by the Courts.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF SARATOGA

X

In the matter of
RICH AMEDURE,
ROBERT SMULLEN, WILLIAM FITZPATRICK,
NICK LANGWORTHY,
THE NEW YORK STATE REPUBLICAN PARTY,
GERARD KASSAR,
THE NEW YORK STATE CONSERVATIVE PARTY,
CARL ZIELMAN,
THE SARATOGA COUNTY REPUBLICAN PARTY,
RALPH M. MOHR, AND ERIK HAIGHT,

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.

**EMERGENCY
AFFIRMATION**

X

**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**

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, Banko v. Webber , 7 NY2d 758 (1959).

6. 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 and 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: September 26, 2022



John Ciampoli, Esq.

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Exhibit A

VoteNY



Dear [REDACTED]

On Tuesday, November 8, New York State will hold critical elections that will choose candidates up and down the ballot.

Voting by mail is easy and convenient. To ensure public health, registered voters in the state of New York are currently eligible to request an absentee ballot to vote by mail. All you need to do is:

- 1. Review and complete the enclosed absentee ballot application.** In Section 1, mark "temporary illness or physical disability" to request a ballot be mailed to you because of COVID-19. For your convenience, we have filled in your name and address on the application. If any of the prefilled information is incorrect, simply cross it out and enter the correct information.
- 2. Sign the form in blue or black ink in Section 8.**
- 3. Use the provided preaddressed, postage-paid envelope to mail the completed form to your County Board of Elections. No additional postage is necessary.**

This application must be either personally delivered to your county board of elections not later than the day before the election, or received by letter, telefax, or through the absentee request portal **not later than October 24**. Once you've submitted your absentee ballot request form, your county board of elections will send you a ballot by mail that you can complete and return to vote without ever leaving your home — **no waiting in line.**

You can track the status of your application at absenteeballot.elections.ny.gov.

Thank you for being a voter.

— *New York State Democratic Committee*

Paid for by the New York State Democratic Committee.



New York State Absentee Ballot Application

BOARD USE ONLY: NY SCEF: 10/06/2022

Please print clearly. See detailed instructions.

To receive an absentee ballot: **In-Person** - Application must be personally delivered to your county board of elections not later than the day before the election. **By Mail** - Application must be received by your county board of elections not later than the 15th day before the election.

The ballot itself must either be personally delivered to the board of elections in your county no later than the close of polls on election day, or postmarked by a governmental postal service no later than the day of the election and received no later than 7 days after the election.

Town/City/Ward/Dist: _____

Registration No: _____

Party: _____

voted in office

1. I am requesting, in good faith, an absentee ballot due to (check one reason):

absence from county or New York City on election day

temporary illness or physical disability **COVID-19 concern**

permanent illness or physical disability

duties related to primary care of one or more individuals who are ill or physically disabled

resident or patient of a Veterans Health Administration Hospital

detention in jail/prison, awaiting trial, awaiting action by a grand jury, or in prison for a conviction of a crime or offense which was not a felony

2. absentee ballot(s) requested for the following election(s) :

Primary Election only

General Election only

Special Election only

Any election held between these dates: absence begins: ____/____/____ absence ends: ____/____/____

3. last name or surname: _____ first name: _____ middle initial: _____ suffix: _____

4. date of birth: MM/DD/YYYY: _____ county where you live: **Schoharie** phone number (optional): _____ email (optional): _____

5. address where you live (residence) street: _____ apt: _____ city: **Cobleskill** state: **NY** zip code: **12043**

6. Delivery of Primary Election Ballot (check one)

I authorize (give name): _____ to pick up my ballot at the board of elections.

Mail ballot to me at: (mailing address)

street no. street name apt. city state zip code

7. Delivery of General (or Special) Election Ballot (check one)

I authorize (give name): _____ to pick up my ballot at the board of elections.

Mail ballot to me at: (mailing address)

street no. street name apt. city state zip code

Cobleskill NY 12043

Applicant Must Sign Below

8. I certify that I am a qualified and a registered (and for primary, enrolled) voter; and that the information in this application is true and correct and that this application will be accepted for all purposes as the equivalent of an affidavit and, if it contains a material false statement, shall subject me to the same penalties as if I had been duly sworn.

Sign Here: **X** Date: ____/____/____

If applicant is unable to sign because of illness, physical disability or inability to read, the following statement must be executed: By my mark, duly witnessed hereunder, I hereby state that I am unable to sign my application for an absentee ballot without assistance because I am unable to write by reason of my illness or physical disability or because I am unable to read. I have made, or have the assistance in making, my mark in lieu of my signature. (No power of attorney or preprinted name stamps allowed. See detailed instructions.)

Date ____/____/____ Name of Voter: _____ Mark: _____

I, the undersigned, hereby certify that the above named voter affixed his or her mark to this application in my presence and I know him or her to be the person who affixed his or her mark to said application and understand that this statement will be accepted for all purposes as the equivalent of an affidavit and if it contains a material false statement, shall subject me to the same penalties as if I had been duly sworn.

(address of witness to mark)

(signature of witness to mark)

Board Use Only
2021 Absentee Ballot Application

NEW YORK STATE VOTER ASSISTANCE PROGRAM

Voting absentee is as easy as 1-2-3

Voting by mail is simple, convenient, and safe.

STEP 1

Fill out, sign, and mail the application on the reverse side of this paper. Your application must be personally delivered to your county board of elections by November 7th, or received by letter, telefax, or through the absentee request portal no later than October 24th.

STEP 2

The Board of Elections will mail you a ballot.

STEP 3

Complete the ballot, and mail it back to the Board of Elections.

See reverse for your application to vote absentee.

97
a-21-22

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Exhibit 4

**SUPREME COURT OF NEW YORK
COUNTY OF WARREN**

<p>Richard Cavalier, Anthony Massar, Christopher Tague, and the Schoharie County Republican Committee,</p> <p>Plaintiffs,</p> <p>v.</p> <p>Warren County Board of Elections, Broome County Board of Elections, Schoharie County Board of Elections, and New York State Board of Elections, Defendant.</p>	<p>COMPLAINT for Declaratory and Injunctive Relief</p> <p>Index No.</p>
-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------

INTRODUCTION

1. Last year the people of New York voted to retain the expectation set in the state constitution that a voter may only qualify for an absentee ballot under certain limited circumstances. Thus, it reads today as it has for decades: “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 their county of 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.

2. This provision is a grant of limited authority to the Legislature to permit absentee voting. The Legislature may allow absentee voting only when the voter is “absent” from their residence or “unable to appear personally at the polling place because of illness or physical disability.”

3. The Legislature, however, strayed beyond this limited grant of authority when it enacted S.7565, which orders county clerks to issue absentee ballots to voters who are not absent, ill, or physically disabled, but instead merely fear that they may catch COVID-19 by voting in-person.

4. The text, history, precedent, and purpose of the State Constitution's absentee voting provision all confirm that S.7565 is invalid.

5. Plaintiffs are voters whose legitimate votes will be cancelled, and candidates whose election outcomes will be affected, by illegal votes cast under S.7565. Plaintiffs bring this lawsuit to enforce the plain meaning and purposes of the constitution.

PARTIES

6. Plaintiff Richard Cavalier is a retired 20-plus year veteran of the United States Navy. He is a registered voter in Queensbury, Warren County, New York.

7. Plaintiff Anthony Massa is a retired labor relations specialist and consultant who has represented both public sector unions and employee associations and public sector employers. He was elected as a Democrat and served two four-year terms on the Binghamton City Council, where his colleagues elected him president of the council. He is a registered voter in Binghamton, Broome County, New York.

8. Plaintiff Christopher Tague is a Republican elected official as an Assemblyman for Assembly District 102. In the Assembly he serves on the Election Law committee. He is a candidate for reelection in November 2022. He is a registered voter in Schoharie, Schoharie County, New York.

9. The Schoharie County Republican Committee is the Republican county party organization in Schoharie County. Its membership includes registered voters, candidates for

office, and current elected officials. Its leadership is elected by its members, and its mission includes winning races for Republicans in Schoharie County.

10. Defendant Warren County Board of Elections is one of 62 County Election Boards charged constitutionally and by statute with administering elections. The Board is comprised of two Commissioners. The Board's election administration responsibilities include issuing absentee ballots pursuant to statute.

11. Defendant Broome County Board of Elections is one of 62 County Election Boards charged constitutionally and by statute with administering elections. The Board is comprised of two Commissioners. The Board's election administration responsibilities include issuing absentee ballots pursuant to statute.

12. Defendant Schoharie County Board of Elections is one of 62 County Election Boards charged constitutionally and by statute with administering elections. The Board is comprised of two Commissioners. The Board's election administration responsibilities include issuing absentee ballots pursuant to statute.

13. Defendant New York State Board of Elections is the statewide agency charged with overseeing, assisting, and advising on election administration. It is composed of two co-chairs and two commissioners, who are supported by the State Board's staff. It issues statewide advice and information to voters and local election boards, including on absentee balloting law.

JURISDICTION & VENUE

14. This Court has jurisdiction under N.Y. C.P.L.R. § 3001, as the Plaintiffs seek a declaratory judgment as to the legal rights they have to cast effective, undiluted ballots as against the Defendants, whom they believe are issuing illegal ballots that dilute their votes. *See also* N.Y. C.L.P.R. § 3017 (b).

15. Venue in this Court is proper under N.Y. C.P.L.R. § 504, which states that actions against county governments (in this case, a county government agency) shall be venued in that county.

FACTS

16. The New York Constitution today reads: “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 their county of 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.

17. On November 2, 2021, the people of New York spoke resoundingly in favor of retaining the state constitution’s safeguards for absentee voting. By a 55 to 45 percent result, New Yorkers rejected Proposal 4 to amend the state constitution in favor of no-excuse absentee voting.

18. Nonetheless, the Legislature passed and on January 21, 2022, the Governor signed into law S.7565, allowing absentee voting in the fall 2022 election for people who are not actually absent, ill, or physically disabled. S.7565 amended N.Y. Election Law § 8-400(1)(b) to specify that “for purposes of this paragraph, ‘illness’ shall include, but not be limited to, instances where a voter is unable to appear personally at the polling place of the election district in which they are a qualified voter because there is a risk of contracting or spreading a disease that may cause illness to the voter or to other members of the general public.”

19. Last fall, when a similar law was in effect, “tens of thousands of New Yorkers [] availed themselves of the expanded absentee ballot eligibility.” Statement of Assemblyman Jeffrey Dinowitz (Jan. 21, 2022).¹

20. New York has a primary election for congressional and state senate seats scheduled for August 23, 2022.

21. New York has a general election scheduled for numerous federal, state, and local offices on November 8, 2022.

22. County boards of election, including Defendants, are charged with receiving absentee ballot applications, verifying eligibility, sending absentee ballots, and receiving and recording cast absentee ballots.

23. County boards of election, including Defendants, will mail out absentee ballots for the general election on September 23, 2022.

24. County boards of election, including Defendants, will mail out absentee ballots to voters who are not sick but who fear getting COVID-19 if they request one, as they are required by law to do so.

25. The New York State Board of Elections, on its “absentee balloting” website, advises voters and county officials, that voters may receive absentee ballots if they are “Unable to appear at the polls due to temporary or permanent illness or disability (temporary illness includes being unable to appear due to risk of contracting or spreading a communicable disease like COVID-19).”²

¹ <https://www.governor.ny.gov/news/governor-hochul-signs-legislation-allow-voting-absentee-ballot-due-covid-19-pandemic-through>.

² <https://www.elections.ny.gov/VotingAbsentee.html>.

Count I – Declaratory Judgment as to Article II, Section 2

26. The Plaintiffs repeat, reallege, and incorporate all the allegations above.

27. The New York Constitution limits absentee ballots to narrow, exceptional circumstances, including “illness.”

28. N.Y. Election Law § 8-400(1)(b) defines “illness” to include “instances where a voter is unable to appear personally at the polling place of the election district in which they are a qualified voter because there is a risk of contracting or spreading a disease that may cause illness to the voter or to other members of the general public.”

29. This definition of illness is contrary to the plain meaning of the text, the purpose of the provision, and the precedent of the courts of New York and other states on this and similar provisions.

30. Absentee ballots issued by the Defendant County Boards pursuant to this definition are illegal. Such ballots, once cast, will dilute the value of the legal ballots cast by Plaintiff Voters and the voter members of the Schoharie County Republican Committee.

31. Absentee ballots issued by the Defendant County Boards pursuant to this definition are illegal. Such ballots, once cast, will infect the results of the election facing Assemblyman Tague and the candidate members of the Schoharie County Republican Committee.

PRAYER FOR RELIEF

The Plaintiffs request judgment in their favor and against the Defendants as follows:

1. A declaration that N.Y. Election Law § 8-400(1)(b)’s definition of “illness” to include “instances where a voter is unable to appear personally at the polling place of the election district in which they are a qualified voter because there is a risk of contracting or

spreading a disease that may cause illness to the voter or to other members of the general public” is contrary to Article II, Section 2 of the N.Y. Constitution.

2. A declaration that absentee ballots issued by Defendant County Boards of Election pursuant to this definition would illegally cancel or dilute the legal votes of Plaintiffs.

3. An injunction enjoining the Defendant County Boards of Elections from distributing absentee ballots to voters who are not “ill” but instead fear “a risk of contracting or spreading a disease that may cause illness.”

4. An injunction ordering the New York State Board of Elections to remove all language based on N.Y. Election Law § 8-400(1)(b)’s definition of “illness” from its website and other materials and guidance.

5. A grant to the Plaintiffs of such additional or alternative relief as the Court deems just and proper.

Dated: July 20, 2022
Rochester, New York

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