SUPREME COURT OF THE STATE OF NEW YORK
SARATOGA COUNTY

_____X

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

Petitioners / Plaintiffs,

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

STATE OF NEW YORK, BOARD OF
ELECTIONS OF THE STATE OF NEW YORK,
GOVERNOR OF THE STATE OF NEW YORK,
SENATE OF THE STATE OF NEW YORK
MAJORITY LEADER AND PRESIDENT PRO
TEMPORE OF THE SENATE OF THE STATE
OF NEW YORK, MINORITY LEADER OF THE
SENATE OF THE STATE OF NEW YORK,
ASSEMBLY OF THE STATE, OF NEW YORK,
MAJORITY LEADER OF THE ASSEMBLY
OF THE STATE OF NEW YORK,
MINORITY LEADER OF THE ASSEMBLY
OF THE STATE OF NEW YORK;
SPEAKER OF THE ASSEMBLY OF
THE STATE OF NEW YORK,

Respondents / Defendants.

_____X

PETITIONERS-PLAINTIFFS' REPLY MEMORANDUM OF LAW

John Ciampoli, Esq.
Of Counsel
Perillo and Hill, LLP
285 West Main Street, Ste. 203
Sayville, New York 11782
Cell: 518.522.3548
Phone: 631.582.9422
e-mail address:
Ciampolilaw@Yahoo.com

Adam Fusco, Esq.
Fusco Law Office
P.O. Box 7114
Albany, New York 12224
P: 518.620.3920
F: 518.691.9304
e-mail address:
Afusco@fuscolaw.net

TABLE OF CONTENTS

INTRODUCTION

This matter is a hybrid proceeding brought under Article Sixteen of the Election Law for, *inter alia*, the preservation of ballots and the CPLR 3001 for a Declaratory Judgment determining certain Laws of the State of New York to be Unconstitutional (Chapter 763, Laws of 2021).

In October 2022, this Supreme Court issued a Decision and Order, holding that Chapter 763, Laws of 2021 was unconstitutional on the second, third, fifth, sixth, and seventh causes of action advanced by Plaintiff / Petitioners. (Matter of Amedure v. State of New York, 77 Misc. 3d 629, 643-644 [2022]). This Court held that Chapter 763 conflicts with Article 16 of the Election Law as it deprives this or any other court of jurisdiction over certain Election Law Matters stating that 'in no event may a court order a ballot that has been counted to be uncounted.' (Id). As it is written, Chapter 763 abrogates both the right of an individual to Seek judicial intervention of a contested "qualified" ballot before it is opened and counted and the right of the Court to judicially review same prior to canvassing. (Id). Further, it deprives any potential objectant from exercising their

constitutional due process right in preserving their objections at the administrative level for review by the courts. (Id).

On Appeal, the Appellate Division, Third Department, dismissed the matter on the basis of laches. (Matter of Amedure v. State of N.Y., 210 A.D.3d 1134 (3rd Dep't 2022]). The Appellate Court consciously chose not to answer the constitutional question(s) before it, namely the constitutionality of Chapter 763 of the Laws of 2021.

Plaintiff – Petitioners subsequently commenced this action, seeking, *inter alia*, a judgement declaring Chapter 763 of the Laws of 2021 unconstitutional as to the 2024 election cycle, unless the court determines that such relief may be applied immediately.

ARGUMENT

POINT I

CHAPTER 763 OF THE LAWS OF 2021 ABRIDGES RIGHTS OF FREE SPEECH, FREE ASSOCIATION, EQUAL PROTECTION AND DUE PROCESS OF LAW

A. Chapter 763 conflicts with Article 16 of the Election Law, depriving the Court of jurisdiction over certain Election Law matters

As a threshold matter the New York Constitution mandates that an absentee voter must be "qualified" to vote. N.Y. Constitution Article II, Section 2. 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, i.e. the qualification of the voter.

Article VI, §7 of the New York State Constitution gives the Supreme Court jurisdiction over all questions of law emanating from the Election Law. The Constitution further 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" N.Y. 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" N.Y. Constitution, Article I, § 11.

When previously considering this argument, this Supreme Court held in 2022 that:

> "Chapter 763 conflicts with Article 16 of the Election Law as it deprives this or any other court of jurisdiction over certain Election Law Matters stating that 'in no event may a court order a ballot that has been counted to be uncounted." Election Law §§ 9-209(7)(j), 9-209(8)(e). As it is written, Chapter 763 abrogates both the right of an individual to Seek judicial intervention of a contested "qualified" ballot before it is opened and counted and the right of the Court to judicially review same prior to canvassing. Election Law §§ 9-209(5) limits poll watchers to "observing, without objection." The making of an objection is a pre-requisite to litigating the validity of a ballot and preclusion in the first instance prevents an objection from being preserved for judicial review. As had been the long-standing practice, a partisan split on the validity of a ballot is no accompanied by a three-day preservation of the questioned ballot for judicial review. Pursuant to Chapter 763, in the event of a split objection on the validity of a ballot, the ballot is opened and counted. As per the plain language of Chapter 763 once the ballot is "counted" it cannot be "uncounted" and is thus precluded from judicial review for confirmation or rejection of validity. Therefore, Chapter 763, Laws of 2021, actually and effectively pre-determines the validity of any of the various ballots which may be contested pursuant to the provision of § 16-112 Election Law thus divesting the Court of its jurisdiction. This inability to Seek judicial intervention at the most important stage of the electoral process (i.e. the opening and canvassing of ballots)

> deprives any potential objectant from exercising their constitutional due process right in preserving their objections at the administrative level for review by the courts. Statutory preclusion of all judicial review of the decisions rendered by an administrative agency in every circumstance would constitute a grant of unlimited and potentially arbitrary power too great for the law to countenance. Matter of DeGuzman v. New York State Civil Service Commission, 129 A.D.3d 1189 (3rd Dept., 2015); See Matter of Pan Am. World Airways v. New York State Human Rights Appeal Bd., 61 N.Y.2d 542 (1984); Matter of Baer v. Nyquist, 34 N.Y.2d 291 (1974). Thus, even when proscribed by statute, judicial review is mandated when constitutional rights (such as voting) are implicated by an administrative decision or "when the agency has acted illegally, unconstitutionally, or in excess of its jurisdiction." Deguzman, See also, Matter of New York City Dept. of Envtl. Protection v. New York City Civ. Serv. Commn., 78 N.Y.2d 318 (1991). By proscribing judicial review and pre-determining the validity of ballots, as set forth in Election Law § 9-209(8)(e), the legislature effectively usurps the role of the judiciary. Further, by eliminating judicial review, Chapter 763 also effectively permits one commissioner to determine and approve the qualification of a voter and the validity of a ballot despite the constitutional requirement of dual approval of matters relating to voter qualification as set forth in N.Y. Constitution, Article II, Section 8: All laws creating, regulating or affecting boards or officers charged with the duty of qualifying voters, or of distributing ballots to voters, or of receiving, recording or counting votes at elections, shall secure equal representation of the two political parties." (Matter of Amedure v. State of New York, 77 Misc. 3d 629, 643-644 [2022]).

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 subsections (7)(j) and (8)(e). 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. The Supreme Court is divested of

jurisdiction since the ballot envelope is to be immediately burst and the ballot intermingled with all others for canvassing. 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.

By eliminating judicial review, the effect of Chapter 763 is that one commissioner is permitted to determine the qualification of a voter and the validity of a ballot despite the constitutional requirement of dual approval of matters relating to voter qualification. ("All laws creating, regulating or affecting boards or officers charged *with the duty of qualifying voters,* or of distributing ballots to voters, *or of receiving, recording or counting votes at elections, shall secure equal representation of the two political parties. . . ."* N.Y. Constitution, Article II, Section 8 (*emphasis added*)). The Court of Appeals has recognized that ensuring bipartisan representation is essential to protect against "disrupt[ion] of the delicate balance required for the fair administration of elections are not insulated from judicial review." (Graziano v. County of Albany, 3 N.Y.3d 475, 480-81 [2004] ["The constitutional and statutory equal representation guarantee encourages even-handed application of the Election Law and when this bipartisan balance is not maintained, the public interest is affected."]). Chapter 763 eliminates judicial

review of a single commissioner's determination of a qualified voter and is an unconstitutional abridgment of both the requirement of equal representation and judicial review.

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

With respect to administrative determinations, the law deprives litigants of such an administrative remedy. Matter of De Guzman v. State of N.Y. Civil Serv. Comm'n instructs that "statutory preclusion of all judicial review of the decisions rendered by an administrative agency in every circumstance would constitute grant of unlimited and potentially arbitrary power too great for the law to countenance." (129 A.D.3d 1189, 1191, 11 N.Y.S.3d 296, 298 3rd Dept., 2015) see Matter of Pan Am. World Airways v. New York State Human Rights Appeal Bd., 61 NY2d 542, 548, 463 NE2d 597, 475 NYS2d 256 [1984]; Matter of Baer v. Nyquist, 34 NY2d 291, 298, 313 NE2d 751, 357 NYS2d 442 [1974]).

Thus, even when proscribed by statute, judicial review is mandated when constitutional rights are implicated by an administrative decision or "when the agency has acted illegally, unconstitutionally, or in excess of its jurisdiction" (Matter of New York City Dept. of Envtl. Protection v New York City Civ. Serv. Comm'n., 78 NY2d at 323).

To the extent that this is a hybrid proceeding and is plead under Article 78 CPLR, it is respectfully submitted that this Court has the power to review the acts and prospective acts of Elections Officials in the performance of their administrative duties. In People ex rel James v. Schofield, 199 A.D.3d 5 (3rd Dept., 2021) the Appellate Division expressly approved the use of an Article 78 proceeding to review the proposed locations of polling sites. Here an even more important administrative function is brought to bar, the legitimacy of ballots being cast by voters, and, sometimes, by those attempting to fraudulently cast ballots for political gain.

It should be remembered that an individual voter has the right to challenge the canvass, see Election Law §16 – 106(2). What can be said for the Legislature and Governor who have removed this right from the voters of this state by precluding any objections during the administrative canvassing of ballots. This demonstrates the sheer wrongheadedness of Chapter 763. It can be said that this

diminishes part of the voters' right to vote under the terms of the Constitution as well.

The provisions of Chapter 763, Laws of 2021 deprive voters and candidates of the process due and the jurisdiction of courts under Article 16 of the Election Law. To the extent that Chapter 763, Laws of 2021 conflicts with Article Sixteen, the conflicting provisions of Chapter 763 must be declared to be invalid and the provisions of Article Eight and Sixteen Election Law must be declared to be controlling.

B. Chapter 763 Conflicts with and Abrogates Article Eight of the Election Law

Election Law Section 8 – 506 expressly regulates the entry of objections at the central polling please set for the canvass of absentee, military, federal and other paper ballots.

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 not-withstanding 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 deter-mine 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)**.

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. To the extent that Chapter 763, Laws of 2021 conflicts with Article Eight, the conflicting provisions of Chapter 763, Laws of 2021 must be declared to be invalid and the provisions of Article Eight must be declared to be controlling. The statute must be stricken, and since it contains no severability clause, must be stricken in its entirety.

C. Chapter 763 Conflicts with and Abrogates the established case law

The Legislature, in its quest to remove the Judiciary's powers in Elections Matters specifically targeted a Court crafted remedy to speed the canvassing process while preserving ballot challenges for Court review.

In O'Keefe v. Gentile, 1 Misc.3d 151 (Sup. Ct., Kings Co. 2003) Justice Tomei invented a process by which an objected to ballot was to be opened and counted, while the objection was preserved for Court review by coping the ballot and placing the copy back in the re-sealed ballot envelope. If the Court found the ballot to be invalid the re-sealed envelope was opened and a vote deducted from the appropriate tally. This became known as the "O'Keefe method of preservation" in Election circles.

The Second Department adopted this practice in King v. NYC Board of Elections, 308 A.D.2d 556 (2nd Dept., 2003). Since then the practice has spread to Courts in all Departments including the third and Fourth Department, see Matter of Stammel v. Rensselaer Cty. Bd. of Elections, 2021 N.Y. Misc. LEXIS 6502 (Sup. Ct. Renns. Co., 2021).

There can be no doubt that when the Legislature invented the new word "uncounted" ["In no event may a court order a ballot that has been counted to

be uncounted." See Election Law §9-202 (7)(j) & (8)(c)], the "O'Keefe" method of ballot preservation under Election Law §16-112 was targeted for extinction. It was just another way to eliminate Judicial Review, and preclude objections or split votes of the Commissioners from having any effect.

This removal of Judicial Review of the administrative process, and the right to object (and with it the free speech, associational rights and even the right to vote which are implicated) was premeditated and the Chapter effectuating this plan is utterly unconstitutional.

POINT II

A PRELIMINARY INJUNCTION IS PROPER

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

On an application for a preliminary injunction pending on appeal the moving party has the burden of establishing a reasonable probability of success on the appeal and the existence of irreparable injury in the event an injunction does not

issue. (See Schwartz v Rockefeller, 38 A.D.2d 995 [3d Dep't 1972], app. dismissed, 30 N.Y.2d 484, [1972], app. dismissed, 30 N.Y.2d 664, [1972]).

In 2022, despite the fact that a case challenging the witness requirements for independent nominating petitions was commenced after the first day to circulate petitions, the United States District Court for the Eastern District of New York nonetheless granted a preliminary injunction - with statewide application – and ordered that independent nominating petitions may be witnessed by out-of-state residents and nonregistered persons. (Schmidt v Kosinski, 1:22-cv02210 [EDNY 2022]).

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

Here, Respondents have been on notice that the constitutionality of Chapter 763 has been in doubt for more than a year now, dating back to September 2022. Nevertheless, they have failed to adequately demonstrate that the imposition of the proposed injunction will prejudice them or candidates seeking ballot access.

This court has squarely addressed the constitutionality of Chapter 763. (Matter of Amedure v. State of New York, 77 Misc. 3d 629 [2022]). The Respondents have failed to establish a compelling interest in the unconstitutional invasion on core political free speech and the exercise of due process rights. Moreover, injunctive relief will not unduly prejudice the Respondents, whereas the continual application of this unconstitutional statute will supplant the rights of the Petitioners guaranteed to them by the Constitution.

POINT III

INTERVENTION IS NOT PROPER AS OF RIGHT OR BY PERMISSION

Permitting the Proposed Intervenors, multiple parties, to intervene will cause unnecessary delays, while doing nothing to further expedite resolution of the issues in this hybrid declaratory/judgment Petition proceeding. For each of these reasons, the motion to intervene should be denied.

A. The Proposed Intervenors Are Not Entitled to Intervention as of Right and They Are Adequately Represented by Existing Parties

Proposed Intervenors do not meet their burden of intervention as of right under C.P.L.R 1012 and establish that the existing Defendants, including the Office of Attorney General ("OAG"), will not adequately defend New York law. CPLR 1012 has a two-prong requirement that requires that the "representation of the person's interest by the parties is or may be inadequate and the person is or may be bound by the judgment." (CPLR 1012(a)(2)). Neither of the prerequisites is established.[1] The Proposed Intervenors do not submit evidence of collusion, adversity of interest, nonfeasance or incompetence by the OAG or the Majority Leaders of the Senate ("MJLOS") and Assembly ("MJLOA") and Democratic Commissioners of the New York State Board of Elections, all of whom have appeared by separate counsel to oppose the Complaint/Petition. The Intervenors fail to make a strong showing of inadequacy in representation or advocacy in a case where the government, here the OAG, seeks the same outcome as the Proposed Intervenors.

In short, the Proposed Intervenors do not even attempt to rebut the presumption that this well-resourced, sophisticated experienced government

[1] See Anschutz Exploration Corp. v. Town of Dryden, 35 Misc. 3d 450, 455 (Sup. Ct. Tompkins County 2012) (holding "both elements [of CPLR 102(a)(2)] must be present" to justify intervention as of right), aff'd sub nom. Matter of Norse Energy Corp. v. Town of Dryden, 108 A.D.3d 25 (3d Dep't 2013), aff'd sub nom. Matter of Wallach v. Town of Dryden, 23 N.Y.3d 728 (2014).

office will adequately perform its duties in this litigation.

B. Proposed Intervenors Are Not Entitled to Permissive Intervention

Permissive intervention will do nothing to further the Court's resolution of the issues in this litigation. The Plaintiffs/Petitioners have stated they have no objection, if the Court wishes, to permit the filing of amici briefs to address existing issues.[2] CPLR 1013 specifically asks a court to consider the "delay" intervention may cause the proceedings. With the crowding of additional participants in this expedited hybrid declaratory judgment/election proceeding litigation becomes more cumbersome and time consuming. Briefing schedules will become more complicated, the number and quantity of filings the parties and the Court must address is multiplied and responses compounded. Even meet and confer conferences and basic stipulations become more unwieldy and time consuming. The Proposed Intervenors do not establish how their Intervention and asserting themselves in the proceedings outweigh these additional burdens.

[2] If the Proposed Intervenors wish to participate, an amicus brief is the more appropriate vehicle to provide their position. The Proposed Intervenors do not explain why participation as an amicus would not allow them to share legal analysis which may be lacking, assuming other defendants do not raise such analysis. It should be noted that the Intervenors could not raise additional issues since "new issues may not be interposed on intervention." St. Joseph's Hosp. v. Department of Health, 224 A.D.2d 1008, 1009 (4th Dep't 1996).

Accordingly, the Court should also deny the Proposed Intervenors Motions for permissive intervention. In the alternative, should the Court grant intervention, the multiple Proposed Intervenors should be ordered to share representation and file any papers in opposition as joint litigants since they share common interests in law and fact.

POINT IV

PETITIONERS HAVE STANDING AND CAPACITY TO SUE

It is the uncontroverted case law of this state that residents, electors and taxpayers have standing to bring a constitutional challenge. See Silver v. Pataki, 96 N.Y.2d 532 [2001]; *In the* Matter of Robert l. Schulz, et al., v. the State of New York, et al., 81 N.Y.2d 336 ([1993]).

It has been well settled that capacity to sue is a threshold matter allied with, but conceptually distinct from, the question of standing. As a general matter, capacity "concerns a litigant's power to appear and bring its grievance before the court" (Community Bd. 7 v Schaffer, 84 NY2d 148, 155 [1994]). Capacity may be expressly conferred or "inferred as a 'necessary implication from [the agency's] power[s] and responsibilit[ies],' provided, of course, that `there is no clear

legislative intent negating review'" (id. at 156 [quoting Matter of City of New York v City Civ. Serv. Commn., 60 NY2d 436, 443-444, rearg. denied 61 NY2d 759]). The "power to bring a particular claim may be inferred when the agency in question has 'functional responsibility within the zone of interest to be protected'" (id. [quoting Matter of City of New York, supra, at 445]). This test is related, but not identical to, the traditional "zone of interest" analysis employed in determining standing.

In the lower courts leading up to the Court of Appeals decision in Silver v. Pataki, 96 N.Y.2d 532 (2001), the Supreme Court denied the Governor's motion to dismiss, rejecting his claim that plaintiff Silver lacked standing and legal capacity to bring the action. A majority at the Appellate Division reversed, concluding that plaintiff Silver lacked capacity to sue because he has no express or inherent authority to bring the action and that he has no standing because he failed to allege personal harm beyond mere institutional injury. The dissenting Appellate Court Justices' contrary view focused on the necessary implication that a legislator who has the power and responsibility to consider and vote on legislation has the capacity to bring an action to vindicate the effectiveness of his or her vote. Ultimately, the Court of Appeals agreed with the dissenting Appellate Court Justices, holding that plaintiff Silver, as a Member of the Assembly, can maintain an action "to vindicate the effectiveness of his vote where he is alleging that the

Governor has acted improperly so as to usurp or nullify that vote" (see 274 AD2d 57, 67 [2000]).

With that, the test for standing is as follows. A plaintiff has standing to maintain an action upon alleging an injury in fact that falls within his or her "zone of interest." "The existence of an injury in fact, i.e. an actual legal stake in the matter being adjudicated, ensures that the party seeking review has some concrete interest in prosecuting the action which casts the dispute in a form traditionally capable of judicial resolution". (See Society of Plastics Indus. v. County of Suffolk, 77 NY2d 761, 772 [1991]).

Cases considering legislator standing generally fall into one of three categories: lost political battles, nullification of votes and usurpation of power. Only circumstances presented by the latter two categories confer legislator standing (see, e.g., Coleman v Miller, 307 US 433 [vote nullification]; Dodak v State Admin. Bd., 441 Mich 547, 495 NW2d 539 [usurpation of power belonging to legislative body]; cf., Raines v Byrd, 521 US 811 [no standing to challenge lost vote]; Matter of Posner v Rockefeller, 26 NY2d 970 [same]).

In terms of standing for a non-legislator citizen, one must look to the "Schulz cases", where a group of citizens challenged State financing schemes embodied in Chapter 190 ("Schulz Appeal #1") and Chapter 220 ("Schulz Appeal #2") of the Laws of 1990. (Matter of Robert l. Schulz, et al., v. the State of New

York, et al., 81 N.Y.2d 336 [1993]). Therein, standing was recognized in the form of a Constitutional voter basis (i.e. taxpayer standing) pursuant to New York Constitution article VII, §11, based upon the legal theory that the express voter referendum requirement to incur debt contained in Article VII, § 11 is inextricably linked to the constitutional grant of debt-incurring authority. (Id). This is a clear exception to the need for injury in fact.

Here, Petitioners, collectively, are comprised of state parties, chairman of state parties, chairmen of county party committees, commissioners of elections, statewide elected officials and candidates, and resident / elector / taxpayers.

To argue that any one of these individuals or entities lacks capacity to bring this action is disingenuous and inconsistent with controlling law.

CONCLUSION

For the all the reasons above, Petitioners-Plaintiffs respectfully request that this Court enter an Order for the relief sought in the annexed Petition and Order to Show Cause, deny the Respondents Motion(s) to Dismiss, deny all of

the Proposed Intervenors Motions to Intervene, and grant such other, further and different relief as the Court deems just and proper under the circumstances.

DATED: September 28, 2023

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

Adam Fusco, Esq.
Fusco Law Office
P.O. Box 7114
Albany, New York 12224
P: 518.620.3920
F: 518.691.9304
e-mail address:
Afusco@fuscolaw.net