

**NEW YORK STATE SUPREME COURT
ALBANY COUNTY**

ELISE STEFANIK, NICOLE MALLIOTAKIS,
NICHOLAS LANGWORTHY, CLAUDIA TENNEY,
ANDREA GOODELL, MICHAEL SIGLER,
PETER KING, GAIL TEAL, DOUGLAS COLETY,
BRENT BOGARDUS, MARK E. SMITH, THOMAS
A. NICHOLS, MARY LOU A. MONAHAN, ROBERT
F. HOLDEN, CARLA KERR STEARNS, JERRY
FISHMAN, NEW YORK STATE REPUBLICAN
STATE COMMITTEE, CONSERVATIVE PARTY OF
NEW YORK STATE, NATIONAL REPUBLICAN
CONGRESSIONAL COMMITTEE, REPUBLICAN
NATIONAL COMMITTEE

Plaintiffs

- against -

KATHY HOCHUL, in her official capacity as Governor
of New York; NEW YORK STATE BOARD OF
ELECTIONS; PETER S. KOSINSKI, in his official
capacity as Co-Chair of the New York State Board of
Elections; DOUGLAS A. KELLNER, in his official
capacity as Co-Chair of the New York State Board of
Elections; and THE STATE OF NEW YORK,

Defendants.

Index No: 908840-23

Albany County

ANSWER

Respondent, **NEW YORK STATE BOARD OF ELECTIONS**, is comprised of four commissioners pursuant to Election Law § 3-100 and when the commissioners do not agree they may appear in litigation by separate counsel¹, to wit Commissioner and Co-Chair **DOUGLAS A.**

¹ See e.g. *Amedure v State of New York*, 210 AD3d 1134 (3rd Dept 2022) (in which "New York State Board of Elections" was named party and Republican and Democratic Commissioners appeared by separate counsel); *Elgin v Smith*, 10 AD 3d 483 (4th Dept 2004) (holding permitting Answer to be filed by only one commissioner of a split board where commissioners disagree); *Marsh v Hale*, 2019 NY Slip Op 50903 (Sup. Ct. Cattaraugus County) (holding "[a] single Commissioner from a split Respondent Board of Elections may properly appear...."); *Cahill v. Kellner*, 121 A.D.3d 1160 (Third Dept 2014) (State Board appeared on appeal by separate counsel for the Democratic and Republican commissioners, respectively, in a case commenced against commissioners "constituting the New York State Board of Elections") *Bothwell v Bernstein*, 2019 NY Slip Op 50966 (Sup. Ct. Cattaraugus County) (holding "[t]he Board, and the Commissioners thereof, have a distinct interest in compliance with the mechanics of the and the statutory mandate as to content under the provisions of the Election Law...Any case where

KELLNER and Commissioner **ANDEW J. SPANO** as and for their Answer to the Complaint in this above-captioned case, respectfully allege as follows:

1. As to paragraph 1, admit that Plaintiffs are seeking a declaratory judgment and injunctive relief. Deny knowledge sufficient to know whether Plaintiffs include qualified citizen voters, and therefore neither admit nor deny that allegation. Admit that Chapter 481 of the Laws of 2023 of the State of New York, entitled the New York Early Mail Voter Act, was enacted by the Legislature in June of this year and signed into law by Governor Hochul on September 20, 2023. Deny that Plaintiffs are entitled to the relief that they seek.

2. Paragraph 2 contains legal conclusions and characterizations, to which no response is required, but otherwise deny the allegations.

3. Paragraph 3 contains legal conclusions and characterizations, to which no response is required, but otherwise deny the allegations.

4. Deny that the Early Mail Voter Act was enacted in violation of Article II. § 2 and or in contrast of the will of the People. Admit that, in the November 2021 general election, more than 55% of votes cast opposed a proposed ballot amendment proposed by the Legislature entitled, "Authorizing No-Excuse Absentee Ballot Voting," but deny that any conclusion may be drawn therefrom. Paragraph 4 contains purported characterizations of the Early Mail Voter Act and the cited proposed amendment, which speak for themselves, and no response is required, but to the extent a response is required, deny these allegations.

such statutory requirements are at issue is of legal interest to a Board and to the individual Commissioners thereof. When properly included as a party, a board of elections or an individual commissioner thereof, has the right to participate in an Election Law court proceeding..."); *Matter of Connolly v Chenot*, 275 AD 2d 583 (Third Dept. 2003) (observing "we reject petitioners' assertion that [Commissioner] Wade was without authority to bring the underlying motion to dismiss.").

5. Paragraph 5 purports to quote from a sponsor memo, which speaks for itself, and no response is required.

6. Paragraph 6 contains legal conclusions, characterizations, or opinions to which no response is required, but to the extent a response is required, deny the allegations.

7. Paragraph 7 contains legal conclusions, characterizations, or opinions to which no response is required, but to the extent a response is required, deny the allegations and deny that Plaintiffs are entitled to the relief they seek.

8. Admit that Plaintiff Elise Stefanik is a Member of the U.S. House of Representatives for New York's 21st Congressional District, but otherwise deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 8.

9. Admit that Plaintiff Nicole Malliotakis is a Member of the U.S. House of Representatives for New York's 11th Congressional District, but otherwise deny knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 9.

10. Admit Plaintiff Nicholas Langworthy is a Member of the U.S. House of Representatives for New York's 23rd Congressional District, but otherwise deny knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 10.

11. Admit Plaintiff Claudia Tenney is a Member of the U.S. House of Representatives for New York's 24th Congressional District, but otherwise deny knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 11.

12. Admit that Andrew Goodell is a Member of the New York State Assembly for the 150th District thereof, and deny knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 12.

13. Deny knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 13.

14. Deny knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 14.

15. Admit that Gail Teal is a County Board of Elections Commissioner, and otherwise deny knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 15.

16. Admit that Douglas Colety is a County Board of Elections Commissioner, and otherwise deny knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 16.

17. Admit that Brent Bogardus is a County Board of Elections Commissioner, and otherwise deny knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 17.

18. Admit that Mark Smith is a County Board of Elections Commissioner, and otherwise deny knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 18.

19. Admit that Thomas A. Nichols is a County Board of Elections Commissioner, and otherwise deny knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 19.

20. Admit that Mary Lou Monahan is a County Board of Elections Commissioner, and otherwise deny knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 20.

21. Deny knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 21.

22. Deny knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 22.

23. Deny knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 23.

24. Deny knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 24.

25. Deny knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 25.

26. Deny knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 26.

27. Deny knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 27.

28. Admit, but deny that all of the jurisdiction ascribed is exclusive.

29. Admit.

30. Admit.

31. Admit.

32. Admit.

33. Deny knowledge or information sufficient to form a belief as to the truth of the allegation that at least one Plaintiff is located within the Third Judicial Department. Paragraph 33 otherwise states a legal conclusion to which no response is required. To the extent a response is required, deny the remaining allegations in Paragraph 33.

34. Paragraph 34 purports to quote from a book, which speaks for itself, and no response is required. Paragraph 34 otherwise contains legal conclusions and characterizations to which no response is required. To the extent a response is required, deny the allegations in Paragraph 34.

35. Paragraph 35 contains legal conclusions and characterizations to which no response is required. To the extent a response is required, deny the allegations in Paragraph 35.

36. Paragraph 36 purports to characterize the cited book, which speaks for itself, and no response is required. To the extent a response is required, deny the allegations in Paragraph 36.

37. Paragraph 37 purports to characterize and quote from two cited books, which speak for themselves, and no response is required. Paragraph 37 otherwise contains legal conclusions and characterizations to which no response is required. To the extent a response is required, deny the allegations in Paragraph 37.

38. Paragraph 38 purports to characterize and quote from a cited newspaper article and book, which speak for themselves, and no response is required. Paragraph 38 otherwise contains legal conclusions and characterizations to which no response is required.

39. To the extent a response is required, deny the allegations in Paragraph 38.

39. Paragraph 39 purports to characterize and quote from a cited newspaper article and book, which speak for themselves, and no response is required. Paragraph 39 otherwise contains legal conclusions and characterizations to which no response is required. To the extent a response is required, deny the allegations in Paragraph 39.

40. Paragraph 40 purports to characterize Department of State records and quote from the New York Constitution, which speak for themselves, and no response is required. Paragraph 40

otherwise contains legal conclusions and characterizations to which no response is required. To the extent a response is required, deny the allegations in Paragraph 40.

41. Paragraph 41 purports to characterize a statute, which speaks for itself, and no response is required, admit that those who fall within the two constitutionally enumerated categories can vote by applying for an absentee ballot and then delivering their ballots to their board of elections, either in person or by mail.

42. Deny knowledge or information sufficient to form a belief as to the truth of the allegation pertaining to that which the “Legislature understood.” Paragraph 42 purports to quote from a sponsor memo, which speaks for itself, and no response is required. Admit that the legislature passed the proposed amendment and referred it to the people in 2021 as a ballot measure for ratification. Paragraph 42 otherwise contains legal conclusions and characterizations to which no response is required.

43. Deny that supporters of expanded mail voting conceded that the amendment was constitutionally necessary. Paragraph 43 otherwise purports to quote from written reports, which speak for themselves, and no response is required, but to the extent a response is required, deny the allegations in Paragraph 43.

44. Paragraph 44 purports to quote from and characterize a ballot measure, which speaks for itself, and no response is required.

45. Admit that the proposed amendment failed in the 2021 election, and otherwise the paragraph purports to quote from a news article and characterize poll results, which speak for themselves, and no response is required. To the extent a response is required, deny the allegations in Paragraph 45.

46. Deny that the Legislature passed 2023 NY Senate-Assembly Bill S7394, A7632 on June 6, 2023. Paragraph 46 otherwise purports to quote from a statute, which speaks for itself, and no response is required.

47. Paragraph 47 purports to characterize and quote from statutes, which speak for themselves, and no response is required. Paragraph 47 otherwise contains mere legal conclusions and characterizations to which no response is required, but to the extent a response is required, deny the allegations in Paragraph 47.

48. Paragraph 48 purports to characterize and quote from a statute, which speaks for itself, and no response is required. Paragraph 48 otherwise contains legal conclusions and characterizations to which no response is required. To the extent a response is required, deny the allegations in Paragraph 48.

49. Paragraph 49 purports to characterize and quote from a statute, which speaks for itself, and no response is required. Paragraph 49 otherwise contains legal conclusions and characterizations to which no response is required, and to the extent a response is required, deny the allegations in Paragraph 49.

50. Paragraph 50 contains legal conclusions and characterizations to which no response is required. Paragraph 50 otherwise purports to quote from an article, which speaks for itself, and no response is required, and to the extent a response is required, deny the allegations in Paragraph 50.

51. Admit.

52. Deny the Mail-Voting Law will impose substantial new burdens on election personnel, and deny knowledge or information sufficient to form a belief as to the truth of the

remaining allegations in Paragraph 52 except to admit that more persons will vote by mail as a result of the Mail-Voting Law.

53. Admit election commissioners will be responsible for implementing portions of the law, but otherwise deny knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 53.

54. Deny that Commissioner Plaintiffs will be required to either perform acts that violate the New York Constitution or to refrain from actions compelled by New York statutes.

55. Deny knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 55.

56. Deny knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 56.

57. Deny knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 57.

58. Deny knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 58.

59. Deny knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 59.

60. Deny knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 60.

61. Deny knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 61.

62. Deny the allegations in Paragraph 62.

63. Deny the allegations of paragraph 63.

64. Paragraph 64 contains a mere legal conclusion and characterization, to which no response is required. To the extent a response is required, deny the allegation.

65. Paragraph 65 states a re-allegation of past paragraphs to which the preceding paragraphs of this Answer shall apply in like manner, and the extent a response is required, deny the allegation.

66. Paragraph 66 states legal conclusions and quotes constitutional text to which no response is required, but to the extent a response is required, deny the allegations.

67. Paragraph 67 states a legal conclusion to which no response is required. To the extent a response is required, deny the allegation.

68. Paragraph 68 contains legal conclusions, characterizations, or opinions to which no response is required. To the extent a response is required, deny the allegations in Paragraph 68.

69. Paragraph 69 purports to characterize and quote from the cited decision, which speaks for itself, and no response is required. To the extent a response is required, deny the allegations in Paragraph 69.

70. Paragraph 70 contains legal conclusions, characterizations, or opinions to which no response is required. Paragraph 70 otherwise purports to characterize and quote from the cited decisions, which speak for themselves, and no response is required. To the extent a response is required, deny the allegations in Paragraph 70.

71. Paragraph 71 contains legal conclusions, characterizations, or opinions to which no response is required. To the extent a response is required, deny the allegations in Paragraph 71.

72. Paragraph 72 contains legal conclusions, characterizations, or opinions to which no response is required. Paragraph 72 otherwise purports to characterize and quote from a report and opinion, which speak for themselves, and no response is required. To the extent a response is required, deny the allegations in Paragraph 72.

73. Paragraph 73 contains legal conclusions, characterizations, or opinions to which no response is required. To the extent a response is required, deny the allegations in Paragraph 73.

74. Paragraph 74 states a legal conclusion to which no response is required. To the extent a response is required, deny the allegation in Paragraph 74.

FIRST AFFIRMATIVE DEFENSE

75. Petitioners' claims are barred in whole or part for failure to state a claim upon which relief can be granted.

76. Defendants reserve the right to amend this Answer, including through the addition of affirmative defenses or objections in point of law within the time provided for by law.

WHEREFORE, Defendants hereby demand judgment dismissing the Complaint.

October 11, 2023

By:



Brian L. Quail (510786)
NEW YORK STATE BOARD OF ELECTIONS
(Commissioners Douglas A. Kellner and Andrew
J. Spano)
40 Pearl Street, Suite 5
Albany, NY 12207
(518) 473-5088
Brian.quail@elections.ny.gov

RETRIEVED FROM DEMOCRACYDOCKET.COM