SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF SARATOGA

----------X

In the matter of
RICH AMEDURE,
GARTH SNIDE, ROBERT SMULLEN,
EDWARD COX,
THE NEW YORK STATE REPUBLICAN PARTY, Index No. 2023-2399
GERARD KASSAR,
THE NEW YORK STATE CONSERVATIVE PARTY,
JOSEPH WHALEN,
THE SARATOGA COUNTY REPUBLICAN PARTY,
RALPH M. MOHR, ERIK HAIGHT & JOHN QUIGLEY,

Petitioners/Plaintiffs,

-against-

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

Respondents/Defendants.

----------X



**REPLY MEMORANDUM OF LAW IN SUPPORT OF MOTION TO INTERVENE AS RESPONDENTS**

Proposed Intervenor-Respondents DCCC, Senator Kirsten Gillibrand, Representative Paul Tonko, and Declan Taintor (collectively, "Proposed Intervenors"), through their attorneys, hereby submit this reply brief in support of their motion to intervene as respondents.

## INTRODUCTION

This case presents the same challenge to New York's absentee voting laws that several of the Petitioners brought last year. *See generally Amedure v. State*, 176 N.Y.S.3d 457 [N.Y. Sup. Ct. 2022]. And, as Petitioners acknowledge, "[t]here is no meaningful difference" between Proposed Intervenors' motion to intervene in this case and the motion made last year. Doc. No. 64, ¶ 20. While this Court denied DCCC's motion to intervene last year despite acknowledging that it had substantial interests in the case, the Third Department reversed that decision and held that intervention should have been granted. *Amedure v. State*, 210 A.D.3d 1134, 1136 [3d Dept 2022]. Petitioners offer no reason why this Court should disregard the Third Department's direction and deny intervention in this action. In fact, Petitioners' opposition barely even acknowledges the Third Department's decision granting intervention in the 2022 version of this case. Instead, Petitioners have submitted two affirmations, a memorandum of law, and a letter from last year's litigation that ignore, mischaracterize, or simply make up governing law and Proposed Intervenors' positions. Because Proposed Intervenors' motion is timely, and they have sufficient interests in the subject matter of this litigation, intervention should be granted.



## ARGUMENT

Under New York's liberal standards for intervention, the primary consideration on a timely motion to intervene is whether the proposed intervenors "have a bona fide interest in an issue involved" in the action. *Yuppie Puppy Pet Prods., Inc. v St. Smart Realty, LLC*, 77 AD3d 197, 201 [1st Dept 2010]; *see also Matter of Pier v Bd. of Assessment Rev. of Town of Niskayuna*, 209 AD2d 788, 789 [3d Dept 1994]. Petitioners through this action seek to strike down significant portions of New York's laws governing absentee voting, including its cure provisions and limitations on the ability of partisan actors such as Petitioners to challenge absentee ballots. Proposed Intervenors

assert interests in protecting curable absentee ballots from being invalidated (those of their own and their members and supporters) and in avoiding the substantial expenditure of time and resources observing the canvassing of absentee ballots and defending against unfounded challenges to counted ballots. *See* Doc. No. 15, at 6-8. No other party claims these interests. Petitioners do not dispute that these are bona fide interests; indeed, Petitioners do not address any of these interests in their many submissions.

Petitioners instead argue primarily that Proposed Intervenors have not made "a strong showing" that their interests will not be represented by existing defendants. Petitioners do not cite any law for the proposition that a "strong showing" of inadequate representation is a prerequisite for intervention; they cannot, because that is not the standard. The law in New York instead is clear that a substantial interest in the litigation is sufficient. *See Amedure*, 210 A.D.3d at 1136 ("[P]roposed intervenors have a substantial interest in the outcome of this proceeding/action. . . . Accordingly, the motions to intervene should have been granted."); *In re Est. of Jermain*, 122 A.D.3d 1175, 1177 (2014) ("[A] timely motion for leave to intervene should be granted . . . where the intervenor has a real and substantial interest in the outcome of the proceedings."). Petitioners' suggestion that Proposed Intervenors must "submit evidence of collusion, adversity of interest, nonfeasance, or incompetence" again advocates for a standard that has no basis in New York law. Proposed Intervenors have bona fide interests in the outcome of this case; that is sufficient for intervention, particularly where (as here) those interests are different from other participants.

Petitioners also assert that granting intervention will cause delay, but their argument appears to be premised on the mistaken belief that multiple motions to intervene have been filed by parties represented by separate counsel. *See* Doc. No. 66 (affirming that "the Proposed Intervenors filed with this Court further motions to intervene after your Plaintiff-Petitioners'

reply," ¶ 72; that "these several motions should be denied," ¶ 74; that this Court should deny "all of the Proposed Intervenors Motions to Intervene," ¶ 75; and that, in the alternative, "proposed intervenors should be ordered to provide joint pleadings and court filings, as their purposes for intervention are seemingly identical," ¶77). Petitioners' Memorandum of Law similarly speaks of "the crowding of additional participants" and asks that, "should the Court grant intervention, the multiple Proposed Intervenors should be ordered to share representation and file any papers in opposition as joint litigants." Doc. No. 71 at 19, 20. But only one motion to intervene has been filed, and Proposed Intervenors already share representation. There is therefore no reason for this Court to give any consideration to Petitioners' claim that the case will become "unwieldy" due to a proliferation of participants (particularly given that last year's *Amedure* litigation included *more* parties).



Petitioners furthermore fail to identify any aspect of Proposed Intervenors' participation that would cause delay or otherwise burden the proceedings. Their argument appears to be that the addition of another party alone is sufficiently burdensome to justify denial of intervention. To explain the argument is to refute it; if that were sufficient grounds for denial, then a motion to intervene could *always* properly be denied. But that is not the law. *See, e.g.*, *Amedure*, 210 A.D.3d at 1136 (reversing denial of intervention).

## CONCLUSION

For the reasons stated above, Proposed Intervenors respectfully request that this Court grant their motion to intervene as respondents in this case as a matter of right, or, in the alternative, in this Court's discretion.

Date: October 2, 2023

DREYER BOYAJIAN LLP

/s/ *James R. Peluso*
James R. Peluso
75 Columbia Street
Albany, NY 12210
Tel.: (518) 463-7784
jpeluso@dblawny.com

ELIAS LAW GROUP LLP

/s/ *Aria C. Branch*
Aria C. Branch*
Justin Baxenberg*
Richard Alexander Medina
Marilyn G. Robb
250 Massachusetts Ave NW, Suite 400
Washington, DC 20001
Tel.: (202) 968-4490
abranch@elias.law
jbaxenberg@elias.law
rmedina@elias.law
mrobb@elias.law

**Admitted pro hac vice*

**CERTIFICATION OF WORD COUNT**

I hereby certify that the word count of this memorandum of law complies with the word limits of 22 New York Codes, Rules and Regulations § 202.8-b(e). According to the word-processing system used to prepare this memorandum of law, the total word count for all printed text exclusive of the material omitted under 22 N.Y.C.R.R. § 202.8-b(b) is 933 words.

Dated: October 2, 2023

/s/ *James R. Peluso*

James R. Peluso