

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF SARATOGA

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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

Index No. 2023-2399

Hon. Dianne N. Freestone

Petitioners/Plaintiffs,

v.

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 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.

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**REPLY MEMORANDUM OF LAW IN FURTHER SUPPORT OF RESPONDENTS  
STATE OF NEW YORK'S AND GOVERNOR HOCHUL'S MOTION TO DISMISS**

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State of New York  
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## **PRELIMINARY STATEMENT**

This Memorandum of Law is submitted in reply to Petitioners' opposition to, and in further support of, Respondents the State of New York's and Governor Hochul's, Motion to Dismiss. Notice of Motion, NYSCEF No. 28; Memorandum of Law, NYSCEF No. 29; Affirmation of Jennifer J. Corcoran with Exhibits, NYSCEF Nos. 30-34; Affidavit of Danny McDonald, NYSCEF No.35. Respondents reassert the arguments set forth in their initial moving papers. Rather than simply reiterate the points already made, this Reply Memorandum addresses specific points made by Petitioners in their opposition to the Motion to Dismiss. NYSCEF Dkt. Nos. 66-71.

### **ARGUMENT**

#### **POINT I**

#### **PETITIONERS' CLAIMS AGAINST GOVERNOR HOCHUL SHOULD BE DISMISSED**

Petitioners do not oppose Respondents' argument that Petitioners' claims against Governor Hochul should be dismissed on legislative immunity grounds. Therefore, Petitioners' claims against Governor Hochul should be dismissed.

#### **POINT II**

#### **PETITIONERS FAIL TO MEET THE REQUIREMENTS FOR A PRELIMINARY INJUNCTION**

Petitioners offer no facts to justify the imposition of the drastic remedy of a preliminary injunction, and the facts set forth by Respondents demonstrate that a preliminary injunction should be denied. The initial filing by Respondent New York State Board of Elections ("BOE"), specifically the Affidavit of Kristen Zebrowski Stavisky, NYSCEF Dkt. No. 26 ("Stavisky Aff."), details the ways in which the 2023 election is

demonstrably underway, and that imposition of a preliminary injunction would throw the 2023 election into upheaval. Stavisky Aff. ¶¶ 7-10. It is Respondents' understanding that thousands of military and overseas absentee ballots have already been mailed and, by the October 5, 2023 return date of this matter, regular absentee ballots will have already been mailed and the first day of canvassing will have already occurred.

Since Petitioners fail to demonstrate their entitlement to a preliminary injunction, Petitioners' motion for such relief should be denied.

### POINT III

#### PETITIONERS' CHALLENGES TO THE STATUTE ARE MERITLESS

A party challenging a duly enacted statute must satisfy the initial heavy burden of demonstrating the statute's unconstitutionality "beyond a reasonable doubt." *LaValle v. Hayden*, 98 N.Y.2d 155, 161 (2002); *Long Is. Oil Terminals Ass'n, Inc. v. Comm'r. of New York State Dep't of Transp.*, 70 A.D.2d 303, 305-306 (3d Dept 1979).

Further, "[i]t is well settled that acts of the Legislature are entitled to a strong presumption of constitutionality." *Cohen v. Cuomo*, 19 N.Y.3d 196, 201 (2012). This is especially true with regard to a facial challenge, as alleged here. A facial challenge must be denied unless the plaintiff demonstrates that "no set of circumstances exists under which the [law] would be valid." *N.Y.S. Rifle and Pistol Ass'n. v. Cuomo*, 804 F.3d 242, 265 (2d Cir. 2015). The Court of Appeals has plainly stated that the mere fact that a statute might be "unclear in hypothetical situations at its periphery does not render it facially, unconstitutionally vague." *Ind. Ins. Agents and Brokers of N.Y., Inc. v. New York State Dep't of Fin. Servs.*, 39 N.Y.3d 56, 65 (2022).

Petitioners' opposition papers do not advance any new legal arguments. Rather, they include affidavits from individuals that aver alleged situations that they claim illustrate the unconstitutionality of the statute in question. Affidavit of Robert J. Smullen, NYSCEF No. 67, generally; Affidavit of Erik Haight, NYSCEF No. 68, generally; Affidavit of Ralph M. Mohr, NYSCEF No. 69, generally. Unfortunately, the allegations in these affidavits demonstrate either misapplications or fundamental misunderstandings of how the election process works in New York State.

The Affidavit of Amy M. Hild, Direction of Operations for the BOE dated October 2, 2023, NYSCEF No. 75 ("Hild Aff.") (which is incorporated herein by reference) refutes, in detail, the allegations contained in Ralph M. Mohr's Affidavit with regard to secrecy, Hild Aff. ¶¶ 2-5; false allegations of fraud, *id.* ¶¶ 11; deceased voters *id.* ¶ 12; and policy objectives. *Id.* ¶¶ 13-17.

Additionally, the affidavits from nineteen (19) county election commissioners attached to the Affirmation of Brian Quail dated September 18, 2023, NYSCEF No. 27, Ex. I, further dispel Petitioners' erroneous allegations regarding potential fraudulent voting. Indeed, the affidavits all reflect miniscule to non-existent issues regarding the canvassing of absentee ballots under the current law, and Petitioners' wildly exaggerated claims. What they do evidence is that the new canvassing procedures are working, and have worked successfully across multiple elections over the last two years.

### CONCLUSION

For all of the foregoing reasons, those set forth in the initial moving papers of all Respondents and those set forth in the reply papers of Respondent Board of Elections of New York State as incorporated by the Affirmation of Jennifer J. Corcoran, the relief sought by Petitioners

should be denied, Petitioners' application for a preliminary injunction during the pendency of the action should be denied, and Respondents' motion to dismiss the Petition should be granted in its entirety.

Dated: October 2, 2023  
Albany, New York

LETITIA JAMES  
Attorney General  
State of New York  
Attorney for Respondents State of New York and Governor Kathy Hochul  
The Capitol  
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By: *s/ Jennifer J. Corcoran*  
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TO: All counsel of record (via NYSCEF)

**STATEMENT PURSUANT TO 22 NYCRR 202.8-b**

I, Jennifer J. Corcoran, affirm under penalty of perjury pursuant to CPLR 2106, that the total number of words in the foregoing memorandum of law, inclusive of point headings and footnotes and exclusive of pages containing the caption, table of contents, table of authorities, and signature block, is 793. The foregoing memorandum of law complies with the word count limit set forth in 22 NYCRR 202.8-b. In determining the number of words in the foregoing memorandum of law, I relied upon the word count of the word-processing system used to prepare the document.

*s/ Jennifer J. Corcoran*  
Jennifer J. Corcoran