

**SUPREME COURT OF THE STATE OF NEW YORK  
APPELLATE DIVISION : THIRD DEPARTMENT**

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ELISE STEFANIK, et al.,

*Plaintiffs-Appellants,*

v.

KATHY HOCHUL, in her official capacity as  
Governor of New York, et al.,

*Defendants-Respondents,*

DEMOCRATIC CONGRESSIONAL CAMPAIGN  
COMMITTEE, et al.,

*Intervenors-Defendants-Respondents.*

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**AFFIRMATION IN  
SUPPORT OF  
MOTION TO  
DISMISS APPEAL**

A.D. No.  
CV-23-2446

SARAH L. ROSENBLUTH, an attorney admitted to practice before the courts of this State, affirms the following under penalties of perjury, which may include a fine or imprisonment, that the following is true:

1. I am an Assistant Solicitor General in the office of Letitia James, Attorney General of the State of New York, and attorney for respondents Governor Kathy Hochul and the State of New York. I submit this affirmation in support of respondents' motion to dismiss the appeal.

2. This action challenges the constitutionality of the Early Mail Voter Act. In Supreme Court, plaintiffs filed a motion for a preliminary

injunction against enforcement of the Act. Defendants filed a motion to dismiss the complaint and plaintiffs also cross-moved for summary judgment.

3. On December 26, 2023, Supreme Court, Albany County (Ryba, J.), denied plaintiffs' motion for a preliminary injunction. The motion to dismiss and motion for summary judgment remained pending at that time.

4. Plaintiffs then took an appeal from the denial of the preliminary-injunction motion and moved in this Court for a motion for a preliminary injunction pending appeal. (NYSCEF Doc. No. 3.)

5. After this Court denied plaintiffs' motion for a preliminary injunction pending appeal (NYSCEF Doc. No. 51), plaintiffs filed a motion to expedite the appeal and for calendar preference (NYSCEF Doc. No. 53). That motion was returnable on January 29, 2024, and remains pending.

6. On January 26, 2024, plaintiffs perfected their appeal. (NYSCEF Doc. Nos. 74, 75.)

7. On February 5, 2024, Supreme Court issued a final decision, order, and judgment granting defendants' motion to dismiss, denying

plaintiffs' motion for summary judgment, and declaring the Act constitutional.

8. On February 6, 2024, plaintiffs filed a second notice of appeal, and on February 7, 2024, they filed a copy of the notice of appeal on the docket in this case. (NYSCEF Doc. No. 77.) To date, however, they have not requested that the Court consolidate the two appeals nor have they opened a new appeal in NYSCEF.

9. Respondents Governor Hochul and the State of New York thus respectfully request that this Court dismiss the first appeal from the preliminary-injunction order as academic, as that order has been superseded by the final judgment.

10. Plaintiffs' right of appeal from the preliminary-injunction order "terminated with the entry of the [final] judgment." *Matter of Aho*, 39 N.Y.2d 241, 248 (1976); *see also* 8 New York Practice, Civil Appellate Practice § 3:3 (3d ed.) ("No appeal lies from an order or judgment that has been superseded by a subsequent order or judgment, as the initial order or judgment has become academic.").

11. Indeed, now that Supreme Court has entered final judgment in favor of defendants, it would make little sense for this Court to

consider the question presented in this appeal, namely, whether plaintiffs are entitled to preliminary relief.

12. To ensure orderly resolution of the issues presented in this action, the Court should dismiss the instant appeal and require plaintiffs to perfect their second appeal from the final judgment. *See, e.g., Ibe Trade Corp. v. Litvinenko*, 288 A.D.2d 125, 125 (1st Dep't 2001) (dismissing as academic appeal from contempt order where final judgment entered subsequent to perfection of appeal); *Ryan v. McLean*, 209 A.D.2d 913, 913-14 (3d Dep't 1994) (dismissing appeal from order denying preliminary injunction where it was superseded by order made upon reargument).

13. Accordingly, respondents Governor Hochul and the State of New York respectfully request that the Court dismiss the appeal.

14. I have conferred with counsel for intervenors and counsel for the Democratic commissioners of the New York State Board of Elections, who concur in the relief sought.

Dated: Buffalo, New York  
February 8, 2024



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SARAH L. ROSENBLUTH

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**NOTICE OF  
MOTION TO  
DISMISS APPEAL**

A.D. No.  
CV-23-2446

PLEASE TAKE NOTICE that, upon the annexed affirmation of SARAH L. ROSENBLUTH, Assistant Solicitor General, dated February 8, 2024, the undersigned will move before this Court on Tuesday, February 20, 2024, at 10:00 a.m., at a term to be held at the Robert Abrams Building for Law and Justice, Empire State Plaza, Albany, New York, or as soon thereafter as counsel can be heard, for an order dismissing the appeal and for such other and further relief as the Court may deem proper and just.

Dated: Buffalo, New York  
February 8, 2024

LETITIA JAMES  
*Attorney General*  
*State of New York*  
Attorney for Respondents  
Governor Kathy Hochul and  
the State of New York  
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By:   
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SARAH L. ROSENBLUTH  
Assistant Solicitor General

TO: HON. ROBERT H. MAYBERGER (via NYSCEF)  
Clerk of the Court  
Appellate Division, Third Department  
P.O. Box 7288  
Capitol Station  
Albany, New York 12224

Counsel of record (via NYSCEF)