

STATE OF NEW YORK
SUPREME COURT COUNTY OF ALBANY

ELISE STEFANIK, NICOLE MALLIOTAKIS
NICHOLAS LANGWORTHY, CLAUDIA TENNEY,
ANDREW 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 REPUBLICAN STATE COMMITTEE,
CONSERVATIVE PARTY OF NEW YORK STATE,
NATIONAL REPUBLICAN CONGRESSIONAL
COMMITTEE, REPUBLICAN NATIONAL COMMITTEE,

Petitioners,

DECISION/JUDGMENT
Index No. 908840-23

-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.

APPEARANCES:

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James R. Peluso, Esq, Richard A. Medina, Esq. and Marilyn Robb, Esq.
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DCCC, Senator Kirsten Gillibrand, Representatives
Yvette Clarke, Grace Meng, Joseph Morelle, Ritchie Torres,
and New York voters Janice Strauss, Geoff Strauss, Rima Liscum,
Barbara Walsh, Michael Colombo, and Yvette Vasquez

RYBA, J.,

By Order to Show Cause signed by Judge Roger D. McDonough, Elise Stefanik, Nicole Malliotakis, Nicholas Langworthy, Claudia Tenney, Andrew Goodell, 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 Republican State Committee, Conservative Party Of New York State, National Republican Congressional Committee, Republican National Committee (hereinafter “plaintiffs”) seek an order pursuant to New York Civil Practice Law and Rules § 6301 preserving the status quo and enjoining defendants, their agents and anyone acting on their behalf from enforcing and/or implementing Chapter 481 of the Laws of 2023 of the

State of New York, entitled the New York Early Mail Voter Act (the “Mail-Voting Law”), or from counting votes cast under the provisions of the Mail-Voting Law until the final judgment in this action has been rendered.

In opposition to the Order to Show Cause, on October 11, 2023, DCCC, Senator Kirsten Gillibrand, Representatives Yvette Clarke, Grace Meng, Joseph Morelle, Ritchie Torres, and New York voters Janice Strauss, Geoff Strauss, Rima Liscum, Barbara Walsh, Michael Colombo, and Yvette Vasquez (hereinafter “Intervenors”) filed a motion to dismiss for failure to state a claim. Likewise, on October 16, 2023 defendants State of New York and Kathy Hochul in her official capacity as Governor of New York filed a motion to dismiss. Thereafter, in a letter dated October 23, 2023, plaintiffs sought an extension to respond to both motions which states the following (emphasis added):

“Currently pending before this Court are two motions to dismiss from the Intervenors (Motion No. 6) and the State Defendants (Motion No. 7), respectively. All parties to this action have conferred, and **for the purposes of judicial efficiency and to accommodate the schedules of all parties, we jointly propose the following briefing schedule for these motions:**

Plaintiff’s opposition brief and anticipated cross-motion due by November 13, 2023. Defendants’ and Intervenors’ reply and opposition to cross-motion due by December 7, 2023. **Return date December 8, 2023, at 10:00 am, or as soon thereafter as counsel can be heard on these motions.**

Despite the above referenced extension, plaintiffs filed a letter request on December 4, 2023 informing the Court of a “change in circumstances” relevant to the pending motion for a preliminary injunction and they sought a decision on the pending motion for a preliminary injunction “as soon as possible.” Three days later, on December 7, 2023, plaintiffs filed their papers in response to defendants’ motions to dismiss in compliance with the time-line above. A week later, in a letter dated December 14, 2023,

plaintiffs referenced a December 12, 2023 Court of Appeals decision indicating that it is “directly relevant to the parties’ arguments in [this matter].” Likewise, in a letter dated December 21, 2023, despite the above referenced extension sought by plaintiffs, plaintiffs filed a letter seeking an expedited decision on their request for a preliminary injunction.

The party seeking a preliminary injunction must demonstrate: 1) a probability of success on the merits, 2) danger of irreparable injury in the absence of an injunction and 3) a balance of equities in its favor (see Nobu Next Door, LLC v. Fine Arts Hous., Inc., 4 NY3d 839, 840 [2007]). “Irreparable harm is injury that is neither remote nor speculative, but actual and imminent (see Public Emps. Fed’n v. Cuomo, 96 AD2d 1118, 1119 [1983]).

Here, plaintiffs contend that the legislature “has openly defied the Constitution and the voice of the people.” They assert that the legislature enacted the exact bill that the voters refused to authorize. In doing so plaintiffs claim that the legislature overrode the ordinary meaning of the Constitution by allowing mail voting regardless of whether a voter meets its two exceptions to the requirements that New Yorkers vote in-person. As a result, plaintiffs claim they are likely to succeed on the merits. Plaintiffs also claim they will suffer irreparable harm “because the mail-in voting law places them at a disadvantage as compared to other candidates.” Lastly, plaintiffs argue that the balance of equities are in their favor because they allege constitutional violations. In addition they argue that “there are no reliance interests at stake and no ongoing electoral procedures that could be disrupted by an injunction.”

In opposition to the preliminary injunction, defendants and intervenors argue that plaintiffs fail set forth irreparable harm or that the balance of the equities are in their favor. The Court agrees. While plaintiffs argue in conclusory fashion that early voters by mail will cast more votes for defendants than

plaintiffs, this belief is insufficient to grant a preliminary injunction. Plaintiffs fail to establish irreparable harm because they cannot establish that they will suffer electoral disadvantages based on the Early Mail Voter Act. Lastly, since the statute has yet to be declared unconstitutional, the balances do not tip in plaintiffs' favor because enjoining the Early Mail Voting Act at this juncture would harm New York voters.

Based on the foregoing, plaintiffs' request for a preliminary injunction is denied.

This shall constitute the Decision and Order of the Court, the original of which is being transmitted to the Albany County Clerk for electronic filing and entry. Upon such entry, the State of New York defendant shall promptly serve notice of entry on all other parties (see, Uniform Rules for Trial Courts [22 NYCRR] § 202.5-b [h] [1], [2]).

Dated: December 26, 2023



HON. CHRISTINA L. RYBA
Supreme Court Justice