UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

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NY CITIZENS AUDIT CIVIC FUND, INC. et al.,

*Plaintiffs*,

-against-

LETITIA JAMES et al.,

*Defendants*.

1:25-cv-1447

(MAD/MJK)

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**MEMORANDUM OF LAW IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS**

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Date: December 23, 2025

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## PRELIMINARY STATEMENT

Defendants Letitia James, Lindsay McKenzie, and Rick Sawyer (collectively, OAG Defendants), and New York State Board of Elections (BOE), Kristen Zebrowski Stavisky, Raymond J. Riley III, Brian Quail, Kathleen McGrath, Jennifer Wilson, Peter S. Kosinski, Douglas A. Kellner, Anthony J. Casale, Andrew J. Spano, and Henry T. Berger (collectively, BOE Defendants) submit this memorandum of law in support of their motion to dismiss, pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure.

Plaintiffs NY Citizens Audit Civic Fund, Inc. (NYCA), Marly Hornik, Karen Ambrosetti, Patrick Wynn, Randall Barber, Joe Atkinson, Susan Herrington, and Diane Sare brought this action against Defendants, alleging claims related to BOE Defendants' supposed "failure to maintain compliant voter rolls . . . which Plaintiffs discovered through comprehensive audits of New York's statewide voter registration list, 'NYSVoter,' following the 2020 election." Compl. ¶ 3, Dkt. No. 1. Plaintiffs allege, pursuant to 42 U.S.C. § 1983, a violation of their First Amendment rights to free speech and petition, voter intimidation pursuant to 52 U.S.C. § 10101(b), a violation of their due process rights under the Fifth and Fourteenth Amendments, and denial of their "right to legitimate representative government" as guaranteed by Article 1, § 2 of the United States Constitution. *Id.* ¶¶ 77-90, 95-112. They also allege a state law claim of defamation. *See id.* ¶¶ 91-94. Plaintiffs seek declaratory, injunctive, and compensatory relief. *See id.* at 47-52.

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The fifty-two-page Complaint—which is little more than a regurgitation of debunked conspiracy theories—fails to state any cause of action for which relief can be granted. Specifically, the First Amendment claims fail because Plaintiffs have not plausibly alleged a causal connection between Defendants' actions and their protected activity or that their First Amendment rights were chilled by Defendants' conduct; the voter intimidation claim must be dismissed because Plaintiffs have not alleged that Defendants' conduct was for the purpose of interfering with their right to

vote nor that their right to vote was implicated at all; the due process claims are infirm because Defendants owed Plaintiffs no right to review or repair the concerns they raised by petition for redress and are otherwise duplicative of the First Amendment claims; the Composition Clause claim cannot stand because there are no allegations of any interreference with Plaintiffs' right to vote; and the defamation claims are untimely and the statements at issue are not defamatory in any event. Simply put, the Complaint should be dismissed in its entirety because the allegations therein fail to state a viable claim against any of the Defendants.

## STATEMENT OF FACTS[1]

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NYCA holds itself out as a nonprofit organization "that performs research, education and litigation in election validity." Compl. ¶ 17. Hornik is NYCA's executive director, and the other individual plaintiffs are voters and residents of New York. *See id.* Except for Sare and Hornik, the individual plaintiffs are volunteers of NYCA. *See id.* As relevant here, in October 2021, NYCA undertook an "audit" of election data obtained through a Freedom of Information Law request to BOE as part of an effort to challenge the results of the 2020 election in New York. *See id.* ¶¶ 7, 19. Plaintiffs presented their conspiracy theories to BOE under the guise of a petition for redress of grievances. *Id.* ¶ 21. BOE did not respond to this submission. *See id.* ¶ 22. NYCA also purports to have "audit[ed]" the 2022 elections., *Id.* ¶ 27. As part of this "audit," NYCA sought support from "town boards" across the State for a comprehensive audit of BOE records from the 2022 general election. *Id.* ¶¶ 29-31.

[1] Consistent with the applicable standard of review, the allegations in the Complaint must be accepted as true for the purposes of a motion to dismiss. *See Sherman v. Abengoa, S.A.*, 156 F.4th 152, 162 (2d Cir. 2025). However, the Court "will not credit 'mere conclusory statements,' '[t]hreadbare recitals of the elements of a cause of action,' or 'a legal conclusion couched as a factual allegation.'" *Id.* (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (internal quotation marks omitted)).

In April 2023, BOE distributed a letter to county boards of election to refute the claims of an unnamed group that "'cloned' voters [were] casting ballots in elections." Compl., Ex. 17 at 1.[2] The letter included a section, "False Claims Explained," which provided cogent responses to NYCA's claims; broadly speaking, the explanations demonstrated that NYCA misunderstood or misinterpreted data relative to voter data. *See id.* at 2-3. According to Plaintiffs, that dissemination served as a basis for election officials to "preemptively discredit and dismiss NYCA volunteers and reports." Compl. ¶ 37.

In "late 2022 [and] into 2023," NYCA volunteers began canvassing New York residents that NYCA believed were part of BOE's "corrupted" voter data, "asking the voters themselves if the records extracted from NYSVoter were correct." *Id.* ¶ 38. In August 2023, NYCA submitted a summary of its theories — titled "New York's 2022 General Election: The Reign of Error" —to BOE; according to Plaintiffs, the document demonstrated "that there were more votes in question in the 2022 General Election than the margin of victory in the election of New York's Attorney General Letitia James." *Id.* ¶ 46. NYCA demanded an acknowledgement of its submission. *See id.* ¶ 48.

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Later in August 2023, BOE issued a press release in which it warned of election imposters, who were "going door-to-door impersonating County Board of Elections staff . . . confronting voters regarding their registration status, and erroneously accusing voters of committing a crime because of how they appear in the state voter database." *Id.*, Ex. 18. In early September 2023, BOE discussed NYCA's submission during its monthly public meeting and BOE staff made comments that BOE was "on the offensive now," seeming to indicate that BOE's goal was to

[2] The documents attached to the Complaint are appropriately considered in connection with the Court's adjudication of this motion to dismiss. *See Santos v. Kimmel*, 154 F.4th 30, 33 (2d Cir. 2025).

combat NYCA's claims by "putting the good information out there." *Id.*, Ex. 19 at 12, 14. The transcript of the meeting reflects the seriousness with which BOE took NYCA's claims and the potential impact those claims would have on the public's confidence in New York elections. *See id.* 11-16.

Later the same month, OAG issued a cease and desist notification and document request to Hornik on behalf of NYCA. *See* Compl. ¶ 51; *id.*, Ex. 20. That notification was prompted by "reports alleging that volunteers from [NYCA] ha[d] confronted voters across the state at their homes, falsely claimed to be Board of Elections officials, and falsely accused voters of committing felony voter fraud." *Id.*, Ex. 20 at 2. Plaintiffs allege that OAG Defendants "escalated the Cease and Desist to a criminal investigation." Compl. ¶ 54.

Finally, Plaintiffs claim that in October and November 2023, Defendants Zebrowski Stavisky and Riley "defamed" NYCA in official written statements. *Id.* ¶¶ 55-60. The allegedly defamatory statements, some of which are attached to the Complaint, make clear that the intent of the publications was to dispel NYCA's "malicious claims" that "fake voters ha[d] been inserted into the registration database in order to create invalid votes to sway elections." Compl., Ex. 23 at 1.

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This Complaint followed.

## ARGUMENT

The disjointed and prolix nature of Plaintiffs' Complaint defies Rule 8 of the Federal Rules of Civil Procedure's requirement to provide Defendants with "fair notice" of the claims and "the grounds upon which [they] rest[]." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007). Plaintiffs' Complaint is strewn with conclusory statements, legal conclusions presented as facts, and threadbare recitals. As set forth above, although Plaintiffs plead seven counts, they actually

amount to only five legal claims: First Amendment retaliation; voter intimidation under 52 U.S.C. § 10101(b); Fifth and Fourteenth Amendment due process violations; a violation of the Composition Clause of Article 1, § 2; and Plaintiff NYCA's defamation claim under New York law. And all of them fail as a matter of law.

## I. Certain Relief is Barred by the Eleventh Amendment.

As noted, Plaintiffs' Complaint is far from a model of clarity, and this lack of clarity extends to the relief requested. However, the Complaint appears to seek both monetary and injunctive relief that is barred by Eleventh Amendment immunity. *See* Compl. at 47-51.

It is well settled law that claims for monetary damages against a state, its agencies, and its employees or officers acting in their official capacity, are barred by Eleventh Amendment immunity. *See Kentucky v. Graham*, 473 U.S. 159, 169 (1985). Pursuant to the doctrine of *Ex parte Young*, the Eleventh Amendment does not foreclose prospective injunctive relief against a state official in his or her official capacity provided the plaintiff has alleged an ongoing violation of federal law and seeks relief that is prospective in nature. *See Verizon Md. Inc. v. Pub. Serv. Comm'n of Md.*, 535 U.S. 635, 645 (2002); *see also Ex parte Young*, 209 U.S. 123 (1908). However, the *Ex parte Young* doctrine does not apply where, as here, the claim for injunctive relief seeks to compel state officials to conform to state law. *See Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 106 (1984).

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To the extent that Plaintiffs' complaint is read to seek either monetary or injunctive relief compelling the State officials to comply with State law, *see* Compl. at 49-51, that relief must be dismissed.

## II. Plaintiffs Fail to State a First Amendment Retaliation Claim.

Plaintiffs' claims for violations of the First Amendment's Free Speech and Right to Petition Clauses amount to claims for retaliation.[3] *See* Compl. ¶¶ 77-83. Specifically, Plaintiffs contend that, because they exercised their First Amendment rights, they were targeted by Defendants through retaliatory public comments denouncing NYCA's activities and reports, the cease and desist notification, and the threat of criminal charges. *See id.* ¶¶ 37, 49-51, 80. Plaintiffs' First Amendment claims fail.

A private citizen alleging a claim of retaliation against a public employee or official must show that: "(1) [the plaintiff] has an interest protected by the First Amendment; (2) defendants' actions were motivated or substantially caused by [the plaintiff's] exercise of that right; and (3) defendants' actions effectively chilled the exercise of [the plaintiff's] First Amendment right." *Curley v. Village of Suffern*, 268 F.3d 65, 73 (2d Cir. 2001); *accord Williams v. Town of Greenburgh*, 535 F.3d 71, 76 (2d Cir. 2008). In the absence of a chilling effect, the plaintiff must demonstrate "that he has suffered some other concrete harm." *Dorsett v. County of Nassau*, 732 F.3d 157, 160 (2d Cir 2013); *see Mangino v. Inc. Vill. Of Patchogue*, 808 F.3d 951, 955-65 (2d Cir 2015). A plaintiff's "naked assertion of a chill," as asserted here, is simply insufficient to defeat a Rule 12 (b) (6) motion. *Spear v. Town of West Hartford*, 954 F.2d 63, 67 (2d Cir. 1992); *see* Compl. ¶¶ 13, 37, 61, 63, 80.

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[3] Confusingly, Plaintiffs simultaneously allege that their speech was "preemptively suppressed," which suggests a prior restraint on speech, Compl. ¶ 79, and that Defendants acted in "retaliation," suggestive of adverse action following protected First Amendment activity, *id.* ¶ 80. Because a prior restraint entails "any law requiring would-be speakers to seek government approval before speaking," *"Q"-Lungian Enters., Inc. v. Town of Windsor Locks*, 272 F. Supp. 3d 289, 297 (D. Conn. 2017), and no allegation in the Complaint suggests that such prior approval was required here, Plaintiffs have not stated a prior restraint claim if that was their intention.

Assuming that they engaged in protected activity, Plaintiffs fail to plausibly allege a causal connection between OAG Defendants' actions and their protected activity, or that their activities were chilled by Defendants' actions. Plaintiffs have not made any non-conclusory allegations supporting the idea that their First Amendment activities were the but-for cause of Defendants' actions. Instead, Plaintiffs allege that OAG Defendants were investigating "volunteers from [NYCA, who] have confronted voters across the state at their homes, falsely claimed to be Board of Elections officials, and falsely accused voters of committing felony voter fraud." Compl. ¶ 51(a). These allegations would constitute unlawful voter fraud, which OAG has statutory authority to investigate. *See* N.Y. Election Law § 17-212. It is plain from the materials attached to the Complaint that BOE Defendants' public comments denouncing NYCA's activities and reports were similarly targeted at dispelling false information. *See* Compl., Exs. 17, 18, 20, 23.

Where, as here, Plaintiffs fail to allege and prove the absence of a legitimate basis for investigation, the claim must be dismissed. *See Hartman v. Moore*, 547 U.S. 250, 261 (2006); *Nieves v. Bartlett*, 587 U.S. 391, 400-01 (2019). Nor is there any indication from the cease and desist letter itself that Plaintiffs' protected activity was targeted. The letter, which was attached to the Complaint, specifically calls on NYCA to cease its "voter deception and intimidation efforts, including instructing or otherwise causing volunteers to falsely represent themselves as government officials or falsely accuse voters of voter fraud." Compl., Ex. 20 at 1. No mention is made of NYCA's conspiracy theory nor is any threat conveyed that further action will be taken if NYCA continues publicizing its theories.

With respect to chilling effect, Plaintiffs alleged only a subjective chill, not an objectively reasonable one. By their own admission, Plaintiffs continued to make public accusations after BOE Defendants sent the April 2023 letter, *see* Compl. ¶ 46, and continued to issue press releases

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after the OAG Defendants' cease and desist letter was sent, *see id.* ¶ 53. The OAG Defendants' cease and desist letter warned only against unlawful voter intimidation. *See* Compl., Ex. 20 at 1. Plaintiffs do not, and cannot, allege that OAG Defendants communicated any kind of threat of enforcement based on Plaintiffs' First Amendment protected activity. NYCA's own course of conduct demonstrates that this is true. Rather than curtail its efforts to spread conspiracy theories, NYCA amplified them. Where a plaintiff alleges no change in behavior, as here, that plaintiff "has quite plainly shown no chilling of [the] First Amendment right to free speech." *Curley*, 268 F. 3d at 73; *see Williams*, 535 F.3d at 78.

The Complaint does not plausibly allege any other concrete harm beyond a chilling effect. *See Zherka v. Amicone*, 634 F.3d 642, 646 (2d Cir. 2011). Plaintiffs contend that the OAG Defendants issued a cease and desist notification and commenced a criminal investigation. The stated authority for the notification, however, was civil in nature, not criminal. *See* Compl., Ex. 20 at 2 (citing N.Y. Election Law § 17-212(2)). A threat of civil litigation is not a sufficiently concrete harm, particularly where the plaintiffs do not allege that their First Amendment rights were chilled. *See, e.g.*, *Colombo v. O'Connell*, 310 F.3d 115, 117-18 (2d Cir. 2002); *Spear*, 954 F.2d at 67 (finding that plaintiff had failed to allege chilling effect even after being sued).

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These shortcomings require dismissal of Plaintiffs' First Amendment claims.

## III. Plaintiffs' Claim of Voter Intimidation is Subject to Dismissal.

In reliance on legal conclusions couched as facts, Plaintiffs contend that Defendants violated 52 U.S.C. § 10101(b) by interfering with Plaintiffs' efforts to "verify the accuracy of official lists of eligible voters, review audit logs of NYSVoter, and to question whether their votes were counted and included in the appropriate totals of votes cast." Compl. ¶¶ 86-89. The claim should be dismissed for two independent reasons: first, Plaintiffs fail to plausibly allege that any

action by Defendants was for the purpose of interfering with Plaintiffs' right to vote, and second, Plaintiffs' right to vote was not implicated at all. *See Dekom v. Nassau County*, 595 F. App'x 12, 15 (2d Cir. 2014).

As an initial matter "the weight of authority suggests that there is no private right of action under" § 10101 (formerly 42 U.S.C. § 1971). *Dekom v. New York*, No. 12-CV-1318, 2013 WL 3095010, at *18 (E.D.N.Y. June 18, 2013), *aff'd*, 583 F. App'x 15 (2d Cir. 2014); *Hayden v. Pataki*, No. 00-CIV-8586 (LMM), 2004 WL 1335921, at *5 (S.D.N.Y. June 14, 2004) (collecting cases and concluding that "the majority of courts addressing civil rights claims brought under § 1971 have held . . . this section does not provide for a private right of action"), *aff'd on other grounds*, 449 F.3d 305 (2d Cir. 2006); *see Olagues v. Russoniello*,770 F.2d 791, 805 (9th Cir. 1985); *but see Schwier v. Cox*, 340 F.3d 1284, 1297 (11th Cir. 2003) (finding that "the Voting Rights Act may be enforced by a private right of action under § 1983").

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Assuming a private right of action exists under § 10101(b), the Complaint falls short of alleging facts to establish that any action by Defendants was for the purpose of interfering with Plaintiffs' right to vote or that Plaintiffs' right to vote was implicated at all.

As relevant here, § 10101(b) provides that no person "shall intimidate, threaten, coerce, or attempt to intimidate, threaten, or coerce any other person for the purpose of interfering with the right of such other person to vote or to vote as he may choose." 52 U.S.C. § 10101(b). Section 10101(b) "essentially requires proof of two ultimate facts: (1) that there was an intimidation, threat, or coercion, or an attempt to intimidate, threaten or coerce, and (2) that the intimidation was for the purpose of interfering with the right to vote." *United States v. McLeod*, 385 F.2d 734, 740 (5th Cir. 1967). "Vote" is defined within the statute as including:

> all action necessary to make a vote effective including, but not limited to, registration or other action required by State law

> prerequisite to voting, casting a ballot, and having such ballot counted and included in the appropriate totals of votes cast with respect to candidates for public office and propositions for which votes are received in an election.

52 U.S.C. § 10101(e).

NYCA is not eligible to vote, and therefore cannot assert a claim under section 10101(b). With respect to the individual plaintiffs, they fail to plausibly allege that any of Defendants' conduct was for the purpose of interfering with their right to vote, rather than—as is evident on the face of the materials incorporated into the Complaint—for the purpose of investigating the intimidation of voters. While Plaintiffs' complaint is replete with bare *conclusions* that Defendants "open[ed] a publicized, pretextual, unsubstantiated criminal investigation" in furtherance of a "conspiracy . . . to intimidate and terrify Plaintiffs," Compl. ¶ 89, they allege no *facts* to plausibly support such a claim, requiring its dismissal.

Furthermore, Plaintiffs' claim does not implicate the right to vote at all. Rather, their theory that their right to "vote" was infringed upon is based on a perverse and incorrect interpretation of the statutory definition of that term. Although not exhaustive, the definition, aimed at measuring whether a vote is "effective," covers registration, casting a ballot, and having one's ballot recorded, 52 U.S.C. § 10101(e), actions with a direct nexus to the franchise which the law protects from any person—including private parties—seeking to "intimidate, threaten, or coerce," in order to interfere with their right to vote. Plaintiffs' conduct is a far cry from these core activities. No Court has read 52 U.S.C. § 10101(e) to encompass them, and for good reason: it would turn the law's protections on their head to endorse the theory that the investigation of voter intimidation would itself constitute intimidation of voters. Indeed, the conduct about which Plaintiffs complain occurred *after* the voting, canvassing, and certification of elections for which NYCA undertook its "audits" and, therefore, could not have been for the purpose of interfering with the right of

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Plaintiffs to vote as they so choose. Plaintiffs do not seek protection of their right to vote, they ask this Court to conjure a new statutory right to "verify the accuracy" of voter rolls, and "question" the legitimacy of a duly administered election. Compl. ¶ 88. The Court should decline that invitation. For all these reasons, this claim must be dismissed.

## IV. Plaintiffs Fail to State a Due Process Claim Under the Fifth or Fourteenth Amendments.

### *A. Plaintiffs Have No Procedural Due Process Claim Under the Fifth Amendment.*

Plaintiffs contend that BOE Defendants[4] failed to review their petitions for redress "submitted under the First Amendment." Compl. ¶ 101. Further, the Complaint alleges that BOE Defendants "denied Plaintiffs' rights to petition by refusing to review or repair credible concerns about New York's voting apparatus" and then acted against Plaintiffs for so petitioning. *Id.* ¶ 104. While the parameters of Plaintiffs' Fifth Amendment claim are murky at best, the claim, which implicates procedural due process, should be dismissed.

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As relevant here, the Fifth Amendment requires that "[n]o person shall . . . be deprived of life, liberty, or property, without due process of law." U.S. Const. amend. V. The first consideration in the analysis of a procedural due process claim is "whether there exists a [life,] liberty or property interest which has been interfered with by the state; the second examines whether the procedures attendant upon that deprivation were constitutionally sufficient." *Ky. Dep't of Corr. v. Thompson*, 490 U.S. 454, 460 (1989). Although individuals have a liberty interest in their First Amendment right to petition the government, there is no interference with that right when one petitions the government and receives no response because "the right to petition confers

[4] Although the Complaint uses group pleading to allege that "Defendants" collectively violated their Fifth Amendment rights with respect to review and response to Plaintiffs' submissions, *see* Compl. ¶ 101, in context, this claim pertains only to BOE Defendants to whom the documents were submitted.

no attendant right to a response from the government." *Trentadue v. Integrity Comm.*, 501 F.3d 1215, 1236-37 (10th Cir. 2007) (citing *Smith v. Ark. State Highway Emp., Loc. 1315*, 441 U.S. 463, 465 (1979) ("But the First Amendment does not impose any affirmative obligation on the government to listen, to respond or, in this context, to recognize the association and bargain with it.")). "Where . . . 'no protected liberty interest is being impaired, no due process is required.'" *Wheatley v. N.Y. State United Tchrs.*, 80 F.4th 386, 393 (2d Cir. 2023) (quoting *Cucciniello v. Keller*, 137 F.3d 721, 724 (2d Cir. 1998)).

Here, Plaintiffs allege that they petitioned the government but are unhappy with BOE Defendants' "examination" thereof. Compl. ¶ 102. It is plain from the pleading that, in Plaintiffs' view, BOE Defendants were required "to review or repair" their concerns, *id.* ¶ 104, but BOE Defendants had no obligation to respond to the petition for redress, *see Smith*, 441 U.S. at 465. While Plaintiffs had a liberty interest in their right to petition, by their own allegations, they exercised that right when they sent various missives to BOE Defendants. Their gripe, instead, is with the response, or lack thereof, which does not implicate interference with a protected liberty interest. *See Wheatley*, 80 F.4th at 393. Accordingly, Plaintiffs fail to set forth a procedural due process claim.

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*B. Plaintiffs Have No Substantive Due Process Claim Under the Fourteenth Amendment.*

Plaintiffs' Fourteenth Amendment substantive due process claim is premised on the alleged violation of their First Amendment rights. *See* Compl. ¶ 96. These allegations fail to state a claim as a matter of law.

"[W]here another provision of the Constitution provides an explicit textual source of constitutional protection, a court must assess a plaintiff's claims under that explicit provision and not the more generalized notion of substantive due process." *Kia P. v. McIntyre*, 235 F.3d 749,

757-58 (2d Cir. 2000) (quoting *Conn v. Gabbert*, 526 U.S. 286, 293 (1999)) (internal quotation marks omitted). The appropriate remedy when the foregoing situation arises is dismissal. *See Longinott v. Bouffard*, No. 11 CV 4245(VB), 2012 WL 1392579, at *6 (S.D.N.Y. Apr. 17, 2012).

Here, Plaintiffs' Fourteenth Amendment due process claim is explicitly based on Defendants' alleged violation of Plaintiffs' First Amendment rights. *See* Compl. ¶¶ 96-98. Because Plaintiffs also alleged causes of action for the specific rights used as support for the substantive due process claim, they are duplicative and must be dismissed. *See Velez v. Levy*, 40 F.3d 75, 94 (2d Cir. 2005). Also fatal to their claim, Plaintiffs fail to allege conduct rising to the level necessary to support a substantive due process violation. *See Simmons v. Inc. Vill. of Rockville Ctr.*, No. 24-2021, 2025 WL 2965799, at *3 (2d Cir. Oct. 21, 2025) (explaining that a substantive due process claim requires allegations of governmental acts that were arbitrary, conscience-shocking, or oppressive in a constitutional sense).

In short, Plaintiffs have no substantive due process claim under the Fourteenth Amendment.

**V. Plaintiffs Admit that They Cannot Support a Claim Under the Composition Clause.**

Plaintiffs allege that Defendants conspired "against Plaintiffs' constitutional right under Article I, § 2." Compl. ¶ 111. Despite that assertion, Plaintiffs admit that they "cannot say with certainty that any election *outcomes* were false, official records in the custody of Defendants plainly demonstrate that neither can Defendants prove their truth according to any reasonable standard." *Id.* This claim also fails as a matter of law.

Article I, § 2 of the United States Constitution provides that "[t]he House of Representatives shall be composed of Members chosen every second Year by the People of the several States, and the Electors in each State shall have the Qualifications requisite for Electors of

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the most numerous Branch of the State Legislature." That provision, referred to as the Composition Clause, "gives persons qualified to vote a constitutional right to vote and to have their votes counted." *Wesberry v. Sanders*, 376 U.S. 1, 17 (1964). In other words, "as nearly as is practicable one man's vote in a congressional election is to be worth as much as another's." *Id.* at 8.

Little authority exists regarding cases in which Article I, § 2 was the basis for a claim brought pursuant to 42 U.S.C. § 1983, but what is clear from the text of the provision and the Supreme Court's interpretation thereof is that it protects the right to vote and to have one's vote counted in a federal election. *See United States v. Classic*, 313 U.S. 299, 315 (1941) (describing right secured by Article I, § 2 at "the right of qualified voters within a state to cast their ballots and have them counted at Congressional elections"); *see Harper v. Va. State Bd. of Elections*, 383 U.S. 663, 664 (1966) ("[T]he right to vote in federal elections is conferred by Art. I, s 2, of the Constitution . . . ."); *see also Isabel v. Reagan*, 987 F.3d 1220, 1225-26 (9th Cir. 2021) (dismissing a § 1983 claim for a violation of Article I, § 2 because the plaintiff had not timely registered to vote).

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Here, NYCA lacks capacity to vote at all. *See* N.Y. Const. Art. 2, § 1 ("Every *citizen* shall be entitled to vote . . . ." (emphasis added)). The individual Plaintiffs, all of whom allege that they are qualified to vote in New York, admit that they cannot prove any interference with that right. *See* Compl. ¶ 111 ("Plaintiffs cannot say with certainty that any election *outcomes* were false. . . ."). By their own admission, they are unable to allege false election outcomes that

deprived them of their right to vote and have their votes counted, which is fatal to the claim. *See Classic*, 313 U.S. at 315. Plaintiffs' Composition Clause claim fails as a matter of law.

**VI. Plaintiff NYCA's Defamation Claim is Time-Barred and is Otherwise Fatally Flawed.**

Plaintiffs' allegations of defamation of NYCA stem from six publications by Defendants that occurred in April, August, September, October, and November 2023.[5] *See* Compl. ¶ 93. Because the claim is plainly untimely, it must be dismissed. The cause of actions also fails on the merits.

Defamation claims in New York are governed by a one-year statute of limitations. *See* CPLR 215(3). Irrespective of ongoing harm to the plaintiff or republication of the statement, the accrual date for such a claim is the date of the original publication. *See Gregoire v. G. P. Putna's Sons*, 298 N.Y. 119, 125 (1948); *Bassim v. Hassett*, 184 A.D.2d 908, 910 (3d Dep't 1992); *see also Meyer v. Onondaga County*, 30 A.D.3d 1002, 1002-03 (4th Dep't 2006). Here, Plaintiffs' claim is plainly untimely despite their allegation that the "damaging effect" of the supposedly defamatory statements are "ongoing." Compl. ¶ 94. Because the date of the original publication was, at the very latest, November 2023 and this action was commenced in October 2025, well beyond the expiration of the one-year statute of limitations, this claim is plainly time-barred.

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The defamation claim is fatally flawed in any event. Under New York law, defamation is "the making of a false statement which tends to expose the plaintiff to public contempt, ridicule, aversion or disgrace, or induce an evil opinion of him in the minds of right-thinking persons, and to deprive him of their friendly intercourse in society." *Foster v. Churchill*, 87 N.Y.2d 744, 751 (1996) (quoting *Rinaldi v. Holt, Rinehart & Winston*, 42 N.Y.2d 369, 379 (1977)). "While a plaintiff need not be specifically named in a publication to sustain a cause of action sounding in

[5] Only NYCA asserts a claim of defamation. *See* Compl. ¶¶ 91-94.

defamation, a plaintiff who is not specifically identified 'must sustain the burden of pleading and proving that the defamatory statement referred to him or her.'" *Lihong Dong v. Ming Hai*, 108 A.D.3d 599, 600 (2d Dep't 2013) (quoting *Chicherchia v. Cleary*, 207 A.D.2d 855, 855 (2d Dep't 1994)). Where the statements at issue are not defamatory per se, that is, the statement "(1) charges the plaintiff with a serious crime; (2) tends to injure the plaintiff in her or his trade, business, or profession; (3) imputes that the plaintiff has a loathsome disease; or (4) imputes unchastity to a woman," the plaintiff must allege "special damages," which "contemplate the loss of something having economic or pecuniary value." *Laguerre v. Maurice*, 192 A.D.3d 44, 50 (2d Dep't 2020); *see Liberman v. Gelstein*, 80 N.Y.2d 429, 435 (1992). Lastly, while a nonprofit entity like NYCA may maintain a defamation claim if it is dependent for its support on voluntary contributions, *see N.Y. Soc. Of Suppression of Vice v. Macfadden Publ'n*, 260 N.Y. 167, 171 (1932), it can also be considered a public figure, or limited-purpose public figure, that must prove—in addition to the elements recited above—that the claimed defamatory statements were made with actual malice, meaning knowledge of falsity or reckless disregard for the truth. *See Gottwald v. Sebert*, 40 N.Y.3d 240, 251-52 (2023); *see also James v. Gannett Co.*, 40 N.Y.2d 415, 423 (1976); *Gottwald v. Sebert*, 193 A.D.3d 573, 585 (1st Dep't 2021) (Scarpulla, J., dissenting) (recognizing that business entities may be treated as limited-purpose public figures).

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The statements authored by OAG Defendants are not defamatory. The cease and desist notification transparently identifies its genesis: reports that NYCA volunteers were confronting voters at their homes. *See* Compl., Ex. 20 at 1. The notification also provides that the "allegations, *if true*, could constitute unlawful voter deception . . . and intimidation." *Id.* (emphasis added).

Further, the letter confirming receipt of documents from NYCA's counsel and a subpoena duces tecum make no statements regarding NYCA at all. *See id.*, Ex. 22.

The statements attributed to BOE Defendants are likewise not actionable. *See id.*, Exs. 17, 18, 21, 23. Only one of those publications even mentions NYCA, and it does not rise to the requisite level necessary to be considered defamatory. *See id.*, Ex. 23. Plaintiffs fail to allege that the supposedly defamatory statements referred to NYCA or identify with any specificity what about the publications at issue was defamatory. In addition, NYCA should be treated as a public figure, at least with respect to the publicity it sought regarding its analysis of election data. *See Gottwald*, 40 N.Y.3d at 251. As such, Plaintiffs were required to allege facts that would support Defendants' actual malice and yet they have averred in conclusory fashion only that Defendants acted "with malice and/or with a reckless disregard for truth." Compl. ¶ 92.

Alternatively, should the Court dismiss all claims over which it has original jurisdiction, the Court may decline to exercise supplemental jurisdiction over this state law claim. *See* 28 U.S.C. § 1367 (c) (3); *City of Chicago v. Int'l Coll. of Surgeons*, 522 U.S. 156, 172 (1997).

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## VII. Plaintiffs' Passing References to Other Alleged Wrongs by Defendants Are of No Legal Consequence.

The Complaint is strewn with stray references to perceived wrongs and slights, none of which are associated with a particular cause of action and none of which are sufficient to sustain a cause of action. For example, Plaintiffs make passing mentions of BOE Defendants' conspiracy "to withhold incriminating evidence of election misconduct by refusing to provide the NYSVoter audit logs pursuant to lawful FOIL requests." Compl. at 48; *see id.* ¶ 44. Because any such denial "amounts to a random unauthorized act of a state employee" and an adequate post-deprivation

remedy exists by way of a special proceeding under CPLR article 78, such a claim is not cognizable under § 1983. *Davis v. Guarino*, 52 F. App'x 568, 569 (2d Cir. 2002).

Plaintiffs also make improper attempts to allege a conspiracy amongst the various defendants to violate various constitutional rights. *See, e.g.*, Compl. ¶¶ 66, 83, 89, 111. Under well-settled law, where the plaintiff fails to adequately allege an underlying constitutional violation, there can be no § 1983 or § 1985 conspiracy. *See Curley*, 268 F.3d at 72. Plaintiffs fail to state an underlying constitutional violation. Accordingly, their conspiracy claims, to the extent stated, fail.

In short, because Plaintiffs' stray remarks and accusations do not allege any claim, this Court must ignore them.

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## CONCLUSION

For all of the reasons detailed above, Defendants' motion to dismiss should be granted, and the Complaint should be dismissed in its entirety.

Dated: Albany, New York
December 23, 2025

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