

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ALBANY

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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,

Index No. 908840-23

Plaintiffs,

**[PROPOSED] ANSWER
OF INTERVENOR-
DEFENDANTS**

-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.

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Intervenor-Defendants DCCC, Senator Kirsten Gillibrand, Representatives Yvette Clarke,
Grace Meng, Joseph Morelle, and Ritchie Torres, and New York voters Janice Strauss, Geoff
Strauss, Rima Liscum, Barbara Walsh, Michael Colombo, and Yvette Vasquez (collectively,
“Intervenors”), by and through their attorneys Dreyer Boyajian LLP and Elias Law Group LLP,
submit the following Answer to Plaintiffs’ Complaint. Intervenors respond to the allegations in the
Complaint as follows:

NATURE OF THE CASE

1. Intervenors admit that Plaintiffs are seeking a declaratory judgment and injunctive relief. Intervenors lack knowledge with respect to whether Plaintiffs include qualified citizen voters, and therefore neither admit nor deny that allegation. Intervenors further admit that Chapter 481 of the Laws of 2023 of the State of New York, entitled the New York Early Mail Voter Act, was enacted by the Legislature in June of this year and signed into law by Governor Hochul on September 20, 2023. Intervenors deny that Plaintiffs are entitled to the relief that they seek.

2. Paragraph 2 contains legal conclusions and characterizations, to which no response is required. To the extent a response is required, Intervenors deny the allegations.

3. Paragraph 3 contains legal conclusions and characterizations, to which no response is required. To the extent a response is required, Intervenors deny the allegations.

4. Intervenors deny that the Early Mail Voter Act was enacted in defiance of Article II, § 2 and in subversion of the will of the People. Intervenors admit that, in the November 2021 general election, more than 55% of votes cast opposed a proposed ballot amendment proposed by the Legislature entitled, “Authorizing No-Excuse Absentee Ballot Voting,” but deny that any conclusion may be drawn therefrom. Paragraph 4 otherwise contains purported characterizations of the Early Mail Voter Act and the cited proposed amendment, which speak for themselves, and no response is required. To the extent a response is required, Intervenors deny these allegations.

5. Paragraph 5 purports to quote from a sponsor memo, which speaks for itself, and no response is required.

6. Paragraph 6 contains legal conclusions, characterizations, or opinions to which no response is required. To the extent a response is required, Intervenors deny the allegations in Paragraph 6.

7. Paragraph 7 contains legal conclusions, characterizations, or opinions to which no response is required. To the extent a response is required, Intervenors deny the allegations in Paragraph 7. Intervenors further deny that Plaintiffs are entitled to the relief they seek.

PARTIES

8. Intervenors admit that Plaintiff Elise Stefanik is a Member of the U.S. House of Representatives for New York's 21st Congressional District. Intervenors otherwise deny knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 8.

9. Intervenors admit that Plaintiff Nicole Malliotakis is a Member of the U.S. House of Representatives for New York's 11th Congressional District. Intervenors otherwise deny knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 9.

10. Intervenors admit Plaintiff Nicholas Langworthy is a Member of the U.S. House of Representatives for New York's 23rd Congressional District. Intervenors otherwise deny knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 10.

11. Intervenors admit Plaintiff Claudia Tenney is a Member of the U.S. House of Representatives for New York's 24th Congressional District. Intervenors otherwise deny knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 11.

12. Intervenors deny knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 12.

13. Intervenors deny knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 13.

14. Intervenors deny knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 14.

15. Intervenors deny knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 15.

16. Intervenors deny knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 16.

17. Intervenors deny knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 17.

18. Intervenors deny knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 18.

19. Intervenors deny knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 19.

20. Intervenors deny knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 20.

21. Intervenors deny knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 21.

22. Intervenors deny knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 22.

23. Intervenors deny knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 23.

24. Intervenors deny knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 24.

25. Intervenors deny knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 25.

26. Intervenors deny knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 26.

27. Intervenors deny knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 27.

28. Admit.

29. Admit.

30. Admit.

31. Admit.

32. Admit.

VENUE

33. Intervenors deny knowledge or information sufficient to form a belief as to the truth of the allegation that at least one Plaintiff is located within the Third Judicial Department. Paragraph 33 otherwise states a legal conclusion to which no response is required. To the extent a response is required, Intervenors deny the remaining allegations in Paragraph 33.

FACTUAL BACKGROUND

34. Paragraph 34 purports to quote from a book, which speaks for itself, and no response is required. Paragraph 34 otherwise contains legal conclusions and characterizations to which no response is required. To the extent a response is required, Intervenors deny the allegations in Paragraph 34.

35. Paragraph 35 contains legal conclusions and characterizations to which no response is required. To the extent a response is required, Intervenors deny the allegations in Paragraph 35.

36. Paragraph 36 purports to characterize the cited book, which speaks for itself, and no response is required. To the extent a response is required, Intervenors deny the allegations in Paragraph 36.

37. Paragraph 37 purports to characterize and quote from two cited books, which speak for themselves, and no response is required. Paragraph 37 otherwise contains legal conclusions and characterizations to which no response is required. To the extent a response is required, Intervenors deny the allegations in Paragraph 37.

38. Paragraph 38 purports to characterize and quote from a cited newspaper article and book, which speak for themselves, and no response is required. Paragraph 38 otherwise contains legal conclusions and characterizations to which no response is required. To the extent a response is required, Intervenors deny the allegations in Paragraph 38.

39. Paragraph 39 purports to characterize and quote from a cited newspaper article and book, which speak for themselves, and no response is required. Paragraph 39 otherwise contains legal conclusions and characterizations to which no response is required. To the extent a response is required, Intervenors deny the allegations in Paragraph 39.

40. Paragraph 40 purports to characterize Department of State records and quote from the New York Constitution, which speak for themselves, and no response is required. Paragraph 40 otherwise contains legal conclusions and characterizations to which no response is required. To the extent a response is required, Intervenors deny the allegations in Paragraph 40.

41. Paragraph 41 purports to characterize a statute, which speaks for itself, and no response is required. Intervenors admit that those who fall within the two constitutionally

enumerated categories can vote by applying for an absentee ballot and then delivering their ballots to their board of elections, either in person or by mail.

42. Intervenor deny knowledge or information sufficient to form a belief as to the truth of the allegation regarding what the “Legislature understood.” Paragraph 42 purports to quote from a sponsor memo, which speaks for itself, and no response is required. Intervenor admit that the legislature passed the proposed amendment and referred it to the people in 2021 as a ballot measure for ratification. Paragraph 42 otherwise contains legal conclusions and characterizations to which no response is required.

43. Intervenor deny that supporters of expanded mail voting conceded that the amendment was constitutionally necessary. Paragraph 43 otherwise purports to quote from written reports, which speak for themselves, and no response is required. To the extent a response is required, Intervenor deny the allegations in Paragraph 43.

44. Paragraph 44 purports to quote from and characterize a ballot measure, which speaks for itself, and no response is required.

45. Intervenor admit that the proposed amendment failed in the 2021 election. Paragraph 45 otherwise purports to quote from a news article and characterize poll results, which speak for themselves, and no response is required. To the extent a response is required, Intervenor deny the allegations in Paragraph 45.

46. Intervenor deny that the Legislature passed 2023 NY Senate-Assembly Bill S7394, A7632 on June 6, 2023. Paragraph 46 otherwise purports to quote from a statute, which speaks for itself, and no response is required.

47. Paragraph 47 purports to characterize and quote from statutes, which speak for themselves, and no response is required. Paragraph 47 otherwise contains mere legal conclusions

and characterizations to which no response is required. To the extent a response is required, Intervenor deny the allegations in Paragraph 47.

48. Paragraph 48 purports to characterize and quote from a statute, which speaks for itself, and no response is required. Paragraph 48 otherwise contains legal conclusions and characterizations to which no response is required. To the extent a response is required, Intervenor deny the allegations in Paragraph 48.

49. Paragraph 49 purports to characterize and quote from a statute, which speaks for itself, and no response is required. Paragraph 49 otherwise contains legal conclusions and characterizations to which no response is required. To the extent a response is required, Intervenor deny the allegations in Paragraph 49.

50. Paragraph 50 contains legal conclusions and characterizations to which no response is required. Paragraph 50 otherwise purports to quote from an article, which speaks for itself, and no response is required. To the extent a response is required, Intervenor deny the allegations in Paragraph 50.

51. Admit.

52. Intervenor deny knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 52

53. Intervenor deny knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 53.

54. Intervenor deny that Commissioner Plaintiffs will be required to either perform acts that violate the New York Constitution or to refrain from actions compelled by New York statutes.

55. Intervenors deny knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 55.

56. Intervenors deny knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 56.

57. Intervenors deny knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 57.

58. Intervenors deny knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 58.

59. Intervenors deny knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 59.

60. Intervenors deny knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 60.

61. Intervenors deny knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 61.

62. Intervenors deny knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 62.

63. Paragraph 63 contains a legal conclusion and characterization, to which no response is required. To the extent a response is required, Intervenors deny the allegation.

64. Paragraph 64 contains a mere legal conclusion and characterization, to which no response is required. To the extent a response is required, Intervenors deny the allegation.

AS AND FOR A CAUSE OF ACTION

65. Intervenors repeat and reallege the above responses as if fully set forth herein.

66. Paragraph 66 states a legal conclusion to which no response is required. To the extent a response is required, Intervenors deny the allegation.

67. Paragraph 67 states a legal conclusion to which no response is required. To the extent a response is required, Intervenors deny the allegation.

68. Paragraph 68 contains legal conclusions, characterizations, or opinions to which no response is required. To the extent a response is required, Intervenors deny the allegations in Paragraph 68.

69. Paragraph 69 purports to characterize and quote from the cited decision, which speaks for itself, and no response is required. To the extent a response is required, Intervenors deny the allegations in Paragraph 69.

70. Paragraph 70 contains legal conclusions, characterizations, or opinions to which no response is required. Paragraph 70 otherwise purports to characterize and quote from the cited decisions, which speak for themselves, and no response is required. To the extent a response is required, Intervenors deny the allegations in Paragraph 70.

71. Paragraph 71 contains legal conclusions, characterizations, or opinions to which no response is required. To the extent a response is required, Intervenors deny the allegations in Paragraph 71.

72. Paragraph 72 contains legal conclusions, characterizations, or opinions to which no response is required. Paragraph 72 otherwise purports to characterize and quote from a report and opinion, which speak for themselves, and no response is required. To the extent a response is required, Intervenors deny the allegations in Paragraph 72.

73. Paragraph 73 contains legal conclusions, characterizations, or opinions to which no response is required. To the extent a response is required, Intervenor deny the allegations in Paragraph 73.

74. Paragraph 74 states a legal conclusion to which no response is required. To the extent a response is required, Intervenor deny the allegation in Paragraph 74.

PRAYER FOR RELIEF

Intervenor deny that Petitioners are entitled to any relief.

FIRST AFFIRMATIVE DEFENSE

75. Petitioners' claims are barred in whole or part for failure to state a claim upon which relief can be granted.

AFFIRMATIVE RESERVATION DEMAND

76. Intervenor reserve the right to amend this Answer, including through the addition of affirmative defenses or objections in point of law.

WHEREFORE, the Intervenor-Defendants hereby demand judgment as follows:

- a) Dismissing the Verified Complaint;
- b) Awarding Defendants costs and disbursements incurred in this matter, together with such other and further relief as this Court may deem just and proper.

Date: September 29, 2023

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/s/ Aria C. Branch

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**Pro hac vice applications forthcoming*