STATE OF NEW YORK
SUPREME COURT – COUNTY OF ALBANY

Index No. 908840-23

Assigned Judge: Hon. Christina L. Ryba

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, and REPUBLICAN NATIONAL COMMITTEE,

Plaintiffs,

-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.

REPLY IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

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Dated: October 12, 2023

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INTRODUCTION

None of the Defendants[1] dispute that New Yorkers have long understood that constitutional amendments are required before new categories of voters can vote in any manner other than in person. Instead, they ask this Court to believe that New York voters and elected officials have been mistaken for centuries. They also ask the Court to accept the self-evidently false proposition that Article II, Section 2's limitations on "absentee voting" do not apply to "voting by mail," even though *the Mail Voting Law itself* conflates the two. *See* PI-Br. 18. If Defendants were right, then Article II, Section 2 would be "functionally meaningless." *Harkenrider v. Hochul*, 38 N.Y.3d 494, 509 (2022). The Court of Appeals has rejected such outcomes in the past, even when the State has invoked its "plenary authority" to dictate election-related issues. *See id.* at 508-09, 526. This Court should do the same.

Left with few other options, Defendants misstate the standard of review, cherry-pick cases on the merits, and misconstrue Plaintiffs' position. Proposed-Intervenors, for example, rely on dicta for the proposition that New York courts do not apply the *expressio unius est exclusio alterius* canon of construction to constitutional provisions, even though the Court of Appeals has explicitly relied on the canon since then and appellate divisions have applied it to constitutional questions in recent years.

As a last resort, Defendants claim that Plaintiffs have not demonstrated irreparable harm in the absence of an injunction and that the balance of the equities favors overhauling New York's elections system rather than maintaining the status quo. Those arguments fly in the face of decades of settled law. The Court should issue a preliminary injunction.

[1] This brief refers to the State Defendants, Board of Election Defendants, and Proposed-Intervenors collectively as "Defendants."

ARGUMENT

I. The preliminary injunction standard requires plaintiffs to show a "probability of success," not proof "beyond a reasonable doubt" or any other "heightened standard."

The State Defendants concede that the usual test for a preliminary injunction applies. *See* State-Br. 3. Intervenors, however, claim that Plaintiffs must "show beyond a reasonable doubt that the [Mail Voting Law] violates Section 2." Intervenors-Br. 1; *see also id.* at 5, 6, 13. Not so. In support of this novel proposition, Intervenors string together two entirely inapposite cases that involved different procedural postures and addressed different areas of law. First, they quote *State v. Schultz Executive* for the unremarkable proposition that courts presume that statutes are constitutional at all stages of litigation, including at the preliminary injunction stage, until shown otherwise. *See* Intervenors-Br. 5 (citing 108 A.D.3d 856, 857 (3d Dep't 2013)). Intervenors then quote *People v. Viviani* for the proposition that a Plaintiff can only "'rebut that presumption'" and obtain a preliminary injunction by "'proving beyond a reasonable doubt that the statute is conflict with the Constitution.'" *Id.* (quoting 36 N.Y.3d 564, 576 (2021)).

Intervenors neglect to mention, however, that *Viviani* was a *criminal case*—not a civil case seeking a preliminary injunction—that involved constitutional challenges to indictments. *Viviani*, 36 N.Y.3d at 574. Intervenors cite no other case supporting their asserted standard. In fact, *Schultz Executive* itself relied on the traditional preliminary injunction standard. *See* 108 A.D.3d at 858. The Board Defendants briefly mention the "beyond a reasonable doubt" standard, Board-Br. 4, but they elsewhere describe the applicable threshold as a "likelihood of success," *see id.* at 19. To the extent that the Board Defendants join Intervenors' position, they likewise fail to cite any case that involved a preliminary injunction, *see id.* at 4, and their arguments fail for the same reasons.

Finally, the Board Defendants suggest that Plaintiffs face a "heightened standard" because they seek a "mandatory" injunction. Board-Br. 19-20 (citing *Roberts v. Paterson*, 84 A.D.3d 655

(1st Dep't 2011)). But unlike the plaintiffs in *Roberts*, who sought "a preliminary injunction requiring defendants to fund health insurance benefits for retirees of the New York City Off-Track Betting Corporation," *id.*, Plaintiffs seek a "prohibitory injunction" to prevent Defendants from enforcing the Mail Voting Law and to "maintain[ ] the status quo" in New York elections, *State v. Town of Haverstraw*, 219 A.D.2d 64, 66 (2d Dep't 1996).

II. Plaintiffs have shown a probability of success on the merits.

Article II, Section 2 specifies the narrow categories of voters who "may vote" in a manner other than appearing "personally at the polls." N.Y. Const., art. II, §2; *see* PI Br. 14. Consistent with the plain text of Section 2, New York has always adopted a constitutional amendment before expanding the list of citizens who can cast ballots without appearing in person. *See, e.g.*, 2 Lincoln, *The Constitutional History of New York* 239 (1906) (Civil War soldiers); *For Absentee Voting*, N.Y. Times (Oct. 5, 1919), perma.cc/SPA2-EG25 (commercial travelers); Compl. ¶¶34-41.

According to Defendants, this is all irrelevant, because Article II, Section 7 gives the legislature "plenary authority to regulate elections," and Section 2's restriction on "absentee voting" does not specifically mention voting by mail. Intervenors-Br. 60; *see also* State-Br. 7; Board-Br. 13. In support of that argument, Defendants recycle Constitutional interpretations the Court of Appeals has already rejected and purport to rebut arguments Plaintiffs have never made.[2]

First, Defendants argue that, although Section 2 only authorizes "'absentee' voting for [certain] categories of voters," it doesn't exclude everyone else from "mail voting." *See* Intervenors-Br. 6-7. This is so, Intervenors say, because Section 2's regulation of "absentee voting" is not "specific to mail voting" and allows for other ways to cast ballots without

[2] The State Defendants spend several pages arguing that the Mail Voting Law satisfies the *federal* Constitution, even though Plaintiffs never raised any federal claims. *See* State-Br. 4-6. The State's sparse discussion of the New York Constitution underscores the weakness of its position.

"personally" voting "at the polls." *Id.* But Plaintiffs do not argue that the Mail Voting Law is unconstitutional because "Section 2 only authorizes mail voting for certain voters." *Id.* at 7. Rather, Plaintiffs argue that that Section 2 only authorizes *absentee* voting for certain voters, and because mail-voting is a *type* of absentee voting, it is therefore limited to the categories enumerated in Section 2. *See, e.g.*, Black's Law Dictionary 8, *Absentee Voting*, (1990) (defining "absentee voting" as "[p]articipation (*usually by mail*) in elections by qualified voters who" do not "appear at the polls in person on election day." (emphasis added)); Cambridge Dictionary, *Absentee Voting*, perma.cc/9TC8-VE48 (similar); *see also Yaniveth R. ex rel. Ramona S. v. LTD Realty Co.*, 27 N.Y.3d 186, 192 (2016) ("[W]e construe words of ordinary import with their usual and commonly understood meaning, and in that connection have regarded dictionary definitions as useful guideposts in determining the meaning of a word or phrase."). Furthermore, the plain text of Section 2 confirms that "absentee voting" refers to votes cast from anywhere other than *the polling place itself*, regardless of physical location. *See* art. II, §2 ("unable to appear" at the polls "because of illness or physical disability").

Relatedly, the State argues that Section 2 is inapplicable to the Mail Voting Law because Section 2 only authorizes absentee-voting options for voters who are physically unable to vote in person or will be physically absent from the polls for specific reasons, whereas the Mail Voting Law authorizes mail-voting for all voters regardless of location or ability. *See* State-Br. 10. That argument misses the entire point of Section 2—that the legislature may authorize absentee voting only in a few, carefully delineated circumstances. The Mail-Voting Law exceeds the limited grant of power in Section 2 by authorizing anyone to vote absentee for any reason. *See* PI-Br. 14.

To justify their unprecedented position, Intervenors and the State both claim that the *expressio unius* canon of construction is inapplicable in matters involving the New York

Constitution.[3] According to Intervenors, "New York courts have explicitly rejected the canon … when interpreting the Constitution." Intervenors-Br. 7. But Intervenors can only point to dicta from two cases. In the first, *Cancemi v. People*, the Court of Appeals merely referenced the canon in passing, while holding that a defendant's ability to waive his right to a jury trial in civil cases did not automatically mean that he could similarly waive his rights in a criminal case. *See* 18 N.Y. 128 (1858). Whatever the import of this isolated reference, *Cancemi* has long since been overruled. *See, e.g., People v. Gajadhar*, 828 N.Y.S.2d 346, 349-50 (2007). The second opinion referenced by Intervenors is no more availing—it predates *Cancemi*, also contains only a single reference to *expressio unius*, and was authored by a single justice. *See Barto v. Himrod*, 8 N.Y. 483, 493 (1853) (Willard, J.).

Furthermore, Intervenors ignore several other—and more recent—examples of the Court of Appeals and the Appellate Division applying the canon in constitutional cases. For example, the Court of Appeals invoked *expressio unius* verbatim while interpreting a constitutional provision in *People ex rel. Killeen v. Angle*. *See* 109 N.Y. 564, 574-75 (1888) ("Under established rules of construction these express provisions for the supervision by the legislature over the cases referred to, afford the strongest implication that, in other respects, it was not intended to leave the powers conferred by the amendment to such control or supervision. '*Expressio unius personæ vel rei est exclusio alterius.*'"). More recently, the First Department invoked *expressio unius* while interpreting Article VII, Section 4 of the Constitution, and the Court of Appeals affirmed. *See Silver v. Pataki*, 3 A.D.3d 101, 107 (1st Dep't 2003), *aff'd sub nom. Pataki v. New York State Assembly*, 4 N.Y.3d 75 (2004). The Second Department likewise relied on *expressio unius* in

[3] While Intervenors claim that the Court of Appeals has forbidden the use of *expressio unius*, the State does not go that far, suggesting only that the canon be used with "caution." State-Br. 9.

Hoerger v. Spota, where it applied the maxim to the Constitution's rules for district attorneys under Article XIII, Section 7 and Article IX, Section 2. *See* 109 A.D.3d 564, 569 (2d Dep't 2013). Once again, the Court of Appeals affirmed. *See* 21 N.Y.3d 549 (2013).

Moreover, the Court of Appeals has never wavered from its declaration that "[t]he same rules apply to the construction of a Constitution as to that of statute law." *Wendell v. Lavin*, 246 N.Y. 115, 123 (1927). Intervenors try to downplay *Wendell's* significance on the grounds that the Court of Appeals "did not apply *expressio unius* in that case." *See* Intervenors-Br. 8. But that does not lessen the significance of the Court's legal conclusions. Moreover, the Appellate Divisions have applied *Wendell*'s holding to *expressio unius*. *See, e.g.*, *Hoerger*, 109 A.D.3d at 569. *Expressio unius* is a well-recognized doctrine in New York statutory interpretation. *See* N.Y. Statutes §240; *see also id.* §74.

Even if there were a difference between absentee voting and mail voting, the Mail-Voting Law makes *both* universal, in clear defiance of Section 2. *See* PI-Br. 18. By the law's own terms, any "challenge to an absentee ballot may not be made on the basis that the voter should have applied for an early mail ballot." 2023 NY Senate-Assembly Bill S7394, A7632, at 20-21 perma.cc/QL4T-HGDZ (§8-502). In other words, because any registered voter can apply for an "early mail ballot," *id.* at 2 (§8-700(2)(d)), any registered voter can now also apply for an "absentee ballot" even if they do not meet Section 2's narrow criteria—and their absentee votes must be counted, *id.* at 20-21. Each of the Defendants ignores this crucial fact, perhaps in the hope that this Court will do the same. The Court should not.

Second, and relatedly, Defendants claim that Article II, Section 7 gives the legislature plenary authority to regulate voting in any manner it sees fit. *See, e.g.*, State-Br. 7; Board-Br. 15; Intervenors-Br. 10-11. For starters, Section 2 and Section 7 are directed at different issues. Section

7 refers to the *mechanics* of voting—paper ballot, lever machine, etc.—while Section 2 refers to the *location* of voting. *Compare* N.Y. Const., art. II, §2 (addressing voting somewhere other than "personally at the polling place"), *with* N.Y. Const., art. II, §7 (authorizing the legislature to determine the mechanics of voting, whether they be "by ballot, or by other such method as described by law," and requiring "signatures, at the time of voting, of all persons voting by ballot or voting machine"). Moreover, the State's distinction between absentee voting as an exception and Mail-Voting as a universal general rule is a post hoc invention that appears nowhere in the constitution itself or any constitutional interpretation prior to 2021. *See* PI-Br. 17-18.

Most importantly, Defendants' claim that the "plenary authority" purportedly granted by Section 7 authorizes absentee voting for the entire electorate, *e.g.*, Intervenors-Br. 10-11, renders Section 2 "functionally meaningless." *Harkenrider*, 38 N.Y.3d at 509. The Court of Appeals has repeatedly rejected such outcomes. In *Harkenrider*, the State asserted the right to unilaterally draw a congressional redistricting map when the Independent Redistricting Committee failed to propose its own map as required by Article III, Section 5-b. *Id.* at 512. In defense of this position, the State invoked legislature's "near-plenary authority to adopt" election-related laws. *Id.* at 526, (Troutman, J., dissenting in part). The Court of Appeals disagreed, because deferring to the State's invocation of its general authority to regulate elections would render Section 5-b a nullity. *See id.* at 509. *Harkenrider* is not an outlier. New York courts have a long history of rejecting constitutional interpretations that leave whole sections of the Constitution superfluous. *See, e.g.*, *People v. Moore*, 208 A.D.3d 1514, 1514–15 (3d Dep't 2022) (art. I, §6 right to counsel would be "rendered meaningless"); *Clark v. Greene*, 209 A.D. 668, 672 (3d Dep't 1924) (adopting party's interpretation "is to hold that the language used in section 3, article 5 of the Constitution … is meaningless.").

Third, the Board Defendants similarly argue that Article II, Section 1 grants the legislature blanket authority to determine how people vote, and that Section 2's authorization of absentee voting for limited categories of voters merely "authoriz[es] exceptions to the manner of voting generally applicable." Board-Br. 13. In the process, they lean heavily on the observation that the most recent version of Section 1 does not specify that citizens will vote "in the election district" where they live. Board-Br. 14. Even if that were somehow significant, the Board's construction still makes no sense. Section 2 is permissive, not mandatory: it states that the legislature "*may,* by general law, provide a manner" of absentee voting for voters "who, on the occurrence of any election, may be absent from the county of their residence or … the City of New York" or are "unable to appear physically at the polling place because of illness or physical disability." N.Y. Const., art. II, §2 (emphasis added). If Section 1 allows the legislature to authorize absentee voting for all voters, then Section 2's statement that the legislature "may" authorize absentee voting for absent or disabled voters is entirely redundant. *See supra.*

Fourth, Defendants mischaracterize the history of absentee voting in New York and battle strawmen of Plaintiffs' position. *See, e.g.,* Intervenors-Br. 13 (claiming that Plaintiffs have argued that "the failure of voters to approve a ballot measure somehow deems a duly passed law unconstitutional"); State-Br. 11 ("[S]imply because a prior legislature unsuccessfully attempted to institute no-excuse absentee voting through a constitutional amendment does not preclude the current Legislature from instituting early mail voting."). But Plaintiffs have not argued that the legislature's previous actions are somehow binding. The legislature's 2021 position is just one example among many of the uniform interpretation of Section 2 that began 150 years ago and continued until this year. *See* PI-Br. 15-17; 2019 NY Senate-Assembly Bill S1049, A778, perma.cc/PQH9-9NVL (Constitutional amendment necessary because, "[c]urrently, the New

York State Constitution only allows absentee voting if a person expects to be absent from the county in which they live, or the City of New York, or because of illness for physical disability"); 2021 NY Senate-Assembly Bill S360, A4431, perma.cc/B2J8-PX56 ("the New York State Constitution allows absentee voting in extraordinarily narrow circumstances").

Indeed, the official abstract of the proposed constitutional amendment in 2021, which was prepared by the Board of Elections with the advice of the Attorney General, *see* Election Law §4–108, states:

> The purpose of this proposal is to eliminate the requirement that a voter provide a reason for voting by absentee ballot. The proposed amendment would do so by deleting the requirement currently in the Constitution that restricts absentee voting to people under one of two specific circumstances: (1) those who expect to be absent from the county of their residence, or from New York City for residents of that city, on Election Day, and (2) those who are unable to appear at their polling place because of illness or physical disability.

New York Board of Elections, *2021 Statewide Ballot Proposals*, perma.cc/9Z2F-M749. This language is difficult to reconcile with the State's new interpretation of Section 2. If there were, as Defendants now contend, no "requirement" that voters satisfy one of the two conditions before voting somewhere other than the polling place, how could the proposed amendment have "eliminate[d]" it?

The State got it right the first time. Its 2021 position was consistent with a century and a half of State history. *See* PI-Br. 15. Now, after the failed 2021 ballot proposal, Defendants propose an alternative history based on conjecture and obfuscation. The Board Defendants' recitation of New York's history of absentee voting cites only a single website summarizing the history of absentee voting nationwide. *See* Board-Br. 13. Intervenors emphasize that the previous amendments adding new categories of voters to Section 2 did not specify mail voting as the singular method of voting, and that "the Legislature experimented with several different manners of absentee voting for soldiers." Intervenors-Br. 12-13. Again, this misses the point: the relevant

inquiry is not *which types of absentee voting* the legislature chooses, but *who may vote absentee* at all.

At bottom, Defendants have no logically consistent explanation for why they thought it necessary to seek the public's approval for universal mail voting less than two years ago but now consider voters' opinions on that consequential question irrelevant. Intervenors appear to suggest that voters' decision to reject a constitutional amendment in 2021 is unworthy of credence because it occurred during "a low-turnout, odd-year election," Intervenors-Br. 4. That is not how elections work.

Finally, Defendants take a malleable and self-serving approach to persuasive authority from other state courts. They tell the Court to disregard the Delaware Supreme Court's recent decision vacating a nearly identical law, because "[t]hat decision involved a different constitution, a different law, and a different court system, and therefore cannot undermine" the Mail Voting Law. Intervenors-Br. 8. In the very next breath, they rely on decisions from Pennsylvania and Massachusetts for the proposition that "the legislature's plenary authority to regulate elections allows vote by mail statutes, even where those states' respective constitutions separately provide for absentee voting." *Id.* at 8-9.

While the Court need not look beyond New York precedent to resolve this case, *see Harkenrider*, 38 N.Y.3d at 509, the Massachusetts and Pennsylvania decisions are inapposite. In *Lyons v. Secretary of the Commonwealth*, the Massachusetts Supreme Judicial Court considered a challenge to Massachusetts' mail-voting law under Article 45 of the Massachusetts Constitution, which provided for absentee voting. 490 Mass. 560 (2022). After examining "the debates during the constitutional convention preceding [Article 45's] submission to the voters in 1917," which included discussion of whether various categories of individuals should be permitted to vote

absentee, the court held that "it [was] reasonable to assume that the drafters would have included language expressly foreclosing the Legislature's authority to further expand voting opportunities if that was the result they intended." *Id.* at 577. No such history is present here. *See supra*.

And in *McLinko v. Department of State*, the Pennsylvania Supreme Court sharply divided over the constitutionality of a mail-voting law, but ultimately upheld the law because it had previously "rejected [Plaintiffs'] interpretation" of the Commonwealth's absentee voting provision "in the context of the Constitution in effect at the time [the mail voting law] was enacted." 279 A.3d 539, 580 (Pa. 2022). Moreover, the law had already been in effect for more than a year and used by millions of Pennsylvania voters before it was challenged. *Id.* at 544-45. Unlike the Massachusetts and Pennsylvania cases, the Delaware Supreme Court's decision in *Albence v. Higgin* is directly on point. *See* 295 A.3d 1065 (Del. 2022). Like this case—and like the State in *Harkenrider*—the defendants appealed to the legislature's "plenary authority." *Id.* at 1081. Like this case, the legislature enacted a temporary mail-voting law during the COVID-19 epidemic under a pre-existing constitutional framework and then sought voters' approval to make that temporary law permanent, but voters rejected the proposal. *Id.* at 1081-83. And like this case, the constitutional history was squarely contrary to the law. *Id.* at 1091. The Delaware Supreme Court rejected the legislature's attempt to bypass the state constitution and the popular will, and this Court should do the same.

III. Plaintiffs have demonstrated irreparable harm in the absence of an injunction.

Plaintiffs have demonstrated that they will likely suffer multiple harms that cannot be redressed by monetary damages, and Defendants don't seriously contest that these harms will occur. Instead, they argue that they don't "rise to the level" required for a preliminary injunction. State-Br. 12. That's incorrect.

First, the State Defendants admit that the "[Mail Voting Law] will almost certainly increase the number of mail-in ballots cast." State-Br. 13. Accordingly, they cannot deny that the Election Official Plaintiffs will likely suffer harm: Any significant increase in the number of mail-in ballots will undoubtedly impose additional burdens on the election personnel tasked with processing those ballots. So instead, Defendants complain that the Plaintiffs haven't described these burdens with adequate "specificity." State-Br. 12. But the law only requires Plaintiffs to show that their expected harms are not "merely speculative." *See Golden v. Steam Heat Inc.*, 216 A.D.2d 440, 442 (2d Dept 1995). Defendants cite no authority for the proposition that non-speculative harms must *also* be alleged at a particular "level[] of specificity." State-Br. 12.

Regardless, the Election Official Plaintiffs can anticipate future harms with more specificity than is common at the preliminary-injunction stage. When the State dramatically expanded mail-in voting during the pandemic, they were forced to rework their office processes, hire additional personnel, and work longer hours to process absentee ballots. *See, e.g.*, Monahan Aff. ¶7. Because the new law mimics the pandemic measures, they have established more than "a mere possibility" that these burdens will reoccur. *Bank of Am., N.A. v. PSW NYC LLC*, 918 N.Y.S.2d 396, *10 (N.Y. Sup. Ct. 2010).

Second, the other Plaintiffs have also established non-speculative harms. The Candidate and Organizational Plaintiffs will have to divert existing assets to mail-voting outreach and mobilization programs. *See* Compl. ¶¶57-60. No one denies that the mail-voting law changes the campaign landscape, necessitating such efforts. Instead, the State Defendants emphasize that in-person voting "remains open to all voters." State-Br. 14-15. If anything, that fact cuts in Plaintiffs' favor: If the law entirely *replaced* in-person voting with mail-in voting, the Plaintiffs could simply reallocate all their resources. But because there will now be *two* universal voting methods,

Plaintiffs must develop new programs *in addition* to their existing ones.

The Voter Plaintiffs have established harm, too: the dilution of their votes by the many thousands of constitutionally invalid ballots that would be cast by mail. Unable to deny that likely result, the State Defendants merely rehash their merits arguments, concluding that no harm exists because the law is constitutional. *See* State-Br. 16. That circular reasoning does not transform a likely harm into a "remote or speculative" one. *Golden*, 216 A.D.2d at 442.

Third, each of the Plaintiffs lacks an adequate remedy in the form of monetary damages. *See Chamber of Commerce of U.S. v. Edmondson*, 594 F.3d 742, 770-71 (10th Cir. 2010) ("Imposition of monetary damages that cannot later be recovered for reasons such as sovereign immunity constitutes irreparable injury."); *see also League of Women Voters of N.C. v. North Carolina*, 769 F.3d 224, 247 (4th Cir. 2014) ("[O]nce [an] election occurs, there can be no do-over."). If the Mail Voting Law is held invalid only after an election has occurred, it will be impossible to restore candidates to the positions they would have been in absent the illegally cast ballots. *Cf. Brown v. Chote*, 411 U.S. 452, 455 (1973) ("irreparably lost").

IV. The balance of equities favors a preliminary injunction.

Neither the State nor the public has an interest in enforcing unconstitutional laws. *See Agudath Israel of Am. v. Cuomo*, 983 F.3d 620, 637 (2d. Cir. 2020). Defendants do not argue otherwise, and their arguments all assume that Plaintiffs are unlikely to succeed on the merits. Moreover, Defendants have offered only conclusory statements to support their assertion that they will be harmed by an injunction requiring New York to continue its centuries-old practice. Plaintiffs, on the other hand, will suffer irreparable harm without an injunction, as outlined above.

CONCLUSION

This Court should preliminarily enjoin the implementation of the Mail-Voting Law.

DATED: October 12, 2023

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CERTIFICATE OF COMPLIANCE

I, Michael Y. Hawrylchak, an attorney duly admitted to practice law in the courts of the State of New York, hereby certify that this Reply in Support of Plaintiff's Motion for a Preliminary Injunction complies with the word count limit set forth in Rule 202.8-b of the Uniform Civil Rules for the Supreme Court and the County Court because it contains 4,182 words, excluding the parts exempted by Rule 202.8-b. In preparing this certification, I have relied on the word count of the word-processing system used to prepare this affirmation.

DATED: October 12, 2023 /s/ *Michael Y. Hawrylchak, Esq.*