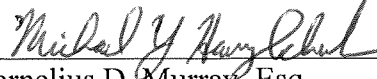


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Albany, New York

O'CONNELL AND ARONOWITZ, P.C.

By: 
Cornelius D. Murray, Esq.
Michael Y. Hawrylchak, Esq.
Attorneys for Plaintiffs
54 State Street, 9th Floor
Albany, New York 12207-2501
(518) 462-5601
cmurray@oalaw.com
mhawrylchak@oalaw.com

NATURE OF THE CASE

1. In this declaratory judgment action, Plaintiffs, including qualified citizen voters, candidates for public office, elected and appointed state and local officials, as well as political party organizations, seek to declare unconstitutional and to enjoin the implementation and enforcement of 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”), which was enacted by the Legislature in June of this year and thereafter signed into law by Governor Hochul on September 20, 2023.

2. The Mail-Voting Law is a blatant violation of Article II, § 2 of the New York State Constitution, which requires qualified voters to cast their vote in any election in person at their designated polling places unless they will be unable to do so because, on the occurrence of any such election, they will either be (a) absent from their county of residence (or the City of New York if they reside in New York City) or (b) unable to appear at the polling place because of illness or physical disability. These are the only exceptions to the requirements in Article II, § 2 that qualified voters must vote in person.

3. Despite the restrictions in Article II, § 2, the Mail-Voting Law nevertheless purports to allow qualified voters to vote by mail rather than in person, even if they do not satisfy either of the two limited exceptions set forth in Article II, § 2.

4. The Mail-Voting Law was enacted by the Legislature in open and knowing defiance of Article II, § 2, ignoring and subverting the will of the People whom the Legislature is supposed to represent. Only two years earlier at the general election held in November 2021, the voters of the State soundly rejected a constitutional amendment proposed by the Legislature entitled “Authorizing No-Excuse Absentee Ballot Voting,” which had sought to amend Article II, § 2 by deleting the requirements for absentee voting in order to allow all qualified voters to vote by mail

without providing a specific reason. More than 55 percent of votes cast opposed the proposed amendment. Both the Mail-Voting Law enacted by the Legislature in 2023 and the proposed constitutional amendment rejected by the voters in 2021 advance the goal of allowing voters to vote by mail without having to declare any specific reason for doing so, but the rejected proposed constitutional amendment was the necessary legal prerequisite to any statutory change.

5. When the Legislature initially adopted the resolution proposing the constitutional amendment that was subsequently rejected by the voters, its sponsors acknowledged that “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 [*sic*] physical disability.” 2019 NY Senate-Assembly Bill S1049, A778.

6. In passing the Mail-Voting Law, the Legislature has now contradicted what it acknowledged in 2021, and in a transparent effort to circumvent the will of the voters, it has resorted to semantics by simply renaming the measure the “Early Mail Voter Act” instead of the “Authorizing No-Excuse Absentee Ballot Voting” Amendment. The Legislature has exalted form over substance.

7. This Complaint traces the etymology of Article II, § 2, and how, until now, it has been consistently viewed by the Legislature and the Judiciary as requiring in-person voting in the absence of a specific exception adopted pursuant to a constitutional amendment. Accordingly, the Mail-Voting Law should be declared unconstitutional and the Defendants should be enjoined both preliminarily and permanently from implementing or enforcing that act in any respect.

PARTIES

8. Plaintiff Elise Stefanik is a Member of the U.S. House of Representatives for New York’s 21st Congressional District. Ms. Stefanik is a candidate for Congress in the 2024 General Election.

Ms. Stefanik voted against the Authorizing No-Excuse Absentee Ballot Voting proposed constitutional amendment ballot proposition. Ms. Stefanik is a resident of Saratoga County, and a registered voter and taxpayer in such county.

9. Plaintiff Nicole Malliotakis is a Member of the U.S. House of Representatives for New York's 11th Congressional District. Ms. Malliotakis is a candidate for Congress in the 2024 General Election. Ms. Malliotakis voted against the Authorizing No-Excuse Absentee Ballot Voting proposed constitutional amendment ballot proposition. Ms. Malliotakis is a resident of Richmond County, Staten Island Borough, and a registered voter and taxpayer in such county.

10. Plaintiff Nicholas Langworthy is a Member of the U.S. House of Representatives for New York's 23rd Congressional District. Mr. Langworthy is a candidate for Congress in the 2024 General Election. Mr. Langworthy voted against the Authorizing No-Excuse Absentee Ballot Voting proposed constitutional amendment ballot proposition. Mr. Langworthy is a resident of Erie County, and a registered voter and taxpayer in such county.

11. Plaintiff Claudia Tenney is a Member of the U.S. House of Representatives for New York's 24th Congressional District. Ms. Tenney is a candidate for Congress in the 2024 General Election. Ms. Tenney voted against the Authorizing No-Excuse Absentee Ballot Voting proposed constitutional amendment ballot proposition. Ms. Tenney is a resident of Oswego County, and a registered voter and taxpayer in such county.

12. Plaintiff Andrew Goodell is a Member of the New York State Assembly for Assembly District 150. Mr. Goodell is a candidate for re-election in the 2024 General Election. Mr. Goodell voted against the Mail-Voting Law and against the Authorizing No-Excuse Absentee Ballot Voting proposed constitutional amendment ballot proposition. Mr. Goodell is a resident of Chautauqua County, and a registered voter and taxpayer in such county.

13. Plaintiff Michael Sigler is a Member of the Tompkins County Legislature for its Sixth District. Mr. Sigler is also the Chairman of the Tompkins County Republican Committee and a candidate for the New York State Senate for the 52nd District. Mr. Sigler voted against the Authorizing No-Excuse Absentee Ballot Voting proposed constitutional amendment ballot proposition. Mr. Sigler is a resident of Tompkins County, and a registered voter and taxpayer in such county.

14. Plaintiff Peter King is a resident of Nassau County, and a registered voter and taxpayer in such county. Mr. King was a member of the U.S. House of Representatives from 1993 to 2021, representing New York's 3rd and later 2nd Congressional District. Mr. King also served as a Town Board member from the town of Hempstead and as Nassau County Comptroller. Mr. King voted against the Authorizing No-Excuse Absentee Ballot Voting proposed constitutional amendment ballot proposition.

15. Plaintiff Gail Teal is a County Board of Elections Commissioner in Hamilton County. Ms. Teal voted against the Authorizing No-Excuse Absentee Ballot Voting proposed constitutional amendment ballot proposition. Ms. Teal is a resident of Hamilton County, and a registered voter and taxpayer in such county.

16. Plaintiff Douglas Colety is a County Board of Elections Commissioner in Westchester County. Mr. Colety is also the Chairman of the Westchester Republican County Committee. Mr. Colety voted against the Authorizing No-Excuse Absentee Ballot Voting proposed constitutional amendment ballot proposition. Mr. Colety is a resident of Westchester County, and a registered voter and taxpayer in such county.

17. Plaintiff Brent Bogardus is a County Board of Elections Commissioner in Greene County. Mr. Bogardus is also the Chairman of the Greene County Republican Committee. Mr. Bogardus

voted against the Authorizing No-Excuse Absentee Ballot Voting proposed constitutional amendment ballot proposition. Mr. Bogardus is a resident of Greene County, and a registered voter and taxpayer in such county.

18. Plaintiff Mark E. Smith is a County Board of Elections Commissioner in Broome County. Mr. Smith voted against the Authorizing No-Excuse Absentee Ballot Voting proposed constitutional amendment ballot proposition. Mr. Smith is a resident of Broome County, and a registered voter and taxpayer in such county.

19. Plaintiff Thomas A. Nichols is a County Board of Elections Commissioner in St. Lawrence County. Mr. Nichols voted against the Authorizing No-Excuse Absentee Ballot Voting proposed constitutional amendment ballot proposition. Mr. Nichols is a resident of St. Lawrence County, and a registered voter and taxpayer in such county.

20. Plaintiff Mary Lou A. Monahan is a County Board of Elections Commissioner in Chenango County. Ms. Monahan voted against the Authorizing No-Excuse Absentee Ballot Voting proposed constitutional amendment ballot proposition. Ms. Monahan is a resident of Chenango County, and a registered voter and taxpayer in such county.

21. Plaintiff Robert F. Holden is a member of the New York City Council representing the 30th District. Mr. Holden voted against the Authorizing No-Excuse Absentee Ballot Voting proposed constitutional amendment ballot proposition. Mr. Holden is a resident of Queens County, Queens Borough, and a registered voter and taxpayer in such county.

22. Plaintiff Carla Kerr Stearns is a resident of New York County, Manhattan Borough, and a registered voter and taxpayer in such county. Ms. Stearns voted against the Authorizing No-Excuse Absentee Ballot Voting proposed constitutional amendment ballot proposition.

23. Plaintiff Jerry Fishman is a resident of Kings County, Brooklyn Borough, and a registered

voter and taxpayer in such county. Mr. Fishman voted against the Authorizing No-Excuse Absentee Ballot Voting proposed constitutional amendment ballot proposition.

24. Plaintiff New York Republican State Committee is a New York State political committee, as defined by New York State Election Law § 2-102, that manages the New York State Republican Party's business at the state level, supports Republican candidates for public office at all levels in New York State elections, coordinates fundraising and election strategy, and develops and promotes the state Republican platform. The New York Republican State Committee engages in various activities to help elect Republicans in New York.

25. Plaintiff Republican National Committee is a national political committee, as defined by 52 U.S.C. § 30101, that manages the Republican Party's business at the national level, supports Republican candidates for public office at all levels, coordinates fundraising and election strategy, and develops and promotes the national Republican platform. The Republican National Committee engages in various activities to help elect Republicans in New York to federal, state, and local offices. Such activities include voter outreach and mobilization programs that will be significantly affected by the Mail-Voting Law.

26. Plaintiff Conservative Party of New York State is a New York State political committee, as defined by New York State Election Law § 2-102, that manages the Conservative Party's business at the state level, supports Conservative candidates for public office at all levels in New York State elections, coordinates fundraising and election strategy, and develops and promotes the state Conservative platform. The Conservative Party of New York State engages in various activities to help elect Conservatives in New York.

27. Plaintiff NRCC (formerly the National Republican Congressional Committee) supports the election of Republicans to the U.S. House of Representatives, including in New York, by providing

direct financial contributions, technical and political guidance, and by making independent expenditures to advance political campaigns. The NRCC operates voter outreach and mobilization programs in New York that will be significantly affected by the Mail-Voting Law.

28. Defendant New York State Board of Elections is a State Agency responsible for the administration and enforcement of all laws relating to elections in New York State and assists local election boards, while also investigating complaints of statutory violations. It has its principal place of business at 40 North Pearl Street, Suite 5, Albany, NY 12207.

29. Defendant Peter S. Kosinski is the Co-Chair of the New York State Board of Elections. He is being sued in his official capacity.

30. Defendant Douglas A. Kellner is the Co-Chair of the New York State Board of Elections. He is being sued in his official capacity.

31. Defendant Kathy Hochul is the Governor of the State of New York with her principal office located at the State Capitol in Albany, New York. She is being sued in her official capacity.

32. Defendant State of New York is the state government constituted by the New York State Constitution.

VENUE

33. Pursuant to Election Law § 16-101, venue is proper in Albany County because at least one Plaintiff is located within the Third Judicial Department.

FACTUAL BACKGROUND

I. History of Mail Voting and the State Constitution

34. The State's constitutional and electoral history shows that mail voting must be expressly authorized by the Constitution. The default constitutional requirement is that voters cast their ballots "at" the election itself, not from afar. N.Y. Const., Art. II, §1. "[T]he Constitution intends

that the right to vote shall only be exercised by the elector *in person*.” 2 Lincoln, *The Constitutional History of New York* 238 (1906) (quoting Governor Seymour).

35. Throughout the history of the State, whenever the Legislature has sought to allow mail voting for certain persons—first soldiers, then commercial travelers, then all travelers and the physically ill or disabled—it has first needed a constitutional amendment. This understanding went unbroken until 2023.

36. Consider the Civil War era, when the Legislature wanted to extend voting rights to Union soldiers who could not vote in person. The Legislature in 1863 drafted a bill to allow soldiers in the battlefields on Election Day to vote by mail. *See* 2 Lincoln, *supra*, at 235. But the Legislature could not enact the bill without a constitutional amendment. *Id.* at 239. Governor Seymour explained that although he supported the bill, it would be unconstitutional. *Id.* at 238. Members of the Legislature expressed the same concern. *Id.* at 237. So they proposed a constitutional amendment providing that “the legislature shall have power to provide the manner in which, and the time and places at which ... absent electors,” if “in the actual military service of the United States,” “may vote.” *Id.* at 239.

37. The Legislature quickly passed the proposed amendment. *Id.* at 238-39. They then called a special election to allow the people to ratify the amendment before the 1864 election, which the people did. *Id.* Only then did the Legislature enact their bill authorizing soldiers to vote by mail. *Id.* at 239-40. For sixty years, this special exception for soldiers stood in contrast to the Constitution’s default requirement of in-person voting. As late as the 1915 constitutional convention, the prevailing view was that beyond that exception, “it will be a long time ... before any Constitution ever permits any such thing as absentee voting.” Poletti et al., *New York State Const. Convention Comm.: Problems Relating to Home Rule and Local Government* 169-70

(1938) (quoting New York Constitutional Convention of 1915, *Revised Record*, pp. 897, 909-10, 1814-15).

38. A few years later, when the Legislature wanted to extend absentee voting rights to commercial travelers, another constitutional amendment was again required. A report showed that hundreds of thousands of New Yorkers, like railroad workers and sailors, were “unable to perform their civic duty” of voting because the expanding modern economy sent them out of town on Election Day. *For Absentee Voting*, N.Y. Times (Oct. 5, 1919), available at perma.cc/SPA2-EG25. To remedy this problem, the Legislature sought to allow these commercial travelers to vote by mail. *Id.* But everyone agreed that doing so required that they “make absentee voting constitutional.” *Id.* (emphasis added). So the Legislature passed a proposed amendment providing that “the legislature may, by general law, provide a manner in which, and the time and place at which,” those unavoidably absent “because of their duties, occupation, or business” could vote by mail. Poletti et al., *supra*, 169.

39. Again, the proposed amendment was put before the people, and again the people ratified it. *Id.*; see also *Voters to Pass on Four Amendments*, N.Y. Times (Oct. 14, 1919), available at perma.cc/JVZ2-SAKS. Only after it was ratified did the Legislature enact a bill authorizing such businesspersons to vote by mail. And when in 1923 and 1929 the Legislature sought to expand mail-voting rights to residents in soldiers’ homes and veterans’ hospitals, they again amended the Constitution to allow them to do so. Poletti et al., *supra*, 169.

40. Likewise, when the Legislature wanted to marginally expand mail voting rights again in 1947, 1955, and 1963, it each time again had to propose to amend the Constitution—and get the people’s ratification—to do so. See New York Department of State, *Votes Cast for and Against Proposed Constitutional Conventions and also Proposed Constitutional Amendments* (2019),

perma.cc/57SH-2GAW (chronicling these votes). As it stands today, Section 2 of Article II of the State Constitution provides the Legislature may authorize absentee voting only for voters who fall into two general categories. First, those who are out of town, for any reason. And second, those who are in town but physically unable to vote in-person. In full, it says:

The legislature may, by general law, provide a manner in which, and the time and place at which, qualified voters who, on the occurrence of any election, may be absent from the county of their residence or, if residents of the city of New York, from the city, and qualified voters who, on the occurrence of any election, may be unable to appear personally at the polling place because of illness or physical disability, may vote and for the return and canvass of their votes.

N.Y. Const. art. II, § 2.

41. The Legislature has operationalized Section 2 with a statute allowing people who fall within these constitutionally enumerated categories to vote. N.Y. Election Law §§ 8-400 *et seq.* Those who fall within the two constitutionally enumerated categories can vote by applying early for an absentee ballot and then delivering their ballots to their board of elections, either in person or by mail. *Id.* § 8-410.

II. The Failed 2021 Mail-Voting Amendment

42. The events underlying this case began in 2019, when the Legislature sought to expand mail voting to everyone permanently. The Legislature understood that it—like every other Legislature before it—would have to amend the Constitution before expanding mail voting. It proposed a constitutional amendment to Article II, Section 2, extending mail voting to “all voters.” 2019 NY Senate-Assembly Bill S1049, A778, perma.cc/PQH9-9NVL. The Legislature’s “justification” explained that the Constitution would not allow it to expand mail voting without one:

Currently, 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.

Id.; see also 2021 NY Senate-Assembly Bill S360, A4431, perma.cc/B2J8-PX56 (“the New York

State Constitution allows absentee voting in extraordinarily narrow circumstances”). The Legislature eventually passed the proposed amendment and referred it to the people in 2021 as a ballot measure for ratification.

43. Supporters of expanded mail voting conceded that the amendment was constitutionally necessary. A report from the New York City Bar, an early catalyst of the proposed amendment, explained that “a legislature inclined to enact no-excuse absentee voting would be *required to amend the Constitution in order to do so.*” New York City Bar, *Instituting No-Excuse Absentee Voting In New York* 4 (2010), available at perma.cc/8CUR-E527 (emphasis added). The report was signed by the City Bar’s 29-member Committee on Election Law, including multiple judges. *Id.* at 15. Other proponents explained that the amendment was necessary because “the [*New York*] *Constitution places unnecessary restrictions and burdens on New Yorkers applying for an absentee ballot.*” *Vote Yes! On the Back Factsheet: The 2021 Constitutional Amendment Ballot Questions*, NYPIRG (2021) (emphasis added).

44. The proposed amendment submitted to the people was called “Authorizing No-Excuse Absentee Ballot Voting.” It explained that it “would delete from the current provision on absentee ballots the requirement that an absentee voter must be unable to appear at the polls by reason of absence from the county or illness or physical disability,” thereby allowing the Legislature to make mail voting available to everyone beyond those two categories. *2021 Statewide Ballot Proposals*, Board of Elections, perma.cc/4FDZ-YPMK.

45. The people rejected the proposed amendment. New Yorkers “overwhelmingly” voted no. Levine, *New Yorkers reject expanded voting access in stunning result*, *The Guardian* (Nov. 9, 2021), perma.cc/QNH7-U4UA. Although New Yorkers had voted for many expansions of mail voting in the past, they decided that this proposal went too far. *2021 Election Results*, Board of

Elections, perma.cc/LK25-HWWS. In doing so, they exercised their sovereign function. And if the Legislature respected the constitutional processes, that would have been the end of this story.

III. The Legislature Enacts Mail Voting Anyway

46. On June 6, 2023, the Legislature passed a bill authorizing *all* “registered voter[s]” to apply “to vote early by mail” in “any election.” 2023 NY Senate-Assembly Bill S7394, A7632, perma.cc/QL4T-HGDZ. (N.Y. Election Law § 8-700). This Mail-Voting Law requires the board of elections to mail a ballot to “*every* registered voter otherwise eligible for such a ballot, who requests such an early mail ballot.” *Id.* at 2 (§ 8-700(2)(d)) (emphasis added). The board must mail requested ballots “as soon as practicable.” *Id.* at 5 (§ 8-704).

47. The Mail-Voting Law gives all voters the same rights that the two categories of absentee voters had before. Throughout its provisions, the Mail-Voting Law uses identical or nearly identical language to the current law governing absentee voting. Voters may apply for a mail ballot by providing their basic information to the election board. *Id.* at 2-3 (§ 8-700); *cf.* N.Y. Election Law § 8-400 (same application and info for absentees). They may do so “at any time until the day before such election.” *Id.* at 2 (§ 8-700(2)(a)); *cf.* N.Y. Election Law § 8-400 (same for absentees). If they qualify—as “every registered voter” does, *id.* at 2 (§ 8-700(2)(d))—the board “shall, as soon as practicable, mail ... an early mail ballot or set of ballots and an envelope therefor.” *Id.* at 5 (§ 8-704); *cf.* N.Y. Election Law § 8-406 (same for absentees). The board must provide “a domestic-postage paid return envelope” with every ballot application and with every ballot itself. *Id.* at 2, 5 (§ 8-700(2)(3), §8-704(2)); *cf.* N.Y. Election Law § 8-406 (same for absentees). The voter then submits the ballot by the same procedures—by delivering it in person or mailing it in the provided nesting envelopes by Election Day. *See id.* at 6-7 (§ 8-708); *cf.* N.Y. Election Law § 8-410 (same for absentees).

48. Throughout the rest of the Election Code, the Mail-Voting Law amends dozens of existing statutory provisions to include the words “early mail” where they now currently say “absentee,” making the two processes identical for all intents and purposes. *Id.* at 13-28, 40-41. It even provides that any “challenge to an absentee ballot may *not* be made on the basis that the voter should have applied for an early mail ballot.” *Id.* at 20-21 (§ 8-502) (emphasis added). In other words, even if there were a difference between the preexisting absentee rules and the new early-mail rules, any registered voter can now use either set of rules without being challenged. The bill also extends the same ballot rules to village elections, school district elections, and special town elections. *Id.* at 11-13, 28-40.

49. The Mail-Voting Law further provides that an absentee ballot may be requested by a voter’s “spouse, parent, or child,” or even “a person residing with the applicant as a member of their household.” *Id.* at 2 (§ 8-700(a)). The person submitting the application can provide any “address to which the ballot shall be mailed,” regardless of whether it is where the voter lives. *Id.* at 2 (§ 8-700(2)(d)). Absentee ballot applications are to be pre-printed and distributed to “political parties,” “colleges,” and “any other convenient distribution source.” *Id.* at 4 (§ 8-700(9)). Applications may be completed by electronic signature. *Id.* at 5 (§ 8-704). And witnesses are rarely required to verify that the application or the ballot itself was signed by the voter. *E.g., id.* at 10.

50. The Legislature’s only attempt to distinguish the Mail-Voting Law from the one that its proposed (but rejected) amendment would have authorized appears semantic—i.e., to call the identical procedure “early mail voting” instead of “absentee voting.” Onlookers observed that the Legislature seemed to be “thumbing its nose at New Yorkers and the state constitution.” *Editorial: New York’s Unconstitutional Mail-Vote Bill*, Wall St. J. (June 20, 2023), perma.cc/TRN5-2TZW.

51. On September 20, 2023, Governor Hochul signed the bill.

IV. Impacts of the Mail-Voting Law

52. The Mail-Voting Law will impose substantial new administrative burdens on election personnel, including Plaintiff county election commissioners, who will have to process the many thousands of additional mail-in ballots that will be submitted by voters who are neither absent from their residence upon the occurrence of the relevant election, nor ill or physically disabled at that time.

53. Plaintiff Commissioners of the county boards of elections will be directly responsible for implementing the Mail-Voting Law, including the many new election administration requirements identified and described above.

54. The Mail-Voting Law will place the Commissioner Plaintiffs in an untenable position, as it will require them to perform acts that violate the New York Constitution or to refrain from actions compelled by New York statutes.

55. The Mail-Voting Law will impose substantial new financial burdens on the county boards of elections because it requires them to provide postage paid return envelopes along with mail-in ballot applications without providing them with the funding necessary to fulfill that obligation. The county boards of elections will also bear the labor and other costs associated with processing, tabulating, and cross-checking many thousands of unconstitutional mail-in ballots.

56. These new expenses of the boards of election are assessed to the counties, allocated to the cities and towns, and ultimately borne by the taxpayers thereof, including the individual Plaintiffs in this action.

57. The Mail-Voting Law will impose significant burdens on Candidate Plaintiffs. Candidate Plaintiffs' voter outreach and mobilization plans are designed to encourage voters to cast their ballot in-person on Election Day because the vast majority of voters do not satisfy the New York

Constitution's "excuse" requirement to be eligible for absentee voting. The Mail-Voting Law will require these candidates to devote significant resources to operate additional and separate voter outreach and mobilization programs directed towards universal mail-voting in addition to their in-person voter outreach and mobilization programs. The strategies and operations associated with a mail-voting outreach and mobilization program differ greatly from those associated with an in-person voting program. For example, a mail-voting outreach and mobilization program requires more frequent contact with voters to ensure they apply for and return a mail ballot. The Mail-Voting Law will also materially affect the competitive environment in which Candidate Plaintiffs campaign for public office and their likelihood of future victory.

58. The Mail-Voting Law will impose similar burdens on the New York Republican State Committee, the Conservative Party of New York State, the Republican National Committee, and the NRCC ("Organizational Plaintiffs"). These Organizational Plaintiffs work to support their parties' candidates for public office at all levels, including by coordinating fundraising and election strategies.

59. Organizational Plaintiffs' voter outreach and mobilization programs are designed to encourage voters to cast their ballot in-person on Election Day because the vast majority of voters do not satisfy the New York Constitution's "excuse" requirement to be eligible for absentee voting. The Mail-Voting Law will require Organizational Plaintiffs to devote significant resources to operate additional and separate voter outreach and mobilization programs directed towards universal mail-voting in addition to their in-person voter outreach and mobilization programs. The strategies and operations associated with a mail-voting outreach and mobilization program differ greatly from those associated with an in-person voting program. For example, a mail-voting outreach and mobilization program requires more frequent contact with voters to ensure they apply

for and return a mail ballot. The Mail-Voting Law will also materially affect the competitive environment in which candidates supported by Organizational Plaintiffs campaign for public office and their likelihood of future victory.

60. For the national Organizational Plaintiffs, operating a voter outreach and mobilization program for universal mail-voting will require them to devote more financial and logistical resources to get-out-the-vote activities in New York State at the expense of activities in other states. They will also have to begin their get-out-the-vote efforts much earlier in the election cycle than under pre-existing law. They will have to hire additional staff and increase the amount of funding allocated to support the New York State Republican Committee and Republican candidates in the state. They will have to conduct an exhaustive voter education campaign to contact voters and explain how the new mail-voting system works – a particularly challenging and time-intensive activity given that mail-voting procedures are more complex than the traditional rules for voting in-person. This education program will have to encompass the mail-voting application procedures and the act of mail-voting itself, each with its own set of deadlines and rules. The national Organizational Plaintiffs will also have to significantly expand their “ballot-curing” operations in the state to notify and encourage mail-voters to take additional actions to correct any errors or omissions which would prevent their ballots from being counted.

61. These national Organizational Plaintiffs have already begun their budgeting and operational planning for the 2024 election cycle. The Mail-Voting Law will require them to adjust their existing operational plans and dedicate more resources to New York than they otherwise would have in response to the significant changes to its electoral process.

62. Until the constitutional validity of the Mail-Voting Law is definitively resolved by the courts, candidates for office will be faced with the dilemma that by encouraging supporters to lock

in their votes by submitting mail-in ballots, they may risk the later nullification of those votes as invalid under the Constitution.

63. Voters who voted against the Authorizing No-Excuse Absentee Ballot Voting ballot proposition resulting in the rejection of the proposed constitutional amendment, including individual Plaintiffs here, had their votes effectively nullified by the passage of the Mail-Voting Law.

64. If an election goes forward under the Mail-Voting Law, Voter Plaintiffs will have their votes diluted by the many thousands of constitutionally invalid ballots cast by mail in violation of the requirements of Article II, Section 2.

AS AND FOR A CAUSE OF ACTION

Violation of the New York State Constitution, Article II, Section 2

65. Plaintiffs repeat and reallege the allegations set forth above as if more fully set forth herein.

66. Article II, Section 2 of the State Constitution authorizes the Legislature to “provide a manner in which, and the time and place at which” two classes of qualified voters “may vote and for the return and canvass of their votes” without being present on Election Day: (1) those “who, on the occurrence of any election, may be absent from the county of their residence or, if residents of the city of New York, from the city” or (2) those “who, on the occurrence of any election, may be unable to appear personally at the polling place because of illness or physical disability.” N.Y. Const. art. II, § 2.

67. The Legislature exceeded its powers in enacting the Mail-Voting Law. By its own terms, the law applies to “every registered voter.” 2023 NY Senate-Assembly Bill S7394, A7632, perma.cc/QL4T-HGDZ, at 2 (§ 8-700(2)(d)) (emphasis added). It applies to voters who are not absent from their county or city and who are not ill or physically disabled. It is universal.

68. For over 150 years, lawmakers and courts have recognized that absentee voting could extend only so far as authorized by the Constitution. *E.g., Sheils v. Flynn*, 299 N.Y.S. 64, 75 (Sup. Ct.), *aff'd* 275 N.Y. 446 (1937) (“The privilege of exercising the elective franchise by qualified voters while absent from the county or state flows from the Constitution.”). For the Legislature to be right today, generations of New York legislators, governors, courts, and voters had to be wrong.

69. As the Delaware Supreme Court unanimously concluded last year when its legislature did the same thing, “the categories of voters identified in [the constitution] constitute a comprehensive list of eligible absentee voters,” so any legislation that goes beyond those categories is “clear[ly]” unconstitutional. *Albence v. Higgin*, 2022 WL 17591864, at *49, *56 (Del. Dec. 13).

70. The Mail-Voting Law also reverses popular sovereignty. “Our Constitution is an instrument framed deliberately and with care, and adopted by the people as the organic law of the State and, when interpreting it, we may not allow for interstitial and interpretative gloss ... by the other branches of the government that substantially alters the specified law-making regimen set forth in the Constitution.” *Harkenrider v. Hochul*, 38 N.Y.3d 494, 511 (2022) (cleaned up). “The People are vested with the supreme and sovereign authority.” *Matter of Sherrill v. O’Brien*, 188 N.Y. 185, 198-99 (N.Y. 1907). “The Constitution is the voice of the People speaking in their sovereign capacity.” *Id.* And crucially, “[t]he authority of the representatives in the legislature is a delegated authority and it is wholly derived from and dependent upon the Constitution.” *Id.* Here, the question whether their Constitution should allow universal mail voting was put to the people in 2021. And they voted no. *2021 Election Results*, Board of Elections, perma.cc/LK25-HWWS.

71. It is a rare case where the proponents of a bill themselves have acknowledged its illegality, but that is this case. The same legislators who in 2021 said that “the New York State Constitution allows absentee voting in extraordinarily narrow circumstances” now take the position that the

Constitution does not limit absentee voting at all. 2021 NY Senate-Assembly Bill S360, A4431, perma.cc/B2J8-PX56.

72. Finally, it does not matter that the Legislature calls the new process “mail voting” rather than “absentee voting.” The two terms are interchangeable. Absentee voting is done almost exclusively by mail. N.Y. Election Law §§ 8-400 et seq. Mail voting is done by people who are absent from the polling place. “[A]bsentee voting” allows voters to “cast such absentee ballots by mail.” New York City Bar, *Instituting No-Excuse Absentee Voting In New York* 4 (2010), available at perma.cc/8CUR-E527 (emphases added). Courts have dismissed any proffered “distinction between voting by mail and absentee voting” as “contradicted by ... law and, frankly, common usage.” *Higgin*, 2022 WL 17591864, at *52.

73. Even if there were a difference between absentee voting and mail voting, Mail-Voting Law makes *both* universal. By its 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” under the law, *id.* at 2 (§ 8-700(2)(d)), any registered voter can now also apply for an “absentee ballot” and be immune to challenge for doing so, *id.* at 20-21. That outcome would fly in the face of the plain text of Article II, Section 2.

74. Because the Mail-Voting Law authorizes what the Constitution forbids, it is void as unconstitutional and must be enjoined.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request:


a. A declaratory judgment pursuant to CPLR 3001 declaring that the Mail-Voting Law is void as violative of the New York State Constitution; and

b. A permanent injunction pursuant to Article 63 of the CPLR prohibiting Defendants, their agents, and anyone acting on their behalf from enforcing and/or implementing the Mail-Voting Law or from counting votes cast under the provisions of the Mail-Voting Law; and

c. A judgment awarding Plaintiffs such other and further relief that the Court deems just, proper, and equitable, including but not limited to reasonable attorneys' fees and other relief pursuant to Article 86 of the CPLR, and costs, disbursements, and other allowances of this proceeding.

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Albany, New York

O'CONNELL AND ARONOWITZ, P.C.

By: 
Cornelius D. Murray, Esq.
Michael Y. Hawrylchak, Esq.
Attorneys for Plaintiff
54 State Street, 9th Floor
Albany, New York 12207-2501
(518) 462-5601