

**UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF NEW YORK**

Emily Gallagher, Alessandra Biaggi, Suraj Patel, Katherine Stabile, Jillian Santella, Aaron Seabright, James C. McNamee, Kristin Sage Rockerman, Maria Barva, Miriam Lazewatsky, Myles Peterson, Samantha Pinsky, Christian O’Toole, Tess Harkin, Caitlin Phung, Antonio Pontón-Núñez, *individually, and on behalf of all others similarly situated,*

Plaintiffs,

v.

New York State Board of Elections; Peter S. Kosinski, Andrew Spano, and Douglas Kellner, *individually and in their official capacities as Commissioners of the New York State Board of Elections;* Todd D. Valentine, Robert A. Brehm, *individually and in their official capacities as Co-Executive Directors of the New York State Board of Elections;* and Andrew Cuomo *as Governor of the State of New York,*

Defendants.

Docket No. 20-cv-5504-AT

**NOTICE OF MOTION FOR
INJUNCTIVE RELIEF**

Maria D. Kaufer and Ethan Felder,

Plaintiff-Intervenors,

v.

New York State Board of Elections; Peter S. Kosinski, Andrew Spano, and Douglas Kellner, *individually and in their official capacities as Commissioners of the New York State Board of Elections;* Todd D. Valentine, Robert A. Brehm, *individually and in their official capacities as Co-Executive Directors of the New York State Board of Elections;* and Andrew Cuomo *as Governor of the State of New York,* New York City Board of Elections, Patricia Anne Taylor, *individually and as President of the New York City Board of Elections,* and Michael J. Ryan, *individually and as the Executive Director of the New York City Board of Elections,*

Defendants.

PLEASE TAKE NOTICE that, upon the ____ Amended Complaint and Exhibits thereto; Plaintiffs’ Memorandum of Law dated September 18, 2020 in support of this Motion; the

Declarations and Exhibits submitted herewith; and all of the prior pleadings and proceedings had herein, Plaintiffs will move this Court, before the Honorable Analisa Torres, United States District Judge, at the United States Courthouse for the Southern District of New York, located at 500 Pearl Street, New York, New York, 10007, for an Order granting Plaintiffs' request for an Order:

1. Requiring the Commissioners and Directors of the New York State Board of Elections (collectively, "NYSBOE"), to direct all local boards of elections that while this case remains pending, in all elections, to count all otherwise valid absentee ballots cast which are (1) received by the end of the first day after the election, without regard to whether such ballots are postmarked by election day; and (2) received by the end of the second day after the election, so long as such ballots are not postmarked later than election day.
2. Requiring NYSBOE to direct all local boards of elections to adopt a policy providing that:
 - a. As a guideline, local board clerks should send applications and ballots on the same day as they receive the request, for requests received before 3:00 p.m. or on the next day for requests received after 3:00 p.m.; and
 - b. As a rule, applications or ballots must be sent before 3:00 p.m. on the second day following the day the request is received.
3. Requiring NYSBOE to direct all local boards of election that while this case remains pending, in all elections, ballots shall be counted without regard to the portion of N.Y. Elec. L. § 8-412 that requires "a cancellation mark of the United States postal service or a foreign country's postal service" or "a dated endorsement of receipt by another agency of the United States government."
4. In the alternative to (3) requiring NYSBOE to direct all local boards of election that rejection of a voter's ballot on the basis of late or missing postmark is unconstitutional if

the voter is not provided with (a) pre-rejection notice of the missing postmark and (b) an opportunity to cure the missing postmark with an affidavit setting out when the ballot was mailed; and directing local boards of elections to implement a process that provides voters with the opportunity to cure missing postmarks by affidavit.

5. Permitting Plaintiffs to file a Second Amended Complaint; and
6. Providing any other relief as the briefing, evidence, record, or proceeding show might be just or proper, or better tailored to the circumstances.

PLEASE TAKE FURTHER NOTICE THAT, as the Court has directed (ECF No. 105):

1. With this Notice, today, September 18, 2020, Plaintiffs are filing their motion to expand the preliminary injunction;
2. By October 2, 2020, the State Defendants shall file their opposition; and
3. By October 9, 2020, Plaintiffs shall file their reply, if any.

DATED: September 18, 2020
Queens, NY

/s/

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