UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

ROBERT L. SCHULZ, ANTHONY FUTIA, Jr.

Plaintiffs,

-against-

STATE OF NEW YORK, ANDREW M. CUOMO, individually and in his official capacity as Governor of the state of New York; JOHN J. FLANAGAN, individually and in his former capacity as Majority Leader of the New York State Senate; ANDREA STEWART-COUSINS, individually an, and in her former capacity as Minority Leader of the New York State Senate; CARL E. HEASTIE, individually and in his official capacity as Speaker of the New York State Assembly; BRIAN KOLB, individually and in his official capacity as Minority Leader of the New York State Assembly; THOMAS DINAPOLI, in his official capacity as Comptroller of New York State,

Defendants.

NOTICE OF MOTION

19-CV-0056

GTS/TWD

PLEASE TAKE NOTICE that, upon the accompanying memorandum of law and upon all prior proceedings, Defendants, on March 21, 2019 at 10:00 a.m., or as soon thereafter as counsel can be heard, will make a motion at the United States District Court, Northern District of New York, Syracuse, New York, pursuant to Rule 12(b)(1),(6) of the Federal Rules of Civil Procedure, for an order dismissing the Complaint in its entirety, together with such other or further relief as may be just.

Dated: Albany, New York
February 5, 2019

LETITIA JAMES
Attorney General of the State of New York
Attorney for Defendants
The Capitol
Albany, New York 12224

By: s/ Chris Liberati-Conant
Chris Liberati-Conant
Assistant Attorney General, of Counsel
Bar Roll No. 700466
Telephone: (518) 776-2584
Email: christopher.liberati-conant@ag.ny.gov

To: Robert L. Schulz
2458 Ridge Road
Queensbury, NY 12804

Anthony Futia, Jr.
34 Custis Avenue
N. White Plains, NY 10603

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

ROBERT L. SCHULZ, ANTHONY FUTIA, Jr.

Plaintiffs,

-against-

STATE OF NEW YORK, ANDREW M. CUOMO, individually and in his official capacity as Governor of the state of New York; JOHN J. FLANAGAN, individually and in his former capacity as Majority Leader of the New York State Senate; ANDREA STEWART-COUSINS, individually an, and in her former capacity as Minority Leader of the New York State Senate; CARL E. HEASTIE, individually and in his official capacity as Speaker of the New York State Assembly; BRIAN KOLB, individually and in his official capacity as Minority Leader of the New York State Assembly; THOMAS DINAPOLI, in his official capacity as Comptroller of New York State,

Defendants.

19-CV-0056

GTS/TWD

MEMORANDUM OF LAW IN SUPPORT OF DEFENDANTS' RULE 12(b)(1), (6) MOTION TO DISMISS

LETITIA JAMES
Attorney General of the State of New York
Attorney for Defendants
The Capitol
Albany, New York 12224

Chris Liberati-Conant
Assistant Attorney General, of Counsel
Bar Roll No. 700466
Telephone: (518) 776-2584

Date: February 5, 2019

TABLE OF CONTENTS

PRELIMINARY STATEMENT 1

SUMMARY OF PLAINTIFFS' CLAIMS 1

1. Violation of United States Constitution Article IV, Section 4 "Republican form of Government" Clause 2
2. Delegation of Powers Entrusted Solely to Legislature in Violation of New York State Constitution 3
3. Loan to a Private Corporation in Violation of the New York State Constitution 4
4. Violation of New York State Education Law § 801.2 4
5. Violation of New York State Constitution Article VI, Section 6 (c) 4
6. Violation of the First Amendment to the United States Constitution 5

STANDARD OF REVIEW 5

ARGUMENT 7

I. Plaintiffs' Republican Form of Government Claim Is Not Justiciable 7

II. Plaintiffs' First Amendment Claim Is Frivolous and Should Be Dismissed for Lack of Subject Matter Jurisdiction 8

III. The Court Should Dismiss All State Law Claims 9

A. The Court Lacks Subject Matter Jurisdiction over the State Law Claims Because the State Has Not Waived Its Sovereign Immunity 9

B. The Court Should Not Exercise Supplemental Jurisdiction over the Remaining State Law Claims 11

TABLE OF AUTHORITIES

CASES

Achtman v. Kirby, McInerney & Squire, LLP, 464 F.3d 328, 337 (2d Cir. 2006) 6
Apple v. Glenn, 183 F.3d 477, 479 (6th Cir. 1999) 8
Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) 6
Baker v. Carr, 369 U.S. 186, 224 (1962) 7
Barber v. Rome Hous. Auth., No. 6:16-cv-1529 (MAD/TWD)
2018 U.S. Dist. LEXIS 54211, at *19-*20 (N.D.N.Y. Mar. 30, 2018) 12
Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007) 6
Carnegie-Mellon Univ. v. Cohill, 484 U.S. 343, 350 n.7 (1988) 11
City of Chi. v. Int'l Coll. of Surgeons, 522 U.S. 156, 173 (1997) 11
Cohen v. Postal Holdings, LLC, 873 F.3d 394, 399 (2d Cir. 2017) 9
Davis v. Lansing, 851 F.2d 72, 74 (2d Cir. 1988) 10
Federal Mar. Comm'n v. South Carolina State Ports Auth.,
535 U.S. 743, 765 (2002) 10
Gibson v. N.Y. State Office of Mental Health, No. 6:17-CV-0608 (GTS/TWD)
2018 U.S. Dist. LEXIS 68500 (N.D.N.Y. Apr. 24, 2018) 10
Makarova v. United States, 201 F.3d 110 (2d Cir. 2000) 5
Minn. State Bd. for Cmty. Colls. v. Knight, 465 U.S. 271, 283-284 (1984) 8
Montero v. City of Yonkers, 890 F.3d 386, 394 (2d Cir. 2018) 6
New York State Teamsters Council Health & Hosp. Fund v.
Centrus Pharmacy Sols., 235 F. Supp. 2d 123, 129 (N.D.N.Y. 2002) 11
Nowak v. Ironworkers Local 6 Pension Fund, 81 F.3d 1182, 1189 (2d Cir. 1996) 6
P.R. Aqueduct & Sewer Auth. v. Metcalf & Eddy, Inc., 506 U.S. 139, 146 (1993) 9
Raygor v. Regents of the Univ. of Minn., 534 U.S. 533 (2002) 10
Reich v. New York, 3 F.3d 581, 590 (2d Cir. 1993) 10
Rizvi v. Town of Wawarsing, 654 F. App'x 37, 40 (2d Cir. 2016) 11
Roberts v. New York, 911 F. Supp. 2d 149, 159–160 (N.D.N.Y. 2012) 10
Rodriguez v. Fed. Bureau of Prisons, No. 9:10-CV-1013 (LEK/TWD),
2012 U.S. Dist. LEXIS 185412, at *18 (N.D.N.Y. Nov. 30, 2012) 6
Schulz v. N.Y. State Exec., 960 F. Supp. 568, 575 (N.D.N.Y. 1997) 7,8
Sklodowska-Grezak v. Stein, 236 F. Supp. 3d 805, 810 (S.D.N.Y. 2017) 11
Smith v. Ark. State Highway Emps., 441 U.S. 463 (1979) 8
Smith v. N.Y. State Dep't of Corr. Servs., No. 15-cv-3455 (NSR),
2018 U.S. Dist. LEXIS 85204, at *18 (S.D.N.Y. May 21, 2018) 10
Steel Co. v. Citizens for a Better Env't, 523 U.S. 83, 89 (1998) 6

United States ex rel. Anti-Discrimination Ctr. of Metro N.Y. v. Westchester Cnty., 712 F.3d 761, 774 (2d Cir. 2013) 7
Williams v. Cnty. of Onondaga, No. 5:18-CV-0139 (LEK/TWD) 2018 U.S. Dist. LEXIS 175613 (N.D.N.Y. Oct. 12, 2018) 8
Valencia ex rel. Franco v. Lee, 316 F.3d 299, 306 (2d Cir. 2003) 11
Wolpoff v. Cuomo, 792 F. Supp. 964, 965-966 (S.D.N.Y. 1992) 10
Ex parte Young, 209 U.S. 123 (1908) 10

UNITED STATES CONSTITUTION

Article IV, Section 4 5,7
First Amendment 5,8

NEW YORK STATE CONSTITUTION

Article III
Section 1 3
Section 6 3
Section 13 3
Section 14 3
Article VI, Section 6 4
Article VII
Section 8 4
Section 11 4

STATUTES

28 U.S.C. § 1367 12,13
Part HHH of Chapter 59 of the laws of 2018 3
N.Y. Education Law § 801.2 4
N.Y. Public Officers Law § 2 11

PRELIMINARY STATEMENT

Plaintiffs Robert L. Schulz and Anthony Futia assert two federal and four state law causes of action against defendants State of New York, Governor Cuomo, Comptroller DiNapoli, Senate Majority Leader Stewart-Cousins, Senate Minority Leader Flanagan, Speaker of the Assembly Heastie, and Assembly Minority Leader Kolb. The first cause of action, alleging violation of the "republican form of government" clause of Article IV, Section 4 of the United States Constitution, commonly referred to as the "Guaranty Clause," is not justiciable. And Plaintiffs' sixth cause of action, alleging that defendants violated the First Amendment to the United States Constitution by failing to respond to a petition for redress of grievances, is frivolous such that the Court lacks subject matter jurisdiction over it. Accordingly, both federal claims should be dismissed for lack of subject matter jurisdiction. Where the Court lacks subject matter jurisdiction over the federal claims asserted in a complaint, supplemental jurisdiction cannot be used as a base of federal jurisdiction for state law claims.

In any event, the state law claims in causes of action two through five are barred by the doctrine of sovereign immunity because they attempt to enforce state law against state officers. If the Court reaches the question of whether to exercise supplemental jurisdiction, it should decline to retain the state law claims. Accordingly, the Court should dismiss the complaint in its entirety.

SUMMARY OF PLAINTIFFS' CLAIMS

Plaintiffs' claims relate to four distinct subjects: New York State legislation creating the 2018 Committee on Legislative and Executive Compensation (Compensation

Committee); a 2018 Memorandum of Understanding between the New York State Urban Development Corporation, New York City Economic Development Corporation, the City of New York, and Amazon.com Services, Inc. (Amazon MOU); the designation as Acting Supreme Court judges of judges appointed by the Governor to the Court of Claims; and the contents of the civic education curriculum in public and private schools. *See* Compl., Dkt. # 1, ¶¶ 33-57.

1. Violation of United States Constitution Article IV, Section 4 "Republican form of Government" or "Guarantee" Clause

The acts of defendants that plaintiffs allege violate the "republican form of government clause" are violations of state law. Per the complaint, "[t]his is a first impression case as a case challenging the demise of republicanism, and the creation of a ruling class led by a small power elite with little regard for the Rule of Law—as peacefully as a thief in the night." Compl., ¶ 64. Said "power elite . . . has turned a blind eye to the supreme law of the State in bestowing increases in compensation . . . upon themselves and . . . encourage or enable unconstitutional behavior." *Id.*, ¶ 65. So too the complaint alleges that the Governor "has turned a blind eye to the supreme law of the State in bestowing judgeships upon" political allies. *Id.*, ¶¶ 66, 67. All defendants allegedly "turned a blind eye" to plaintiff Schulz's petition for redress of the grievances. *Id.*, ¶ 68.[1]

[1] Schulz's "petition for redress of grievances," which complains of the alleged state law violations raised in the complaint here, is discussed in more detail in section 6 below.

2. Delegation of Powers Entrusted Solely to Legislature in Violation of New York State Constitution

This claim challenges the creation of the Compensation Committee, which was created pursuant to Part HHH of Chapter 59 of the laws of 2018 ("Part HHH"). *See* Dkt. # 1, *See* Compl., ¶¶ 74-84; Schulz Aff., Ex. A. Part HHH provides that the Committee's purpose was to "examine, evaluate and make recommendations with respect to adequate levels of compensation, non-salary benefits, and allowances pursuant to section 5-a of the legislative law, for members of the legislature, statewide elected officials, and those state officers referred to in section 169 of the executive law." *Id.*, § 1. The Compensation Committee submitted its report to the Governor and Legislature on December 10, 2018, recommending, among other things, phased-in salary increases and ethics restrictions for legislators. *See* Schulz Aff., Ex. B, at 14-16. According to the terms of Part HHH, because the Legislature did not modify or abrogate the Compensation Committee's recommendations before January 1, 2019, its recommendations have the force of law and supersede any inconsistent statute. *See* Part HHH, § 4.2, Schulz Aff., Ex. A, at 14-16.

Plaintiffs contend that, in creating the Compensation Committee, the Legislature and Governor violated the following clauses of the New York State Constitution: Article III, Section 1 ("The legislative power of this state shall be vested in the senate and assembly."); Article III, Section 6 (providing that Legislators' salaries be "fixed by law"); Article III, Section 13 ("no law shall be enacted except by bill"); and Article III, Section 14 (describing procedure for passing bills). *See* Compl., ¶¶ 33-45.

3. Loan to a Private Corporation in Violation of the New York State Constitution

Plaintiffs' third cause of action challenges the Amazon MOU as "violat[ing] the Letter and Spirit of Article VII, Sections 8 and 11 of the New York State Constitution." Compl., ¶ 87. Specifically, according to plaintiffs, "the State has unconstitutionally contracted debt without a law" or voter approval and defendants have "given the money and credit of the State to a public corporation in aid of a private undertaking." *Id.*

4. Violation of New York State Education Law § 801.2

Plaintiffs, who both attended public school in New York State decades ago, assert that they did not know until well into adulthood that New York State had a constitution. Compl., ¶¶ 19-20. Plaintiffs further assert that "the regents and boards of education and trustees of several school districts of the State do not now, nor have they ever" complied with Education Law § 801.2, which requires the Board of Regents to "prescribe courses of instruction in the history, meaning, significance, and effect of the provisions of" the United States and New York State Constitutions. *See* Compl., ¶ 89.

5. Violation of New York State Constitution Article VI, Section 6 (c)

The complaint alleges that, in violation of the New York State Constitution, "[m]any of the State Supreme Court Justices serving in Judicial Districts were appointed by Defendant Governor to the Court of Claims and then immediately assigned to the State Supreme Court sections statewide where they rule on civil and criminal cases, including cases brought against Defendants on constitutional grounds, where republicanism and the

balance of power between the Government and the People hang in the balance." Compl., ¶ 94.

6. <u>Violation of the First Amendment to the United States Constitution</u>

Plaintiffs allege that, on November 28, 2018, plaintiff Schulz "served Defendant Governor with a proper and legal First Amendment Petition for Redress of Grievances" and that "Defendants have not responded to said Petition for Redress." *Id.*, ¶¶ 97, 98. Plaintiff Schulz's "First Amendment Petition to the Government of New York State for Violations of the State and Federal Constitutions" raises many of the arguments at issue here regarding the Compensation Committee, Amazon.com MOU, and the New York State Education Department's responsibility to ensure that students are taught about the federal and New York State Constitutions. *See* Schulz Aff., Ex. E. The petition demanded that defendants respond "within thirty (30) calendar days, providing a formal acknowledgement of its receipt with a rebuttal of its legal arguments and statement of facts, or demonstrating a good faith effort to comply with [the pettion's] remedial instructions." *Id.* at 1. Plaintiffs assert that defendants' failure to respond to the petition violates the First Amendment, which states that "Congress shall make no law . . . abridging the freedom . . . to petition the government for a redress of grievances." *See* Compl., ¶¶ 96, 99.

STANDARDS OF REVIEW

A complaint should be dismissed "for lack of subject matter jurisdiction under Rule 12(b)(1) when the district court lacks the statutory or constitutional power to adjudicate it." *Makarova v. United States*, 201 F.3d 110, 113 (2d Cir. 2000). "The standard for a Rule 12(b)(1) motion to dismiss for lack of subject matter jurisdiction is substantively identical

to the 12(b)(6) standard, except that the plaintiff has the burden of establishing jurisdiction on a 12(b)(1) motion." *Rodriguez v. Fed. Bureau of Prisons*, No. 9:10-CV-1013 (LEK/TWD), 2012 U.S. Dist. LEXIS 185412, at *18 (N.D.N.Y. Nov. 30, 2012). A court may "dismiss for lack of subject matter jurisdiction—even if a federal claim is asserted on the face of the complaint—where the federal question is so plainly insubstantial as to be devoid of any merits and thus does not present any issue worthy of adjudication." *Nowak v. Ironworkers Local 6 Pension Fund*, 81 F.3d 1182, 1189 (2d Cir. 1996) (internal quotation marks and brackets omitted); *see Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 89 (1998) (A court lacks subject matter jurisdiction over a claim where "the claim is so insubstantial, implausible, foreclosed by prior decisions of this Court, or otherwise completely devoid of merit as not to involve a federal controversy." (internal quotation marks omitted)).

In considering a Rule 12(b)(6) motion to dismiss for failure to state a claim, the Court must accept as true all plausible factual allegations in the complaint and accord the plaintiff the benefit of all reasonable inferences. *Montero v. City of Yonkers*, 890 F.3d 386, 394 (2d Cir. 2018). However, "[l]egal conclusions masquerading as factual conclusions" should not be accepted as true. *Achtman v. Kirby, McInerney & Squire, LLP*, 464 F.3d 328, 337 (2d Cir. 2006). A complaint need not contain "detailed factual allegations" to withstand a motion to dismiss for failure to state a claim. *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). But "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (internal quotation marks and brackets omitted). Thus, "[t]o survive a motion

to dismiss, a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." *Id.* Relief is plausible on its face when the complaint's factual allegations give rise to a "reasonable inference" that a defendant is liable. *Id.*

ARGUMENT

The Court should dismiss the first and sixth causes of action for lack of subject matter jurisdiction. The republican form of government claim is not justiciable, and the First Amendment claim is frivolous. The remaining claims ask the Court to enforce the laws of the State of New York against the state's public officers and thus are barred by sovereign immunity. Even if the exercise of supplemental jurisdiction were technically within the Court's discretion, the application of such jurisdiction where all federal claims have been dismissed would be inappropriate. This is particularly so here, where the state claims are barred by sovereign immunity.

I. Plaintiffs' Republican Form of Government Claim Is Not Justiciable

Although courts have expressed uncertainty whether some subset of republican form of government claims may be justiciable, "a challenge to state action based on the Guaranty Clause presents no justiciable question." *Baker v. Carr*, 369 U.S. 186, 224 (1962); *see United States ex rel. Anti-Discrimination Ctr. of Metro N.Y. v. Westchester Cnty.*, 712 F.3d 761, 774 (2d Cir. 2013); *Schulz v. N.Y. State Exec.*, 960 F. Supp. 568, 575 (N.D.N.Y. 1997). Indeed, approximately 20 years ago, this Court dismissed a republican form of government claim by plaintiff Schulz on this very ground, reasoning that, "in light of the Guarantee Clause's implicit protection of state governmental processes from the

tyranny of an all-powerful federal sovereign, it would seem imprudent on the part of the federal judiciary to allow the Clause to be used to challenge a state's own lawmaking." *Schulz*, 960 F. Supp. at 576. So too must plaintiff's Guarantee Clause claim here be dismissed.

II. Plaintiffs' First Amendment Claim Is Frivolous and Should Be Dismissed for Lack of Subject Matter Jurisdiction

The complaint's sixth cause of action alleges that defendants failed to respond to plaintiff Schulz's "First Amendment Petition for Redress of Grievances" submitted to the Governor. The language of the First Amendment does not suggest a right to a response: "Congress shall make no law abridging . . . the right of the people peaceably to assemble, and to petition the Government for a redress of grievances." And no authority appears to exist to support such right. The cases that address the issue reject any such right. "A citizen's right to petition the government does not guarantee a response to the petition or the right to compel government officials to act on or adopt a citizen's views." *Apple v. Glenn*, 183 F.3d 477, 479 (6th Cir. 1999); *accord Smith v. Ark. State Highway Emps.*, 441 U.S. 463 (1979); *see also Minn. State Bd. for Cmty. Colls. v. Knight*, 465 U.S. 271, 283-284 (1984). Plaintiffs' sixth cause of action therefore attempts to enforce a constitutional right that does not exist, rendering this cause of action frivolous. *See Williams v. Cnty. of Onondaga*, No. 5:18-CV-0139 (LEK/TWD), 2018 U.S. Dist. LEXIS 175613 (N.D.N.Y. Oct. 12, 2018). Thus, the Court should dismiss the complaint's sixth cause of action for lack of subject matter jurisdiction or, in the alternative, failure to state a claim.

III. The Court Should Dismiss All State Law Claims

The remaining claims seek to enforce the laws of the State of New York against state officials. If the Court holds that it lacks subject matter jurisdiction over the first and sixth causes of action, no further analysis is necessary, as a district court is precluded from exercising supplemental jurisdiction when the court lacks subject matter jurisdiction over all federal claims. *See Cohen v. Postal Holdings, LLC*, 873 F.3d 394, 399 (2d Cir. 2017). Should the Court dismiss plaintiffs' sixth cause of action for failure to state a cause of action instead of lack of subject matter jurisdiction, the remainder of the complaint should nevertheless be dismissed because, (A) pursuant to the Eleventh Amendment to the United States Constitution plaintiffs cannot enforce state laws against state officers in federal court, and (B) invocation of supplemental jurisdiction would, in any event, be inappropriate.

A. The Court Lacks Subject Matter Jurisdiction over the State Law Claims Because the State Has Not Waived Its Sovereign Immunity

New York State has not waived its sovereign immunity and Congress has not abrogated the state's immunity with respect to plaintiffs' state law claims. Accordingly, causes of action two through five should be dismissed.

"'The very object and purpose of the 11th Amendment were to prevent the indignity of subjecting a State to the coercive process of judicial tribunals at the instance of private parties.' The Amendment is rooted in a recognition that the States, although a union, maintain certain attributes of sovereignty, including sovereign immunity." *P.R. Aqueduct & Sewer Auth. v. Metcalf & Eddy, Inc.*, 506 U.S. 139, 146 (1993) (quoting *In re Ayers*, 123

U.S. 443, 505 (1887)). The Eleventh Amendment thus "'prohibits federal courts from entertaining suits that seek to enforce state law against state officers.'" *Smith v. N.Y. State Dep't of Corr. Servs.*, No. 15-cv-3455 (NSR), 2018 U.S. Dist. LEXIS 85204, at *18 (S.D.N.Y. May 21, 2018) (quoting *Wolpoff v. Cuomo*, 792 F. Supp. 964, 965-966 (S.D.N.Y. 1992)); *Gibson v. N.Y. State Office of Mental Health*, No. 6:17-CV-0608 (GTS/TWD), 2018 U.S. Dist. LEXIS 68500 (N.D.N.Y. Apr. 24, 2018); *see Raygor v. Regents of the Univ. of Minn.*, 534 U.S. 533 (2002); *see also Davis v. Lansing*, 851 F.2d 72, 74 (2d Cir. 1988) ("The federal courts have no general power to compel action by state officials."). The only exceptions to this bedrock rule are where the state has waived its immunity or Congress has abrogated the Eleventh Amendment through clear and unmistakable language. *See Raygor*, 534 U.S. at 541; *Reich v. New York*, 3 F.3d 581, 590 (2d Cir. 1993); *cf. Ex parte Young*, 209 U.S. 123 (1908). "[S]overeign immunity applies regardless of whether a private plaintiff's suit is for monetary damages or some other type of relief." *Federal Mar. Comm'n v. South Carolina State Ports Auth*., 535 U.S. 743, 765 (2002); *see Roberts v. New York*, 911 F. Supp. 2d 149, 159–160 (N.D.N.Y. 2012).

Here, causes of action two through five seek to enforce New York State law against public officers. *See* Compl., ¶¶ 69-95; Public Officers Law § 2. Plaintiffs allege no federal legislation abrogating the Eleventh Amendment or waiver of sovereign immunity with respect to the claims asserted. Accordingly, causes of action two through five should be dismissed.

B. The Court Should Not Exercise Supplemental Jurisdiction over the Remaining State Law Claims

Should the Court dismiss the sixth cause of action for failure to state a claim rather than lack of subject matter jurisdiction and determine that causes of action two through five are not barred by sovereign immunity, it should nevertheless decline to exercise supplemental jurisdiction over those claims. "[W]hen deciding whether to exercise supplemental jurisdiction, a federal court should consider and weigh in each case, and at every stage of the litigation, the values of judicial economy, convenience, fairness, and comity." *City of Chi. v. Int'l Coll. of Surgeons*, 522 U.S. 156, 173 (1997) (internal quotation marks omitted); *see* 28 U.S.C. § 1367. Where all federal claims are dismissed at the outset of litigation, dismissal of the state law claims is generally appropriate. *See* 28 U.S.C. § 1367 (3); *Carnegie-Mellon Univ. v. Cohill*, 484 U.S. 343, 350 n.7 (1988); *see, e.g., Sklodowska-Grezak v. Stein*, 236 F. Supp. 3d 805, 810 (S.D.N.Y. 2017); *New York State Teamsters Council Health & Hosp. Fund v. Centrus Pharmacy Sols*., 235 F. Supp. 2d 123, 129 (N.D.N.Y. 2002). Indeed, "where the federal claims had been dismissed at a relatively early stage and the remaining claims involved issues of state law that were unsettled, [the Second Circuit has] concluded that the exercise of supplemental or pendent jurisdiction was an abuse of discretion." *Valencia ex rel. Franco v. Lee*, 316 F.3d 299, 306 (2d Cir. 2003); see *Rizvi v. Town of Wawarsing*, 654 F. App'x 37, 40 (2d Cir. 2016) (District Court "abused its discretion where the state law claim required a balancing of numerous important policies of state government" (internal quotation marks and brackets

omitted)); *Barber v. Rome Hous. Auth.*, No. 6:16-cv-1529 (MAD/TWD), 2018 U.S. Dist. LEXIS 54211, at *19-*20 (N.D.N.Y. Mar. 30, 2018).

Here, this case is in its earliest stages and the state law claims "substantially predominate[ ]" over the only claim over which the Court arguably has original jurisdiction—violation of the First Amendment right to petition the government for redress of grievances. *See* 28 U.S.C. § 1367 (3). The allegedly unanswered petition on which plaintiffs base this claim in substantial part asserts that the Compensation Committee and the Amazon MOU violate the New York State Constitution, and that the civic education provided to students in the state violates the New York Education Law. *See* Compl., ¶¶ 97-98, Exhibit E.

Accordingly, the Court should not exercise supplemental jurisdiction over the state law claims asserted by plaintiffs.

CONCLUSION

For the reasons stated above, the Court should dismiss the complaint in its entirety.

Dated: Albany, New York
February 5, 2019

LETITIA JAMES
Attorney General of the State of New York
Attorney for Defendants Andrew M. Cuomo, Thomas DiNapoli, Andrea Stewart-Cousins, Carl Heastie, Brian Kolb, and John Flanagan
The Capitol
Albany, New York 12224

By: **<u>s/ Chris Liberati-Conant</u>**
Chris Liberati-Conant
Assistant Attorney General, of Counsel
Bar Roll No. 700466
Telephone: (518) 776-2584
Email: christopher.liberati-conant@ag.ny.gov

TO: Robert L. Schulz
2458 Ridge Road
Queensbury, NY 12804

Anthony Futia, Jr.
34 Custis Avenue
N. White Plains, NY 10603

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

ROBERT L. SCHULZ, ANTHONY FUTIA, Jr.

Plaintiffs,

-against-

STATE OF NEW YORK, ANDREW M. CUOMO, individually and in his official capacity as Governor of the state of New York; JOHN J. FLANAGAN, individually and in his former capacity as Majority Leader of the New York State Senate; ANDREA STEWART-COUSINS, individually an, and in her former capacity as Minority Leader of the New York State Senate; CARL E. HEASTIE, individually and in his official capacity as Speaker of the New York State Assembly; BRIAN KOLB, individually and in his official capacity as Minority Leader of the New York State Assembly; THOMAS DINAPOLI, in his official capacity as Comptroller of New York State,

Defendants.

DECLARATION OF SERVICE

19-CV-0056

GTS/TWD

I, ELIZABETH M. MINK, declare pursuant to 28 USC § 1746, that on February 6, 2019, I served the **Notice of Motion and Memorandum of Law in Support of Defendants' Rule 12(b)(1), (6) Motion to Dismiss**, filed herein electronically upon the following individuals, by depositing a true copy thereof, properly enclosed in a sealed, postpaid wrapper, in a post office box in the City of Albany, a depository under the exclusive care and custody of the United States Postal Service, directed to the individuals at the addresses, designated for that purpose, as follows:

Robert L. Schulz
2458 Ridge Road
Queensbury, NY 12804

Anthony Futia, Jr.
34 Custis Avenue
N. White Plains, NY 10603

Dated: Albany, New York
February 6, 2019

s/ Elizabeth M. Mink
Elizabeth M. Mink