

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SAM PARTY OF NEW YORK and
MICHAEL J. VOLPE,

Plaintiffs,

v.

ANDREW CUOMO, as the Governor of the State of New York; ANDREA STEWART-COUSINS, as the Temporary President and Majority Leader of the New York State Senate; JOHN J. FLANAGAN, as the Minority Leader of the New York State Senate; CARL E. HEASTIE, as the Speaker of the New York State Assembly; BRIAN KOLB, as the Minority Leader of the New York State Assembly; PETER S. KOSINSKI, as the Co-Chair of the New York State Board of Elections; DOUGLAS A. KELLNER, as the Co-Chair of the New York State Board of Elections; ANDREW J. SPANO, as a Commissioner of the New York State Board of Elections; TODD D. VALENTINE, as Co-Executive Director of the New York State Board of Elections; and ROBERT A. BREHM, as Co-Executive Director of the New York State Board of Elections,

Defendants.

ANSWER

Civil Case No.:
1:20-cv-00323-JGK

Carl E. Heastie, the Speaker of the New York State Assembly (the “Speaker”), as a Defendant in the above-captioned action, by and through his attorneys Phillips Lytle LLP, answers the Complaint of Plaintiffs the SAM Party of New York (the “SAM Party”) and Michael J. Volpe (collectively, “Plaintiffs”), as follows:

1. The Speaker offers no response to paragraphs 1, 3, 4, 17, 20, 32, 43, 44, 46, 47, 54, 55, 57, 58, 59, 68, 69, 71, 72, 73, 75, 76, 77, 78, 79, 81, 83, 84, 85, 86, 87, 90, 91, 92, 95, and 96 of the Complaint, inasmuch as the assertions in those paragraphs make legal conclusions, rather than factual allegations for which a response is required. To the

extent a response may be required, the Speaker denies the allegations contained in those paragraphs.

2. With respect to the allegations contained in paragraph 2 of the Complaint, the Speaker admits that the SAM Party's candidate for Governor of New York State received more than 50,000 votes in the 2018 general election. With respect to that paragraph's allegations that the SAM Party "is a recognized political 'party' under New York law," and the SAM Party "earn[ed] 'party' status for four years under the then-existing laws" in 2018, the Speaker offers no response, inasmuch as these allegations make legal conclusions, rather than factual allegations for which a response is required. To the extent a response may be required, the Speaker denies these allegations. The Speaker lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 2 of the Complaint.

3. The Speaker admits the allegations contained in paragraph 5 of the Complaint.

4. With respect to the allegations contained in paragraph 6 of the Complaint, the Speaker admits that Defendant Andrew Cuomo is the Governor of the State of New York. The Speaker offers no response to the remaining allegations contained in paragraph 6 of the Complaint, inasmuch as those allegations make legal conclusions, rather than factual allegations for which a response is required. To the extent a response may be required, the Speaker denies those allegations.

5. With respect to the allegations contained in paragraph 7 of the Complaint, the Speaker admits that Defendant Andrea Stewart-Cousins is the Temporary President and Majority Leader of the New York State Senate. The Speaker offers no

response to the remaining allegations contained in paragraph 7 of the Complaint, inasmuch as those allegations make legal conclusions, rather than factual allegations for which a response is required. To the extent a response may be required, the Speaker denies those allegations.

6. With respect to the allegations contained in paragraph 8 of the Complaint, the Speaker admits that Defendant John J. Flanagan is the Minority Leader of the New York State Senate. The Speaker offers no response to the remaining allegations contained in paragraph 8 of the Complaint, inasmuch as those allegations make legal conclusions, rather than factual allegations for which a response is required. To the extent a response may be required, the Speaker denies those allegations.

7. With respect to the allegations contained in paragraph 9 of the Complaint, the Speaker admits that he is the Speaker of the New York State Assembly. The Speaker offers no response to the remaining allegations contained in paragraph 9 of the Complaint, inasmuch as those allegations make legal conclusions, rather than factual allegations for which a response is required. To the extent a response may be required, the Speaker denies those allegations.

8. With respect to the allegations contained in paragraph 10 of the Complaint, the Speaker admits that "Defendant Brian Kolb was, until he announced his resignation on January 3, 2020, the Minority Leader of the New York State Assembly." With respect to that paragraph's allegation that Defendant Brian Kolb "is sued in his official capacity," the Speaker offers no response, inasmuch as this allegation makes a legal conclusion, rather than a factual allegation for which a response is required. To the extent a response may be required, the Speaker denies this allegation. The Speaker lacks knowledge

or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 10 of the Complaint.

9. With respect to the allegations contained in paragraph 11 of the Complaint, the Speaker admits that Defendant Peter S. Kosinski is a Co-Chair of the New York State Board of Elections. The Speaker offers no response to the remaining allegations contained in paragraph 11 of the Complaint, inasmuch as those allegations make legal conclusions, rather than factual allegations for which a response is required. To the extent a response may be required, the Speaker denies those allegations.

10. With respect to the allegations contained in paragraph 12 of the Complaint, the Speaker admits that Defendant Douglas A. Kellner is a Co-chair of the New York State Board of Elections. The Speaker offers no response to the remaining allegations contained in paragraph 12 of the Complaint, inasmuch as those allegations make legal conclusions, rather than factual allegations for which a response is required. To the extent a response may be required, the Speaker denies those allegations.

11. With respect to the allegations contained in paragraph 13 of the Complaint, the Speaker admits that Defendant Andrew J. Spano is a Commissioner of the New York State Board of Elections. The Speaker offers no response to the remaining allegations contained in paragraph 13 of the Complaint, inasmuch as those allegations make legal conclusions, rather than factual allegations for which a response is required. To the extent a response may be required, the Speaker denies those allegations.

12. With respect to the allegations contained in paragraph 14 of the Complaint, the Speaker admits that a position of Commissioner of the New York State Board of Elections is presently vacant. The Speaker lacks knowledge or information

sufficient to form a belief as to the truth of the remaining allegations in paragraph 14 of the Complaint.

13. With respect to the allegations contained in paragraph 15 of the Complaint, the Speaker admits that Defendant Todd D. Valentine is a Co-Executive Director of the New York State Board of Elections. The Speaker offers no response to the remaining allegations contained in paragraph 15 of the Complaint, inasmuch as those allegations make legal conclusions, rather than factual allegations for which a response is required. To the extent a response may be required, the Speaker denies those allegations.

14. With respect to the allegations contained in paragraph 16 of the Complaint, the Speaker admits that Defendant Robert A. Brehm is a Co-Executive Director of the New York State Board of Elections. The Speaker offers no response to the remaining allegations contained in paragraph 16 of the Complaint, inasmuch as those allegations make legal conclusions, rather than factual allegations for which a response is required. To the extent a response may be required, the Speaker denies those allegations.

15. With respect to the allegations contained in paragraph 18 of the Complaint, the Speaker admits that “each of the Defendants resides in the State of New York.” The Speaker offers no response to the remaining allegations contained in paragraph 18 of the Complaint, inasmuch as those allegations make legal conclusions, rather than factual allegations for which a response is required. To the extent a response may be required, the Speaker denies those allegations.

16. With respect to the allegations contained in paragraph 19 of the Complaint, the Speaker admits that “all Defendants [in this action] are residents of New York.” The Speaker offers no response to the remaining allegations contained in paragraph

19 of the Complaint, inasmuch as those allegations make legal conclusions, rather than factual allegations for which a response is required. To the extent a response may be required, the Speaker denies those allegations.

17. The Speaker lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraphs 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 36, 37, 40, 50, 52, 53, 60, 61, 63, 64, 66, and 74 of the Complaint.

18. With respect to the allegations contained in paragraph 33 of the Complaint, the Speaker admits that “Governor Cuomo . . . ran as the candidate of both the Democratic Party and the Working Families Party in the general election [for New York Governor] in 2018.” The Speaker offers no response to the remaining allegations contained in paragraph 33 of the Complaint, inasmuch as those allegations make legal conclusions, rather than factual allegations for which a response is required. To the extent a response may be required, the Speaker denies those allegations.

19. With respect to the allegations contained in paragraph 34 of the Complaint, the Speaker lacks knowledge or information sufficient to form a belief as to the truth of the allegations that “[t]he [New York State] Board of Elections makes the current voter-registration form available on its website” at <https://www.elections.ny.gov/NYSBOE/download/voting/voteregform-eng-fillable.pdf>, or that such form was “last accessed January 4, 2020[.]” The Speaker offers no response to the remaining allegations contained in paragraph 34 of the Complaint, inasmuch as those allegations make legal conclusions, rather than factual allegations for which a response is required. To the extent a response may be required, the Speaker denies those allegations.

20. With respect to the allegations contained in paragraph 35 of the Complaint, the Speaker admits that the slate of Stephanie Miner for Governor and Plaintiff Michael J. Volpe for Lieutenant Governor received a total of 55,441 votes on the SAM Party ballot line in New York's 2018 general election. With respect to that paragraph's allegations that the SAM Party thereby "secur[ed] . . . -- in its first attempt -- four years as a recognized 'party' and the concomitant substantial benefits and exemptions under New York campaign-finance and election law," the Speaker offers no response, inasmuch as these allegations make legal conclusions, rather than factual allegations for which a response is required. To the extent a response may be required, the Speaker denies these allegations. The Speaker lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 35 of the Complaint.

21. With respect to the allegations contained in paragraph 38 of the Complaint, the Speaker admits that, in 2018, "Cynthia Nixon challenged Governor Cuomo for the nominations of both the Democratic and Working Families Parties" for Governor of New York State. The Speaker denies the allegations in paragraph 38 of the Complaint that Cynthia Nixon "captured 91.5% of the vote" in a "Working Families Party primary" for Governor, that such a primary "guaranteed [Cynthia Nixon] a spot in the general election" for New York Governor in 2018, and that "Governor Cuomo captured 65% of the vote in the Democratic primary" for New York Governor "to Ms. Nixon's 35%" in 2018. The Speaker offers no response to the allegation in paragraph 38 of the Complaint that the outcome of this Democratic primary "guarantee[d] [Governor Cuomo] the Democratic nomination" for New York Governor in 2018, inasmuch as this allegation makes a legal conclusion, rather than a factual allegation for which a response is required. To the extent a

response may be required, the Speaker denies this allegation. The Speaker lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 38 of the Complaint.

22. With respect to the allegations contained in paragraph 39 of the Complaint, the Speaker admits that, at some point, “the Working Families Party agreed to endorse Governor Cuomo in the general election” in 2018 for New York Governor. The Speaker offers no response to the remaining allegations contained in paragraph 39 of the Complaint, inasmuch as those allegations make legal conclusions, rather than factual allegations for which a response is required. To the extent a response may be required, the Speaker denies those allegations.

23. With respect to the allegations contained in paragraph 41 of the Complaint, the Speaker offers no response to the allegations that “[t]he New York State Campaign Finance Review Commission (the ‘Commission’) was created as part of a budget and appropriations bill submitted by Governor Cuomo and approved by the Legislature in 2019,” inasmuch as these allegations make legal conclusions, rather than factual allegations for which a response is required. To the extent a response may be required, the Speaker denies those allegations. The Speaker lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 41 of the Complaint.

24. With respect to the allegations contained in paragraph 42 of the Complaint, the Speaker lacks knowledge or information sufficient to form a belief as to when the Internet website referenced therein was last accessed. The Speaker offers no response to the remaining allegations contained in paragraph 42 of the Complaint, inasmuch as they make legal conclusions, rather than factual allegations for which a

response is required. To the extent a response may be required, the Speaker denies those allegations, and further alleges that the text of Part XXX of Chapter 59 of the New York Laws of 2019 speaks for itself.

25. With respect to the allegations contained in paragraph 45 of the Complaint, the Speaker offers no response to allegations that “the Commission’s December 1, 2019, Report repeatedly describes its recommendations as ‘hav[ing] the force of law,’” inasmuch as they make legal conclusions, rather than factual allegations for which a response is required. To the extent a response may be required, the Speaker denies those allegations, and further alleges that the text of the Exhibit A to the Complaint speaks for itself. The Speaker lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 45 of the Complaint.

26. The Speaker offers no response to the allegations contained in paragraph 48 of the Complaint, inasmuch as they make legal conclusions, rather than factual allegations for which a response is required. To the extent a response may be required, the Speaker denies those allegations, and further alleges that the text of Part IV of Exhibit A to the Complaint speaks for itself.

27. With respect to the allegations contained in paragraph 49 of the Complaint, the Speaker lacks knowledge or information sufficient to form a belief as to the truth of the allegations that “November 9, 2022 . . . is[] the day after the next election in which Governor Cuomo will be a candidate” (emphasis in original). The Speaker offers no response to the remaining allegations contained in paragraph 49 of the Complaint, inasmuch as they make legal conclusions, rather than factual allegations for which a

response is required. To the extent a response may be required, the Speaker denies those allegations.

28. With respect to the allegations contained in paragraph 51 of the Complaint, the Speaker lacks knowledge or information sufficient to form a belief as to the truth of the allegation that the New York State Public Campaign Financing and Election Commission engaged in any “effort to thwart anticipated challenges to the constitutionality of aspects of the new system[.]” The Speaker offers no response to the remaining allegations contained in paragraph 51 of the Complaint, inasmuch as they make legal conclusions, rather than factual allegations for which a response is required. To the extent a response may be required, the Speaker denies those allegations. The Speaker further alleges that the text of the New York State Public Campaign Financing and Election Commission’s Report referenced in paragraph 51 of the Complaint speaks for itself.

29. With respect to the allegations contained in paragraph 56 of the Complaint, the Speaker admits that the New York State Legislature was not in session in the month of December 2019. The Speaker offers no response to the remaining allegations contained in paragraph 56 of the Complaint, inasmuch as they make legal conclusions, rather than factual allegations for which a response is required. To the extent a response may be required, the Speaker denies those allegations.

30. With respect to the allegations contained in paragraph 62 of the Complaint, the Speaker lacks knowledge or information sufficient to form a belief as to whether the SAM Party “could forego this year’s presidential election[.]” The Speaker offers no response to the remaining allegations contained in paragraph 62 of the Complaint, inasmuch as they make legal conclusions, rather than factual allegations for which a

response is required. To the extent a response may be required, the Speaker denies those allegations.

31. With respect to the allegations contained in paragraph 65 of the Complaint, the Speaker lacks knowledge or information sufficient to form a belief as to the truth of the allegations that the SAM Party “has made its choice,” “[a]mong [certain] unpalatable options,” that “it does not intend to nominate a candidate for President” in 2020; and that the SAM Party would “earn” or “seek to earn” certain “benefits . . . in the 2022 gubernatorial election.” The Speaker offers no response to the remaining allegations contained in paragraph 65 of the Complaint, inasmuch as they make legal conclusions, rather than factual allegations for which a response is required. To the extent a response may be required, the Speaker denies those allegations.

32. With respect to the allegations contained in paragraph 67 of the Complaint, the Speaker repeats and realleges its answers to paragraphs 1 through 66 of the Complaint.

33. With respect to the allegations contained in paragraph 70 of the Complaint, the Speaker lacks knowledge or information sufficient to form a belief as to the truth of the allegations that the SAM Party’s “opposition to nominating a candidate for President is a political one”; that the SAM Party “is still establishing itself and its brand”; and that “nominating a presidential candidate other than a frivolous candidacy would cause the public to tag the [SAM Party] with the political views of its candidate even though it does not share or want to be associated with those views and even if that candidate does not share SAM’s emphasis on transparency, accountability, electoral reform, and problem solving.” The Speaker offers no response to the remaining allegations contained in

paragraph 70 of the Complaint, inasmuch as they make legal conclusions, rather than factual allegations for which a response is required. To the extent a response may be required, the Speaker denies those allegations.

34. With respect to the allegations contained in paragraph 80 of the Complaint, the Speaker repeats and realleges its answers to paragraphs 1 through 79 of the Complaint.

35. With respect to the allegations contained in paragraph 82 of the Complaint, the Speaker lacks knowledge or information sufficient to form a belief as to the truth of the allegations that the SAM Party “does not want to nominate anyone for President”; that, if it were “to nominate the Republican or Democratic nominee -- the only way to have any realistic chance at garnering 2% of the vote -- the SAM Party of New York would be seen as endorsing the political views of that candidate on issues on which it otherwise would express no policy position”; and that, “to achieve the required vote thresholds, [the SAM Party] would be required to spend money supporting a candidate it does not wish to support, financially or otherwise.” The Speaker offers no response to the remaining allegations contained in paragraph 82 of the Complaint, inasmuch as they make legal conclusions, rather than factual allegations for which a response is required. To the extent a response may be required, the Speaker denies those allegations.

36. With respect to the allegations contained in paragraph 88 of the Complaint, the Speaker repeats and realleges its answers to paragraphs 1 through 87 of the Complaint.

37. With respect to the allegations contained in paragraph 89 of the Complaint, the Speaker lacks knowledge or information sufficient to form a belief as to the

truth of the allegation that “[b]allot-access laws can affect smaller political parties differently than larger ones.” The Speaker offers no response to the remaining allegations contained in paragraph 89 of the Complaint, inasmuch as they make legal conclusions, rather than factual allegations for which a response is required. To the extent a response may be required, the Speaker denies those allegations.

38. With respect to the allegations contained in paragraph 93 of the Complaint, the Speaker repeats and realleges its answers to paragraphs 1 through 92 of the Complaint.

39. With respect to the allegations contained in paragraph 94 of the Complaint, the Speaker lacks knowledge or information sufficient to form a belief as to the truth of the allegations that the SAM Party’s qualification “as a recognized ‘party’ . . . was the result of hard, sustained work, securing the requisite number of signatures to appear on the ballot and walking the streets to secure more than 50,000 votes for [Stephanie] Miner and Plaintiff Volpe”; and that the SAM Party “put its campaign-finance-law advantages and its ballot rights to good use in 2019, running 102 candidates, half of them successfully.” The Speaker offers no response to the remaining allegations contained in paragraph 94 of the Complaint, inasmuch as they make legal conclusions, rather than factual allegations for which a response is required. To the extent a response may be required, the Speaker denies those allegations.

40. The Speaker denies each and every other allegation of the Complaint that has not been admitted, denied, or otherwise avoided.

DEFENSES

FIRST DEFENSE

41. The Complaint fails to state a claim upon which relief may be granted.

SECOND DEFENSE

42. Plaintiffs are not entitled to the injunctive relief they request, because any injury they allege is not immediate or irreparable.

THIRD DEFENSE

43. In the interest of comity, a United States District Court should refrain from adjudicating a claim, already being litigated in New York State Court, that a New York State law violates the New York State Constitution.

44. Inasmuch as the Complaint challenges any law on the basis that it violates the New York State Constitution, such challenge may not be adjudicated, and/or this Court should abstain from doing so, subject to final and non-appealable adjudication of the causes of action alleged in *Jastrzemski, et al. v. Public Campaign Financing & Election Commission of State of New York, et al.* (Niagara County Index No. E169561/2019) and *Hurley, et al. v. Public Campaign Financing & Election Commission of State of New York, et al.* (Niagara County Index No. E169547/2019).

FOURTH DEFENSE

45. The Speaker is immune from, and is not subject to suit under, the claims set forth in the Complaint.

WHEREFORE, the Speaker respectfully requests that this Court enter an Order and Judgment dismissing the Complaint in its entirety, with prejudice; awarding the Speaker his costs and expenses, including attorneys' fees, incurred in connection with the

defense of this action; and further awarding the Speaker such other and further relief as this

Court deems proper and just.

DATED: Buffalo, New York
March 12, 2020

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