

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

SAM PARTY OF NEW YORK, *et al.*,

Plaintiffs,

v.

ANDREW CUOMO, *et al.*,

Defendant.

Case No. 20-cv-323

Hon. John G. Koeltl

**BOARD OF ELECTIONS  
DEFENDANTS' ANSWER**

Defendants 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 (collectively, the “Board of Elections Defendants”) hereby answer the complaint in this action as follows:

**INTRODUCTION**

1. The allegations in paragraph 1 set forth legal conclusions to which no response is required. To the extent a response is required, the Board of Elections Defendants deny the allegations in paragraph 1.

2. The Board of Elections Defendants admit that the SAM Party of New York received more than 50,000 in the 2018 gubernatorial election and that the SAM Party of New York nominated candidates for local offices in 2019. To the extent that the allegations in paragraph 2 set forth legal conclusions, no response is required. To the extent a response is required, the Board of Elections Defendants deny such allegations. The Board of Elections

Defendants lack knowledge or information sufficient to form a belief about the truth of the remaining allegations in paragraph 2 and therefore deny the same.

3. The Board of Elections Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in the first sentence of paragraph 3 and therefore deny the same. The Board of Elections Defendants admit that plaintiffs commenced this action and that they seek the relief specified in the second sentence of paragraph 3, but deny that plaintiffs are entitled to any such relief and deny that there is any basis in law or fact for plaintiffs' claims.

#### **THE PARTIES**

4. The allegations in paragraph 4 set forth legal conclusions to which no response is required. To the extent a response is required, the Board of Elections Defendants deny the allegations in paragraph 4.

5. The Board of Elections Defendants admit that plaintiff Michael J. Volpe was the SAM Party of New York's candidate for lieutenant governor of New York in 2018. The Board of Elections Defendants lack knowledge or information sufficient to form a belief about the truth of the remaining allegations in paragraph 5 and therefore deny the same.

6. The Board of Elections Defendants admit the allegations in paragraph 6.

7. The Board of Elections Defendants admit the allegations in paragraph 7.

8. The Board of Elections Defendants admit the allegations in paragraph 8.

9. The Board of Elections Defendants admit the allegations in paragraph 9.

10. The Board of Elections Defendants admit that Brian Kolb was, until he announced his resignation, the Minority Leader of the New York State Assembly. The Board of Elections Defendants lack knowledge or information sufficient to form a belief about the truth of the remaining allegations in paragraph 10 and therefore deny the same.

11. The Board of Elections Defendants admit that Peter S. Kosinski is a Co-Chair of the New York State Board of Elections; that plaintiffs have brought this suit against him in his official capacity; and that the New York State Board of Elections is an agency within the Executive Department of the State. The remaining allegations in paragraph 11 set forth legal conclusions to which no response is required. To the extent a response is required, the Board of Elections Defendants deny the remaining allegations in paragraph 11.

12. The Board of Elections Defendants admit the allegations in paragraph 12.

13. The Board of Elections Defendants admit the allegations in paragraph 13.

14. The Board of Elections Defendants admit that the position of one of the Commissioners on the New York State Board of Elections is vacant. The Board of Elections Defendants lack knowledge or information sufficient to form a belief about the truth of the remaining allegations in paragraph 14 and therefore deny the same.

15. The Board of Elections Defendants admit the allegations in paragraph 15.

16. The Board of Elections Defendants admit the allegations in paragraph 16.

#### **JURISDICTION AND VENUE**

17. The allegations in paragraph 17 set forth legal conclusions to which no response is required. To the extent a response is required, the Board of Elections Defendants admit that plaintiffs have invoked the jurisdiction of this Court under 28 U.S.C. §§ 1331 and 1343 and that they purport to seek declaratory and injunctive relief under 28 U.S.C. §§ 2201 and 2202, but deny that plaintiffs are entitled to any such relief and deny that there is any basis in law or fact for plaintiffs' claims.

18. The Board of Elections Defendants admit that each them resides in the State of New York, but state that they knowledge or information sufficient to form a belief about the truth of the allegations concerning the residency of the remaining defendants and therefore deny

the same. The remaining allegations in paragraph 18 set forth legal conclusions to which no response is required. To the extent a response is required, the Board of Elections Defendants deny the remaining allegations in paragraph 18.

19. The Board of Elections Defendants admit that Governor Cuomo maintains an office at 633 Third Avenue in Manhattan. The remaining allegations in paragraph 19 set forth legal conclusions to which no response is required. To the extent a response is required, the Board of Elections Defendants deny the allegations in paragraph 19.

20. The allegations in paragraph 20 set forth legal conclusions to which no response is required. To the extent a response is required, the Board of Elections Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 20 and therefore deny the same.

#### **STATEMENT OF FACTS**

21. The Board of Elections Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 21 and therefore deny the same.

22. The Board of Elections Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 22 and therefore deny the same.

23. The Board of Elections Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 23 and therefore deny the same.

24. The Board of Elections Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 24 and therefore deny the same.

25. The Board of Elections Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 25 and therefore deny the same.

26. The Board of Elections Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 26 and therefore deny the same.

27. The Board of Elections Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 27 and therefore deny the same.

28. The Board of Elections Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 28 and therefore deny the same.

29. The Board of Elections Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 29 and therefore deny the same.

30. The Board of Elections Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 30 and therefore deny the same.

31. The Board of Elections Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 31 and therefore deny the same.

32. The allegations in paragraph 32 set forth legal conclusions to which no response is required. To the extent a response is required, the Board of Elections Defendants deny the allegations in paragraph 32.

33. The Board of Elections Defendants admit that Governor Cuomo ran as the candidate for both the Democratic Party and the Working Families Party in the 2018 gubernatorial general election. The remaining allegations in paragraph 33 set forth legal conclusions to which no response is required. To the extent a response is required, the Board of Elections Defendants deny the allegations in paragraph 33.

34. The Board of Elections Defendants admit that the Board of Elections makes the current voter registration form available on its website. To the extent that the remaining allegations in paragraph 34 purport to describe or characterize the form, no response is required, and the Board of Election Defendants further state that the form speaks for itself. To the extent that the remaining allegations in paragraph 34 set forth legal conclusions, no response is

required. The Board of Elections Defendants lack knowledge or information sufficient to form a belief about the truth of the remaining allegations in paragraph 34 and therefore deny the same.

35. The Board of Elections Defendants admit that that the SAM Party of New York submitted signatures sufficient to nominate Ms. Miner as a candidate for governor and Mr. Volpe as candidate for lieutenant governor in the 2018 gubernatorial election; that those candidates received 55,441 votes on the ballot line for the SAM Party of New York; and that the New York State voter registration form lists the SAM Party of New York as a political party in which a new voter may enroll. To the extent that the remaining allegations in paragraph 35 set forth legal conclusions, no response is required. The Board of Elections Defendants lack knowledge or information sufficient to form a belief about the truth of the remaining allegations in paragraph 35 and therefore deny the same.

36. The Board of Elections Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 36 and therefore deny the same.

37. The Board of Elections Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 37 and therefore deny the same.

38. The Board of Elections Defendants admit that Cynthia Nixon challenged Governor Cuomo for the nomination of both the Democratic Party and Working Families Party in the 2018 gubernatorial primary election for New York State; that Ms. Nixon won 34.47% of the vote in the Democratic Party primary election compared to Governor Cuomo's 65.53%; and that Governor Cuomo secured the nomination of the Democratic Party. The Board of Elections Defendants lack knowledge or information sufficient to form a belief about the truth of the remaining allegations in paragraph 38 and therefore deny the same.

39. The Board of Elections Defendants admit that Ms. Nixon's name was withdrawn from the general election ballot. The Board of Elections Defendants lack knowledge or information sufficient to form a belief about the truth of the remaining allegations in paragraph 39 and therefore deny the same.

40. The Board of Elections Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 40 and therefore deny the same.

41. The Board of Elections Defendants admit that the New York State Campaign Finance Review Commission was created as part of a budget and appropriations bill submitted by Governor Cuomo and approved by the Legislature in 2019. The Board of Elections Defendants lack knowledge or information sufficient to form a belief about the truth of the remaining allegations in paragraph 41 and therefore deny the same.

42. The allegations in paragraph 42 set forth legal conclusions to which no response is required. To the extent a response is required, the Board of Elections Defendants deny the allegations in paragraph 42 and further state that Part XXX of Chapter 59 of the New York Laws of 2019 speaks for itself.

43. The Board of Elections Defendants deny the allegations in paragraph 43 and further state that Part XXX of Chapter 59 of the New York Laws of 2019 speaks for itself.

44. The allegations in paragraph 44 set forth legal conclusions to which no response is required. To the extent a response is required, the Board of Elections Defendants deny the allegations in paragraph 44.

45. The allegations in paragraph 45 concerning the Commission's December 1, 2019 Report set forth legal conclusions to which no response is required. To the extent a response is required, the Board of Elections Defendants deny the allegations in paragraph 45 concerning the

Report and further state that the Report speaks for itself. The Board of Elections Defendants lack knowledge or information sufficient to form a belief about the truth of the remaining allegations in paragraph 45 and therefore deny the same.

46. The allegations in paragraph 46 set forth legal conclusions to which no response is required. To the extent a response is required, the Board of Elections Defendants deny the allegations in paragraph 46.

47. The allegations in paragraph 47 purport to recite or characterize the contents of the Report, to which no response is required. To the extent a response is required, the Board of Elections Defendants deny the allegations in paragraph 47 and further state that the Report speaks for itself.

48. The allegations in paragraph 48 purport to recite or characterize the contents of the Report, to which no response is required. To the extent a response is required, the Board of Elections Defendants deny the allegations in paragraph 48 and further state that the Report speaks for itself.

49. The allegations in paragraph 49 purport to recite or characterize the contents of the Report, to which no response is required. To the extent a response is required, the Board of Elections Defendants deny the allegations in paragraph 49 and further state that the Report speaks for itself.

50. The Board of Elections Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 50 and therefore deny the same.

51. To the extent that the allegations in paragraph 51 purport to recite or characterize the contents of the Report, no response is required. To the extent a response is required, the Board of Elections Defendants deny such allegations in paragraph 51 and further state that the



Report speaks for itself. The Board of Elections Defendants lack knowledge or information sufficient to form a belief about the truth of the remaining allegations in paragraph 51 and therefore deny the same.

52. The Board of Elections Defendants admit that plaintiffs do not seek in this lawsuit to invalidate the monetary limits and public-funding recommendations of the Commission. The Board of Elections Defendants lack knowledge or information sufficient to form a belief about the truth of the remaining allegations in paragraph 52 and therefore deny the same.

53. The Board of Elections Defendants admit that plaintiffs seek to enjoin the enforcement of the requirement that the SAM Party obtain 130,000 or 2% of votes cast in presidential elections, but deny that there is any basis in fact or law for such relief. The Board of Elections Defendants lack knowledge or information sufficient to form a belief about the truth of the remaining allegations in paragraph 53 and therefore deny the same.

54. To the extent that the allegations in paragraph 54 purport to recite or characterize the contents of the Report, no response is required. To the extent a response is required, the Board of Elections Defendants deny such allegations in paragraph 54 and further state that the Report speaks for itself. The Board of Elections Defendants lack knowledge or information sufficient to form a belief about the truth of the remaining allegations in paragraph 54 and therefore deny the same.

55. The allegations in paragraph 55 purport to recite or characterize the contents of the Report, to which no response is required. To the extent a response is required, the Board of Elections Defendants deny the allegations in paragraph 55 and further state that the Report speaks for itself.

56. The Board of Elections Defendants admit that the Commission's recommendations became law on December 23, 2019. The Board of Elections Defendants lack knowledge or information sufficient to form a belief about the truth of the remaining allegations in paragraph 56 and therefore deny the same.

57. The allegations in paragraph 57 set forth legal conclusions to which no response is required. To the extent a response is required, the Board of Elections Defendants deny the allegations in paragraph 57 and further state that the text of Part XXX of Chapter 59 of the New York Laws of 2019 speaks for itself.

58. The allegations in paragraph 58 set forth legal conclusions to which no response is required. To the extent a response is required, the Board of Elections Defendants deny the allegations in paragraph 58.

59. The allegations in paragraph 59 set forth legal conclusions to which no response is required. To the extent a response is required, the Board of Elections Defendants deny the allegations in paragraph 59.

60. The Board of Elections Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 60 and therefore deny the same.

61. The Board of Elections Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 61 and therefore deny the same.

62. To the extent that the allegations in paragraph 62 set forth legal conclusions, no response is required. To the extent a response is required, the Board of Elections Defendants deny such allegations in paragraph 62. The Board of Elections Defendants lack knowledge or information sufficient to form a belief about the truth of the remaining allegations in paragraph 62 and therefore deny the same.

63. To the extent that the allegations in paragraph 63 set forth legal conclusions, no response is required. To the extent a response is required, the Board of Elections Defendants deny such allegations in paragraph 63. The Board of Elections Defendants lack knowledge or information sufficient to form a belief about the truth of the remaining allegations in paragraph 63 and therefore deny the same.

64. To the extent that the allegations in paragraph 64 set forth legal conclusions, no response is required. To the extent a response is required, the Board of Elections Defendants deny such allegations in paragraph 64. The Board of Elections Defendants lack knowledge or information sufficient to form a belief about the truth of the remaining allegations in paragraph 64 and therefore deny the same.

65. To the extent that the allegations in paragraph 65 set forth legal conclusions, no response is required. To the extent a response is required, the Board of Elections Defendants deny such allegations in paragraph 65. The Board of Elections Defendants lack knowledge or information sufficient to form a belief about the truth of the remaining allegations in paragraph 65 and therefore deny the same.

66. The Board of Elections Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 66 and therefore deny the same.

#### **COUNT I**

67. The Board of Elections Defendants repeat and reallege their responses to paragraphs 1 through 66.

68. The allegations in paragraph 68 set forth legal conclusions to which no response is required. To the extent a response is required, the Board of Elections Defendants deny the allegations in paragraph 68.

69. The Board of Elections Defendants deny the allegations in paragraph 69.

70. The Board of Elections Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in the first sentence of paragraph 70 and therefore deny the same. The remaining allegations in paragraph 70 set forth legal conclusions, no response is required. To the extent a response is required, the Board of Elections Defendants deny the remaining allegations in paragraph 70.

71. The Board of Elections Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 71 and therefore deny the same.

72. The Board of Elections Defendants admit that the public campaign finance program does not provide funding to candidates for federal office, including president. The Board of Elections Defendants deny the remaining allegations in paragraph 72.

73. The allegations in paragraph 73 set forth legal conclusions to which no response is required. To the extent a response is required, the Board of Elections Defendants deny the allegations in paragraph 73.

74. The Board of Elections Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in the first sentence of paragraph 74 and therefore deny the same. The Board of Elections Defendants deny the remaining allegations in paragraph 74.

75. The Board of Elections Defendants deny the allegations in paragraph 75.

76. The allegations in paragraph 76 set forth legal conclusions to which no response is required. To the extent a response is required, the Board of Elections Defendants deny the allegations in paragraph 76.

77. The allegations in paragraph 77 set forth legal conclusions to which no response is required. To the extent a response is required, the Board of Elections Defendants deny the allegations in paragraph 77.

78. The allegations in paragraph 78 set forth legal conclusions to which no response is required. To the extent a response is required, the Board of Elections Defendants deny the allegations in paragraph 78.

79. The allegations in paragraph 79 set forth legal conclusions to which no response is required. To the extent a response is required, the Board of Elections Defendants deny the allegations in paragraph 79.

## **COUNT II**

80. The Board of Elections Defendants repeat and reallege their responses to paragraphs 1 through 79.

81. The allegations in paragraph 81 set forth legal conclusions to which no response is required. To the extent a response is required, the Board of Elections Defendants deny the allegations in paragraph 81.

82. The allegations in paragraph 82 set forth legal conclusions to which no response is required. To the extent a response is required, the Board of Elections Defendants deny the allegations in paragraph 82.

83. The allegations in paragraph 83 set forth legal conclusions to which no response is required. To the extent a response is required, the Board of Elections Defendants deny the allegations in paragraph 83.

84. The allegations in paragraph 84 set forth legal conclusions to which no response is required. To the extent a response is required, the Board of Elections Defendants deny the allegations in paragraph 84.

85. The allegations in paragraph 85 set forth legal conclusions to which no response is required. To the extent a response is required, the Board of Elections Defendants deny the allegations in paragraph 85.

86. The allegations in paragraph 86 set forth legal conclusions to which no response is required. To the extent a response is required, the Board of Elections Defendants deny the allegations in paragraph 86.

87. The allegations in paragraph 87 set forth legal conclusions to which no response is required. To the extent a response is required, the Board of Elections Defendants deny the allegations in paragraph 87.

### **COUNT III**

88. The Board of Elections Defendants repeat and reallege their responses to paragraphs 1 through 87.

89. The Board of Elections Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in the first sentence of paragraph 89 and therefore deny the same. The remaining allegations in paragraph 89 set forth legal conclusions to which no response is required. To the extent a response is required, the Board of Elections Defendants deny the remaining allegations in paragraph 89.

90. The Board of Elections Defendants deny the allegations in paragraph 90.

91. The Board of Elections Defendants deny the allegations in paragraph 91.

92. The allegations in paragraph 92 set forth legal conclusions to which no response is required. To the extent a response is required, the Board of Elections Defendants deny the allegations in paragraph 92.

#### **COUNT IV**

93. The Board of Elections Defendants repeat and reallege their responses to paragraphs 1 through 92.

94. The Board of Elections Defendants admit that the SAM Party of New York obtained the requisite number of signatures to place Ms. Miner and Ms. Volpe on the ballot for the 2018 gubernatorial election; that those candidates received more than 50,000 in the 2018 election; and that the SAM Party of New York ran candidates during the 2019 election. To the extent that the remaining allegations set forth legal conclusions, no response is required. The Board of Elections Defendants lack knowledge or information sufficient to form a belief about the truth of the remaining allegations in paragraph 94 and therefore deny the same.

95. The allegations in paragraph 95 set forth legal conclusions to which no response is required. To the extent a response is required, the Board of Elections Defendants deny the allegations in paragraph 95.

96. The allegations in paragraph 96 set forth legal conclusions to which no response is required. To the extent a response is required, the Board of Elections Defendants deny the allegations in paragraph 96.

#### **PRAYER FOR RELIEF**

97. The Board of Elections Defendants deny that plaintiffs are entitled to the relief requested or any relief whatsoever.

#### **AFFIRMATIVE DEFENSES**

98. Without assuming any burden of pleading or proof that would otherwise rest upon plaintiffs, the Board of Elections Defendants assert the following defenses, reserving the right to supplement its answer and defenses as discovery and investigation continue, and to assert any additional defenses pleaded by any other defendant in this action.

**FIRST AFFIRMATIVE DEFENSE**

**(Failure to State a Claim)**

99. The complaint fails to state a claim upon which relief may be granted.

**SECOND AFFIRMATIVE DEFENSE**

**(Lack of Irreparable Harm)**

100. Plaintiffs are not entitled to injunctive relief due to lack of immediate or irreparable injury.

**THIRD AFFIRMATIVE DEFENSE**

**(Abstention)**

101. To the extent plaintiffs' claims challenge the legality of any law on the basis that it violates the Constitution of the State of New York, this Court should abstain from adjudicating such claims.

**WHEREFORE**, the Board of Elections Defendants demand judgment against plaintiffs as follows:

- (a) dismissing the complaint in its entirety, with prejudice;
- (b) awarding the Board of Elections Defendants their costs and expenses incurred in connection with the defense of this action; and
- (c) granting such other and further relief as the Court deems just and proper.



Dated: Albany, New York  
March 26, 2020

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