

Appellate Division – Third Department Case No. CV-24-0281

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**New York State Supreme Court**  
**Appellate Division—Third Department**

ELISE STEFANIK, NICOLE MALLIOTAKIS, NICHOLAS LANGWORTHY,  
CLAUDIA TENNEY, ANDREW GOODELL, MICHAEL SIGLER, PETER  
KING, GAIL TEAL, DOUGLAS COLETY, BRENT BOGARDUS, MARK E.  
SMITH, THOMAS A. NICHOLS, MARY LOU A. MONAHAN, ROBERT F.  
HOLDEN, CARLA KERR STEARNS, JERRY FISHMAN, NEW YORK  
REPUBLICAN STATE COMMITTEE, CONSERVATIVE PARTY OF  
NEW YORK STATE, NATIONAL REPUBLICAN CONGRESSIONAL  
COMMITTEE and REPUBLICAN NATIONAL COMMITTEE,

*Plaintiffs-Appellants,*

- against -

KATHY HOCHUL, in her official capacity as Governor of New York,  
NEW YORK STATE BOARD OF ELECTIONS, PETER S. KOSINSKI, in  
his official capacity as Co-Chair of the New York State Board of Elections,  
DOUGLAS A. KELLNER, in his official capacity as Co-Chair of the  
New York State Board of Elections, and THE STATE OF NEW YORK,

*Defendants-Respondents,*

*(For Continuation of Caption See Inside Cover)*

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**BRIEF OF THE LEADERSHIP NOW PROJECT AS *AMICUS CURIAE* IN  
SUPPORT OF DEFENDANTS AND INTERVENOR-DEFENDANTS**

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- and -

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JOSEPH MORELLE, RITCHIE TORRES, JANICE STRAUSS,  
GEOFF STRAUSS, RIMA LISCUM, BARBARA WALSH,  
MICHAEL COLOMBO and YVETTE VASQUEZ,

*Intervenors-Defendants-Respondents.*

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Appellate Division – Third Department Case No. CV-24-0281  
**STATEMENT OF INTEREST OF *AMICUS CURIAE***

The Leadership Now Project (“Leadership Now”) is a national membership organization of business leaders committed to ensuring that the United States has a strong democracy and economy. Leadership Now supports a set of core principles that include defending the rule of law, increasing competitiveness in the political system to improve the quality of governance, supporting civil participation, and planting seeds for longer-term national growth and prosperity. Preserving responsive, democratic government is critical to the American economy, central to the organization’s mission, and touches the lives of all Americans.

**INTRODUCTION**

An engaged and well-informed electorate is the foundation of any democracy. And a stable democracy, in turn, is necessary for economic development and innovation. It is therefore crucial to ensure that citizens stay informed and have the ability to regularly participate in elections. With the passage of the Early Mail Voter Act, New York joins dozens of other states that allow all citizens to vote by mail. By allowing this, New York is eliminating barriers to participation and accommodating modern work obligations. Based on the experiences of these other states, New York can expect an increase in voter

turnout, especially among traditionally underrepresented groups, and a better informed electorate. The Act is a surefire way to strengthen democracy.

The Appellants argue that the Act is unconstitutional, claiming that the New York Constitution impliedly prohibits the Legislature from allowing vote by mail for all citizens. It does nothing of the sort. To the contrary, the New York Constitution grants the Legislature broad authority to create laws precisely like the Act that prescribe alternate “methods” of voting. This authority is important in providing the Legislature with the flexibility to adapt methods of voting to accommodate changes in modern work and life. This Court should therefore affirm the lower court’s ruling that the Act is constitutional and dismissing the complaint.

## **ARGUMENT**

### **I.**

#### **THE EARLY MAIL VOTER ACT STRENGTHENS DEMOCRACY**

“A well-functioning democracy is the cornerstone of a strong economy.”<sup>1</sup> Democracy provides “stability and predictability for businesses,” which in turn promote competition and innovation, along with economic growth

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<sup>1</sup> Daniella Ballou-Aares, et al., *Supporting Democracy Is Not a Partisan Issue – It’s What All Americans Expect of Business Ahead of the 2024 Election*, Fortune, Sept. 11, 2023, available at <https://fortune.com/2023/09/11/supporting-democracy-not-partisan-issue-what-all-americans-expect-of-business-ahead-2024-election-politics-leadership/> (last visited Mar. 21, 2024).



and job creation.<sup>2</sup> When democratic institutions fail to function properly, businesses inevitably face increased demands from customers, employees, shareholders, and regulators. Additionally, studies show that “interference with regular electoral processes” create risks to investors.<sup>3</sup> As but one example, foreign investments fall in the face of political instability.<sup>4</sup> The reason for this is simple—foreign investors think twice about partnering with U.S.-based companies when there is political uncertainty.<sup>5</sup>

Because of the relationship between democracy and business, business leaders are working to ensure the integrity of the democratic process, and are active in advocating for key voting reforms that promote fair elections.<sup>6</sup> Leadership Now and other similar organizations support the Early Mail Voter Act and are committed to the change the Act will bring for New York voters.

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<sup>2</sup> *See id.*

<sup>3</sup> Layna Mosley, *The Financial & Economic Dangers of Democratic Backsliding*, at 5, July 2023 available at <https://statesuniteddemocracy.org/wp-content/uploads/2023/07/THE-FINANCIAL.pdf> (last visited Mar. 21, 2024).

<sup>4</sup> *See id.* at 7.

<sup>5</sup> *See id.*

<sup>6</sup> *See* Ballou-Aares.

With the passage of the Early Mail Voter Act, New York joins thirty-five other states that have adopted broad mail voting options to their citizens.<sup>7</sup> Allowing New Yorkers to vote by mail promotes democracy by clearing barriers to voting, and by making voting more accessible to all New Yorkers, not only those with the time and means to participate.

The Early Mail Voter Act adapts methods of voting in ways that accommodate the modern workplace. Workers today are increasingly likely to juggle shift changes, long hours, travel, and unexpected assignments. Employers increasingly expect employees to be available for work, without significant notice or control over their schedule.<sup>8</sup> Workers live farther from their work places, adding longer commutes to their day.<sup>9</sup> Many voters also depend on public or

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<sup>7</sup> Press Release, The New York State Senate, Assembly Members Reyes, Senate Deputy Leader Gianaris Announce “Early Vote by Mail Act” Passes NYS Assembly, Enabling New Yorkers to Use Mail-In Ballots for Early Voting, June 10, 2023, *available at* <https://www.nysenate.gov/newsroom/press-releases/2023/michael-gianaris/assembly-member-reyes-senate-deputy-leader-gianaris> (last visited Mar. 21, 2024).

<sup>8</sup> See Sigrid Lurh et al., *Parenting Without Predictability: Precarious Schedules, Parental Strain, and Work-Life Conflict*, *Russell Sage Foundation Journal of the Social Sciences*, Aug. 2022, *available at* <https://www.rsfsjournal.org/content/8/5/24> (last visited Mar. 21, 2024) (summarizing research showing dramatic changes in work and family life resulting from transformations in workplace scheduling and expectations).

<sup>9</sup> Charlynn Burd et al., *Travel Time to Work in the United States: 2019, American Community Survey Reports*, United States Census, March 2021 (charting increased commuting times over the past decade, and noting that the New York City Metro Area “stands out with the longest average travel time, at 37.7 minutes, and the highest percentage of workers with commutes of at least 60 minutes, at 22.7 percent”), *available at* <https://www.census.gov/content/dam/Census/library/publications/2021/acs/acs-47.pdf> (last visited March 21, 2024).

shared transportation, and therefore may not have transportation to polling places. And many voters juggle caregiving responsibilities and may not have the ability to arrange an alternative caregiver in order to vote.

New Yorkers' lives are simply different from what they were in the late 1800s, in ways that create significant barriers to voting. New York has declined to adopt an Election Day holiday, which might help address those barriers. And while the law allows employees to request up to two hours time off to vote, they must submit that request in writing at least two days in advance. NY Elec. Law Sec. 3-110. The Early Mail Voter Act, by allowing the flexibility to cast a ballot from home, is an essential accommodation to the realities of modern work and life.

Mail voting also allows voters to avoid long wait times for in-person voting. New Yorkers waited an average of 16.8 minutes to vote in 2020, well above the national average.<sup>10</sup> A voter who waits in a long line, or otherwise has a negative voting experience, is statistically less likely to vote in future elections.<sup>11</sup>

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<sup>10</sup> Massachusetts Institute of Technology Election Data & Science, Elections Performance Index, <https://elections.mit.edu/#/data/map?view=state-profile&state=NY&year=2020> (last visited Mar. 21, 2024).

<sup>11</sup> Mac Brower, *How Long Lines Affect Turnout*, Democracy Docket, Mar. 3, 2022 (every additional hour a voter stands in line decreases the probability they will vote in the next election by 1%).

Mail voting has the potential to increase voting participation, especially among groups that have been previously underrepresented at the polls. For example, Colorado allows its citizens to vote by mail, and as of 2018, it boasted the highest voter turnout in the nation.<sup>12</sup> The option to vote by mail is responsible for increasing voter turnout by 8 percentage points—which amounts to approximately 900,000 additional ballots cast over a four-year period.<sup>13</sup> Utah, which also allows vote by mail, reported increased voter turnout by 5-7 percentage points.<sup>14</sup> Young voters, blue-collar workers, voters of color, and voters with lower wealth and educational attainment showed the largest turnout gains.<sup>15</sup>

Nationwide, increased mail voting in the 2020 presidential election led to higher voter participation rates in states that made such voting more accessible. The participation rate in 2020 was 66.7%, which eclipsed the previous post-War record of 63.8% set in 1960. Many academics attribute that increase to the availability of absentee or mail voting, made more available during the COVID epidemic. Research by the University of Virginia found that increases in the

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<sup>12</sup> Adam Bonica et al., *All-Mail Voting in Colorado Increases Turnout and Reduces Turnout Equality*, *Electoral Studies*, Vol. 72, available at <https://www.sciencedirect.com/science/article/pii/S0261379421000822> (last visited Mar. 21, 2024).

<sup>13</sup> See Bonica.

<sup>14</sup> See Bonica.

<sup>15</sup> See Bonica.

availability of mail voting increased turnout by just over 0.7 percentage points.<sup>16</sup> Particularly high increases were seen among people with disabilities.<sup>17</sup> Other research has suggested a positive effect of 2 to 3 percentage points when mail voting is made available.<sup>18</sup>

Notably, the effects of greater participation are not generally partisan. University of Virginia researchers found that the prevalence of mail voting had no effect on the 2020 presidential vote margin. They found no evidence that voting by mail favors a particular party.<sup>19</sup> Other large analyses confirm this conclusion.<sup>20</sup>

Voting by mail also has the potential to create a better-informed electorate. Recent surveys show that citizens who vote by mail spend more time

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<sup>16</sup> Alan I. Abramowitz, *Assessing the Impact of Absentee Voting on Turnout and Democratic Vote Margin in 2020*, Sabato's Crystal Ball, UVA Center for Politics, Feb. 25, 2021, available at <https://centerforpolitics.org/crystalball/articles/assessing-the-impact-of-absentee-voting-on-turnout-and-democratic-vote-margin-in-2020/> (last visited Mar. 21, 2024).

<sup>17</sup> Lisa Schur et al., *Disability and Voter Turnout in the 2022 Elections, Supplemental Analysis of Census Voter Turnout Data*, Rutgers University, U.S. Election Assistance Commission, available at [https://www.eac.gov/sites/default/files/2023-07/EAC\\_2023\\_Rutgers\\_Report\\_Supplement\\_FINAL.pdf](https://www.eac.gov/sites/default/files/2023-07/EAC_2023_Rutgers_Report_Supplement_FINAL.pdf) (last visited Mar. 21, 2024) (voter turnout among people with disabilities improved significantly between 2018 and 2022 in states that shifted to mail-in voting).

<sup>18</sup> Eric McGhee et al., *Vote-By-Mail Policy and the 2020 Presidential Election*, Sage Journals, 2022, at 3 (summarizing research).

<sup>19</sup> Abramowitz.

<sup>20</sup> McGhee at 15 (partisan effects of greater turnout following vote by mail in 2020 “are generally weak” and may favor either party).

researching election issues than when they vote at a polling location.<sup>21</sup> As a result, voters are more likely to be informed about ballot measures and candidates.<sup>22</sup> Accordingly, the Early Mail Voter Act is likely to lead to greater participation and engagement among New Yorkers, and thereby strengthen democracy.

Finally, mail voting may be an important means for safe voting. Leadership Now and its members are conscious of the potentially destabilizing effects of election violence. The Department of Homeland Security’s most recent Threat Assessment report highlights the heightened risk of violence in the 2024 elections, including the risk that “violence or threats could be directed at government officials, voters, and elections-related personnel and infrastructure, including polling places.”<sup>23</sup> Such risks could deter voting, making the option for voting by mail even more essential.

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<sup>21</sup> See James Szewczyk, *Does Vote-by-Mail Cause Voters to Gather Information about Politics?*, at 25, 28, available at [https://bpb-us-w2.wpmucdn.com/web.sas.upenn.edu/dist/7/538/files/2019/06/VBM\\_Information.pdf](https://bpb-us-w2.wpmucdn.com/web.sas.upenn.edu/dist/7/538/files/2019/06/VBM_Information.pdf) (last visited Mar. 21, 2024.)

<sup>22</sup> See Szewczyk, at 11, 28.

<sup>23</sup> U.S. Department of Homeland Security, *Homeland Threat Assessment 2024*, at 19, available at [https://www.dhs.gov/sites/default/files/2023-09/23\\_0913\\_ia\\_23-333-ia\\_u\\_homeland-threat-assessment-2024\\_508C\\_V6\\_13Sep23.pdf](https://www.dhs.gov/sites/default/files/2023-09/23_0913_ia_23-333-ia_u_homeland-threat-assessment-2024_508C_V6_13Sep23.pdf) (last visited Mar. 21, 2024).

## II.

### THE EARLY MAIL VOTER ACT IS CONSTITUTIONAL

The New York Legislature has plenary authority to enact election laws, so long as those laws do not add to the disqualifications provided in the New York Constitution. *Ahern v. Elder*, 195 N.Y. 493, 500 (1909). This authority is strengthened by Article, II, Section 7 of the New York Constitution, which explicitly places in the hands of the Legislature responsibility to prescribe the “method” of voting for all voters. The Constitution provides that “[a]ll elections by the citizens, ..., shall be by ballot, *or by such other method as may be prescribed by law*, provided that secrecy in voting is preserved.” N.Y. Const. art. II, § 7 (emphasis added). Pursuant to this broad grant of power, the Legislature passed the Early Mail Voter Act, which expanded early voting methods to include voting by mail.

The only question raised by this appeal, whether the Early Mail Voter Act is *prohibited* by the Constitution, is easily answered in the negative. Appellants claim that the Act violates Article II, Section 2 of the New York Constitution (“Section 2”). Section 2, titled “Absentee voting” allows the Legislature to provide different voting procedures for certain voters. It provides as follows:

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.

Nothing in Section 2 limits the Legislature's plenary power or the broad authority granted in Section 7. Indeed, nothing in the plain text of Section 2 suggests that it prohibits any kind of conduct. It does not even *require* the Legislature to allow for absentee voting and instead only says the Legislature *may* provide for it. N.Y. Const. Art. II, § 2. Thus, Section 2 cannot be read as a limitation on the Legislature's power. Rather, it simply creates an option that allows the Legislature, if it wishes, to create special accommodations for certain classes of voters.

The Legislature's broad power under Section 7 to adapt methods of voting is essential to ensuring that New Yorkers are not shut off from the opportunity to vote. New Yorkers work longer and more unpredictable hours, and do so farther from their homes, than they did in the past, imposing greater barriers to voting. The COVID pandemic led to new work patterns that are still evolving. The future will surely see more changes to work and life patterns, and with them new challenges to voting. A fully participatory democracy requires an ability to adapt methods of voting to these changes in work and life.



The framers of the New York Constitution foresaw that need by expressly authorizing the Legislature to provide for voting “by ballot” or by any “other method.” And in the Constitutional Convention of 1894, the Legislature rejected amendments that would have limited those methods to ballot or “voting machines.”<sup>24</sup> Limiting that power, as Appellants suggest, would without basis prevent the Legislature from taking action to update methods of voting to accommodate modern work and life.

The Early Mail Voter Act adopts a method of early voting, consistent with the Legislature’s plenary authority and Article II Section 7 of the New York Constitution. Nothing in the New York Constitution limits the Legislature’s authority to take this action. It is an important accommodation of modern work life, and will promote democracy by ensuring that all have access to vote.

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<sup>24</sup> Charles Z. Lincoln, *The Constitutional History of New York*, Vol. III, at 109-11 (1906).

## **CONCLUSION**

For the reasons stated above, Amicus Curiae The Leadership Now Project respectfully requests that this Court affirm the lower court's ruling declaring the Act constitutional and dismissing Appellants' complaint.

Dated: March 21, 2024

Respectfully submitted,

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