FAX COVER SHEET

TO: Kimberly Galvin Esq / Andrew Celli, Esq

FROM: John Ciampoli Esq

DATE: 9/10/2015

PAGES: 38 (including cover)

COMMENTS: Motion for Intervention by Ed Co/t the NY Republican State Committee

AT AN IAS TERM OF SUPREME COURT,
ALBANY COUNTY AT THE COURTHOUSE
THEREOF ON SEPTEMBER 10, 2015

PRESENT: Hon. Kimberly A O'Connor JSC
SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ALBANY

ALBANY COUNTY CLERK PAID 45

X

In the matter of
BRENNAN CENTER FOR JUSTICE AT NYU SCHOOL OF LAW; GERALD BENJAMIN; LIZ KRUEGER; JOHN R. DUNNE; DANIEL L. SQUADRON, MAUREEN KOETZ; and BRIAN KAVANAGH,

- Petitioners,

Index No. **3579-15**

For a Judgment Pursuant to Article 78 of the Civil Practice law and Rules,

ORDER TO SHOW CAUSE

-against-

NEW YORK STATE BOARD OF ELECTIONS,

-Respondents.

X

Upon the application of Edward Cox, and the New York Republican State Committee, by their attorney, John Ciampoli, Esq., let the above captioned parties

SHOW CAUSE before the assigned Justice of this Court at a special term thereof to be held at the Albany County Courthouse, on the 18th Day of September, 2015, at 9:30 AM, or as soon thereafter as counsel may be heard why an order of the Supreme Court should not issue

1. Granting the application for intervention in the above captioned matter by the proposed intervenors, and

2. Amending the caption of the within proceeding to reflect such intervention, and

3. Upon the application of Intervenors, denying the Petition in this matter in all respects, together with such other, further and different relief as this Court may deem to be just and proper in the premises.

AND IT IS FURTHER

ORDERED, that service of a copy of this order to show cause, together with a copy of the papers upon which it was granted shall be made upon the Petitioner and Respondents to these proceedings by delivering same to the counsel appearing for such parties via electronic transmission and first class mail. on or before September 11, 2015, and that such service shall be good and sufficient service thereof.

DATED: September 10, 2015
ALBANY, NEW YORK

ENTER:

JUSTICE OF THE SUPREME COURT

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ALBANY

X

In the matter of

BRENNAN CENTER FOR JUSTICE AT NYU SCHOOL OF LAW; GERALD BENJAMIN; LIZ KRUEGER; JOHN R. DUNNE; DANIEL L. SQUADRON, MAUREEN KOETZ; and BRIAN KAVANAGH,

- Petitioners,

Index No. **3579-15**

For a Judgment Pursuant to Article 78 of the Civil Practice law and Rules,

AFFIRMATION

-against-

NEW YORK STATE BOARD OF ELECTIONS,

-Respondents.

X

JOHN CIAMPOLI, ESQ. an attorney admitted to the practice of Law before the Courts of the State of New York, does hereby affirm pursuant to the provisions of the CPLR, and respectfully moves this Court as follows:

1. He is the attorney for the proposed Intervenors, Edward Cox and the New York Republican State Committee in these proceedings.
2. Your Intervenors are, respectively, the Chairman of the New York Republican State Committee and the New York Republican State Committee.
3. Chairman Cox is a citizen and voter of the State of New York, and serves as the chief executive officer of the Republican Party's

statutorily established entity in the State of New York, see, Article Two, Election Law.

4. The New York Republican State committee is established by statute and as such is the entity representing and acting for the Republican party in the State of New York, see Election Law. Article Two.
5. All of your proposed intervenors have standing to intervene in this proceeding as the petition herein necessarily will affect their rights and obligations under the law.
6. In addition, the relief sought by the petitioner herein would adversely affect and prejudice the rights of the state party committee and candidates that it is advancing for public offices within State of New York.
7. Your intervenors have annexed a proposed pleading as required by law.
8. Intervenors claim status to intervene under CPLR 2012, 2013 and 2014, as well as the provisions of CPLR 7802 (d).
9. Intervenors will be directly impacted by the relief requested by the Petitioner as set forth herein.
10. A judicially re-written statute, as sought by the within petitioners, necessarily adversely affects the rights and interests of the recognized

political parties in this state, including the rights of free speech guaranteed by the New York State Constitution.

11. A judicially re-written statute, as sought by the within petitioners, necessarily adversely affects the rights and interests of the citizens and voters in this state, including, but not limited to those who choose to use their free speech rights by donating to political committees and candidates through their business entities such as LLCs [Limited Liability Companies].

12. The Intervenors have a history of engaging in protected speech by receiving contributions from LLCs. The relief sought by Petitioners would necessarily chill the free speech rights of the Intervenors and LLC donors.

13. Moreover, none of the parties to these proceedings have the interests at stake that your proposed Intervenors have. The single public agency named herein has no candidates on the ballot, engages in no political fundraising or communications, and does not compete for the favour of the voters in any election.

14. This all clearly distinguishes the interests of the Intervenors from those of the State Board of Elections.

15. It is entirely likely that Intervenors' positions will not be adequately represented in these proceedings.

16. Accordingly, mandatory intervention under the provisions of the CPLR should be ordered.

17. Alternatively, Intervenors request permissive intervention under the terms of the CPLR and the facts advanced above.

18. Intervenors are undoubtedly "interested parties" in the existing proceeding and as interested parties should be allowed to intervene.

19. It is respectfully submitted that the standard of Article 78 CPLR governing special proceedings should be applied here and intervention allowed.

20. The Petitioners seek statutory change without compliance with the State Constitution's requirements therefor. Specifically, the Petitioners seek to substitute this Court for acquiring the imprimatur of both houses of the Legislature, and approval of a bill by the Governor. Indeed some of the Petitioners are Legislators who were not capable of having legislation on this very topic passed by the legislature.

21. This attempt to obtain judicial legislation under the guise of an Article 78 Proceeding leaves a situation where the State of New York, is not present to defend the statute against the claim.

22. Further, upon information and belief, the State Attorney General has publically taken a position on the underlying issue in favour of the Petitioners and would be conflicted in any effort to defend the statute from attack.

23. Intervention would help to assure compliance with the Constitution and the Law, and help to protect the statute from this "back door" attack.

24. This application is brought before the Court on short notice due to the fact that Intervenors have just recently learned of the Petition to this Court and have had to then, after appropriate consultation, retain counsel for this application.

25. Expedited service has been requested. All parties to these proceedings will be represented by counsel who may be served upon the return date specified by the Court in its order to show cause.

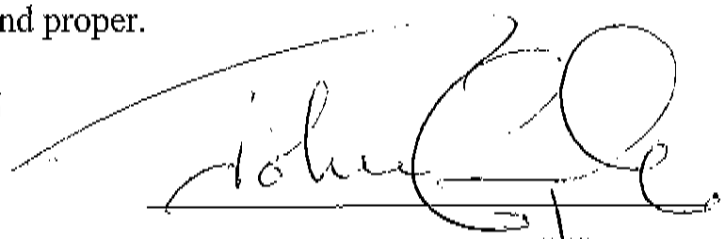
26. No application for the relief requested herein has been made to any Court.

27. Counsel hereby certifies the pleadings as non-frivolous pursuant to the rules of the New York Courts.

WHEREFORE, it is respectfully requested that the Court sign the within Order to Show Cause, grant Intervenor status, allow imposition of the responsive pleadings,

and dismiss the within petition and grant the relief requested in the order to show cause and the motion, together with such other, further and different relief as this Court may deem to be just and proper.

DATED: September 8, 2015



Sinnreich, Kosakoff & Messina, LLP
by: John Ciampoli, Esq., of counsel
267 Carleton Avenue, Suite 301
Central Islip, New York 11722
631-650-1200

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ALBANY

X

In the matter of

BRENNAN CENTER FOR JUSTICE AT NYU SCHOOL OF LAW; GERALD BENJAMIN; LIZ KRUEGER; JOHN R. DUNNE; DANIEL L. SQUADRON, MAUREEN KOETZ; and BRIAN KAVANAGH,

- Petitioners,

Index No. **3579-15**

For a Judgment Pursuant to Article 78 of the Civil Practice law and Rules,

EMERGENCY AFFIRMATION

-against-

NEW YORK STATE BOARD OF ELECTIONS,

-Respondents.

X

John Ciampoli, Esq., an attorney duly admitted to the practise of law before the courts of the State of New York does hereby affirm pursuant to the provisions of the CPLR as follows:

1. He is the attorney for the Proposed Intervenors in these proceedings.

2. This is a proceeding brought pursuant to the provisions of CPLR Article 78, relating to the regulation of the Election Process and as such should be considered to be of the most urgent nature.

3. Elections matters have a preference over all others pursuant to statute.

4. This matter requires the immediate attention of this Court.

5. Counsel for respondent Board of Elections has been contacted and informed of this application.

6. Intervenors have just learned of the application and have retained counsel and prepared these papers as quickly as possible.

7. No temporary restraining orders are requested herein.

WHEREFORE, it is respectfully requested that this order to show cause be considered immediately, and that the relief requested therein be granted.

DATED: Central Islip, New York
September 8, 2015

Sinnreich, Kosakoff & Messina, LLP
by: John Ciampoli, Esq., of counsel
267 Carleton Avenue, Suite 301
Central Islip, New York 11722
631-650-1200

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ALBANY

X

In the matter of

BRENNAN CENTER FOR JUSTICE AT NYU SCHOOL OF LAW; GERALD BENJAMIN; LIZ KRUEGER; JOHN R. DUNNE; DANIEL L. SQUADRON, MAUREEN KOETZ; and BRIAN KAVANAGH,

- Petitioners,

Index No. **3579-15**

For a Judgment Pursuant to Article 78 of the Civil

-against-

VERIFIED ANSWER & AFFIRMATIVE DEFENSES

NEW YORK STATE BOARD OF ELECTIONS,

-Respondents.

X

INTERVENORS, in these proceedings, by their attorney do hereby answer the petition herein as follows:

1. Deny the allegations contained in paragraphs numbered 1, 2, 4, 5, 6, 8, 10, 40, 41, 42, 45, 48, 73, 88, 89, 90, 92, 96, 97, 98, 99, 100, 101, 103, 104, 105, and 106.
2. Deny the allegations contained in paragraph 3 which alleges the Board has refused to correct an alleged "interpretational anomaly". We respectfully refer the Court to the New York Election Law and the relevant State Board of Elections Opinion for an accurate depiction of the contents thereof, and

respectfully allege that the petitioners are urging this Court to adopt an erroneous interpretation of the law so as to chill free speech rights which are protected by the New York State Constitution.

3. Deny the allegations contained in paragraph 7. Intervenors respectfully allege that if the Legislature wanted to impose specific limits on LLCs it has the full ability to do so and that Petitioners' bald faced lies to the effect that the legislature intended to cover LLCs with corporate or other limits is clearly disproved by the failure of certain Petitioners to pass legislation conforming the law to what they desire at the expense of the free speech and associational rights of the Intervenors which are protected under the terms of the New York State Constitution.

4. The allegations that the Respondent Board of Elections has violated the "spirit" of the Election Law and its purpose are without merit. The Petitioners could just as soon have accused the Board of Elections with violating the Spirit of Christmas Past. The Election Law was never designed to choke off, chill, and throttle the free speech of the citizens of this State, whether they be business entities or individuals.

5. Deny the allegations contained in that portion of paragraph 9 which alleges the Board's failure to consider the fundamental nature of LLCs and how they are treated by other agencies. It is respectfully pointed out to this Court

that in the area of federal election law that they make reference to the trend has been to liberalize contribution limitations in favour of the protection of free speech and associational rights, see, Citizens United v. FEC, No. 08-205, 558 U.S. 310 (2010). What the Petitioners seek is to change the law in a retrogressive fashion without an act of the Legislature to suit their own political agenda.

6. Further, with respect to the allegations in paragraph 9, upon information and belief, at least two individual commissioners, whose votes the Petitioners seek to have this Court improperly coerce, very carefully considered the proposal sprung upon them by the Petitioners.

7. Finally, with regard to the allegations of paragraph 9 and all other paragraphs in which the Board of Elections' vote is alleged to constitute an act that is, *inter alia,* arbitrary and capricious, the Petitioners seek to foist upon this Court a purposeful misstatement of the law. The Election law states:

> "For the purposes of meetings, three commissioners shall constitute a quorum. The affirmative vote of three commissioners shall be required for any official action of the state board of elections." Election Law 3-100(4)

8. Under the terms of the Election Law the Board has in fact taken no action.

9. Upon information and belief, the Petitioners have resorted to this subterfuge because they are guilty of *laches* in that they took no timely action to

overturn the 1996 Formal Opinion of the State Board of Elections that is the actual target of their proceeding.

10. It is fair to say that the statute of limitations for an attack on said 1996 opinion has long since lapsed and no timely proceeding challenging it has been commenced, necessitating the misrepresentation of the law and facts contained in their papers.

11. Deny the allegations contained in paragraph 11, 107 and 109, to the extent that they assert conclusions of law which are, at best self-serving statements.

12. Deny the allegations paragraph 12 and note that they contain no relevant statements of fact; and respectfully re-allege that the petitioners seek to chill certain protected Constitutional Rights in accordance with their agenda.

13. Deny knowledge and information sufficient to form a belief as to the allegations contained in paragraphs numbered 13, 15, 17, 28, 29, 50, 51, 52, 53, 55, 56, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 70, 72, and 84.

14. Admit that portion of paragraph 14 which states that Petitioner Liz Krueger is a current member of the New York State Senate; and deny knowledge and information sufficient to form a belief as to the allegations contained in the remainder of the paragraph.

15. Admit that portion of paragraph 16 which states that Petitioner Daniel L. Squadron is a current member of the New York State Senate; and deny

knowledge and information sufficient to form a belief as to the allegations contained in the remainder of the paragraph.

16. Admit that portion of paragraph 18 which states that Petitioner Brian Kavanagh is a current member of the New York State Assembly; and deny knowledge and information sufficient to form a belief as to the allegations contained in the remainder of the paragraph.

17. As to the allegations contained in paragraphs numbered 19, 34, 37 and 38, the terms of the Election Law speak for themselves. The Court need not rely upon Petitioners' characterizations of the law Intervenors respectfully deny these allegations to the extent that they depart from the Law.

18. As to the allegations contained in paragraph 20, make no response to the portion which refers to an intent to eliminate quid pro quo corruption, as it contains no statement of fact. The remaining allegations are irrelevant and to the extent that they may be relevant they are denied. Finally, Intervenors refer the Court to the New York Election Law for an accurate depiction of the contents thereof.

19. As to the allegations contained in the first portion of paragraph 21 ending at "well over a century", respectfully refer the Court to the New York Election Law for an accurate depiction of the contents thereof and deny the

allegations to the extent that they depart therefrom; and make no response to the remainder of the paragraph, as it contains no statement of fact.

20. Admit the allegations contained in paragraphs numbered 22 and 94.

21. As to the allegations contained in paragraph 23, respectfully refer the Court to the New York Election Law and to the complete contents of the documents referred to in the paragraph. Intervenors deny the allegations to the extent that they depart therefrom.

22. As to the allegations contained in paragraphs numbered 24, 26, 35, and 36, respectfully refer the Court to the specific contents of the documents referenced within those paragraphs, and deny the allegations to the extent that they depart therefrom.

23. As to the allegations contained in paragraph 25, object to self-serving and prejudicial use of the term "modest" in the first sentence of the paragraph. In fact 1n 1974 five thousand dollars was a substantial amount of money. We respectfully refer the court to the specific contents of the documents referenced in the paragraph, and deny the allegations to the extent that they depart therefrom; and deny knowledge and information sufficient to admit or deny the allegations contained in the remainder of the paragraph.

24. As to the allegations contained in paragraph 27, object to use of the term "several" and "worried" in the first sentence of the paragraph. The Court is

respectfully referred to the specific contents of the documents referenced in the remainder of the paragraph, and deny the allegations to the extent that they depart therefrom. Further, the Petitioners utterly fail to point out to the Court any actual language adopted by the legislature in response to inquiries made on the floor of the Assembly.

25. As to the allegations contained in paragraph 30, admit the allegations contained in that portion which alleges that partnerships are treated differently than corporations. Intervenors respectfully refer the Court to the New York Election Law and relevant Board Opinions for the specific policies and procedures relative to partnerships and corporations.

26. With regard to the allegedly "stricter" limits imposed upon partnerships, alleged in paragraph 30, the Petitioners again misrepresent the terms of the Election Law. In fact, partnerships are subject to the totality of the individual limits of all of the partners. Partnerships are required to report an attribution their contributions only when aggregate Partnership contributions exceed twenty-five hundred dollars this is a reporting requirement and in no way affects contribution limitations.

27. As to the allegations contained in paragraphs numbered 31, 32, 33, 39, 43, 46 and 47, respectfully refer the Court to the contents of the relevant Board

Opinions referenced to therein, and deny Petitioners' characterizations to the extent that they depart therefrom.

28. Make no response to paragraphs numbered 44, 49, 83, 102, and 108, as they contain no statements of fact, and are irrelevant to the case at bar.

29. Deny the allegations contained in paragraph 54. Intentional evasion of the contribution limitations is currently a crime in New York State.

30. Deny the allegations of paragraph 57 and note that they are irrelevant as to the case at bar.

31. The allegations contained in the part of paragraph 57 referring to "[t]his type of activity in highly regulated industries", implies that the activities are (or should be) illegal. These allegations only serve to underscore the fact that the petitioners seek to have this Court engage in an unconstitutional Legislative Act. The Moreland Commission's opinion is irrelevant to the determination of this matter on the existing law, and to the extent necessary is denied.

32. As to the allegations contained in paragraph 58 through 74 they are irrelevant to the case at bar, and to any extent necessary are otherwise denied. These allegations are more properly included in an op/ed piece rather than Court pleadings. These pleadings should be disregarded by this

Court as self-serving and, again, underscoring the unconstitutional act of judicial legislation that the Petitioners seek.

33. Deny knowledge and information sufficient to form a belief as to the allegations in paragraph 69 addressing Petitioners' "enormous financial disadvantage", but state that both Petitioner Kreuger and Petitioner Squadron have been continually reelected, and are, upon information and belief, in possession of sufficient wealth to support their candidacies. Intervenors note that both of these Petitioners defeated long time incumbents at the polls who were, upon information and belief, the beneficiaries of the very types of contributions that they now complain of.

34. Deny knowledge and information sufficient to form a belief as to the allegations in paragraph 71 relative to their confidence in New York's democracy. Their individual beliefs are irrelevant to the question of law before this Court. Shaken or not, Petitioners Benjamin, Krueger, Dunne, Squadron, Koetz and Kavanagh are still free to pursue the changes in the law that they seek here with the appropriate authority, the Legislature.

35. As to the allegations contained in paragraph 74, they are irrelevant to the question of law presented to this Court. To any extent necessary they are denied and Intervenors respectfully refer the Court to the specific contents of

the Moreland Commission Report referenced therein, and deny the allegations to the extent that they depart therefrom.

36. Intervenors point out that the Moreland Commission called for Legislative acts to change the law. Nowhere in its reports did the Moreland Commission suggest an Article 78 proceeding as the remedy for the ills the commission members perceived.

37. As to the allegations contained in paragraph 75, deny that the Board relied on the FEC opinion; and admit that the FEC opinion was rescinded in 1999.

38. As to the allegations contained in paragraphs numbered 76, 77, 78, and 79 Intervenors point out that the FEC's interpretation of its federal statutes is irrelevant unless the Petitioners can show identical or similar provisions of state statute. Intervenors deny such allegations to the extent necessary and respectfully refer the Court to the CFR sections recited and to the specific contents of the documents referenced within those paragraphs, and deny the allegations to the extent that they depart therefrom.

39. As to the allegations contained in paragraphs 80 through 84 of the Petition, they are irrelevant to the question at bar, and are otherwise denied as may be necessary. Intervenors note that the claims made therein underscore the Intervenors' defenses of the statute of limitations and *laches*.

40. Admit that portion of paragraph 80 which alleges that groups wrote to the Board in 1997 on this issue; and deny knowledge and information sufficient to form a belief as to the allegations contained in the remainder of the paragraph.

41. Intervenors note that no legal action was taken by any persons seeking to change the State Board's position.

42. As to the allegations contained in paragraph 81, respectfully refer to the Court to the specific contents of those documents referenced therein which speak for themselves.

43. As to the allegations contained in paragraph 82, refer the court to the contents of the document referenced therein; and further note, upon information and belief, that two of the four current commissioners at the Board were involved with the formulation of the Board's position.

44. Further, as was pointed out by the Board of Elections in the 1996 -97 juncture, a change in policy would require an act of the Legislature.

45. As to the allegations contained in paragraphs 83 and 84 of the Petition, deny knowledge and information sufficient to form a belief as to the motives of the Board of Elections beyond fulfilling their statutory duties.

46. As to the allegedly "dramatic" increase in contributions by LLCs Intervenors deny information sufficient to form a belief as to such claims

and further note that this is irrelevant to the question of an arbitrary and capricious action taken by the Board of Elections in 1996.

47. The activities by LLCs complained of in the Petition are nothing more than engagement by those entities in protected Free Speech under the terms of the New York State Constitution.

48. As to the allegations contained in paragraph 85, deny knowledge and information sufficient to admit or deny the allegations regarding what may or may have not prompted Commissioner Kellner to make the motion in question; and deny the allegations contained in the remainder of the paragraph.

49. As to the allegations contained in paragraphs numbered 86 and 87, they are denied and objected to as an attempt to mislead this Court by introducing a misstatement of the law into these proceedings. Intervenors respectfully refer the court to the specific contents of the document sent by Attorney General Schneiderman referenced therein.

50. Intervenors note, however, that the Attorney General has misstated the application of the Election Law as a partnership may contribute to the aggregate individual limits of multiple partners while a LLC is limited to the limitation applied to a single individual.

51. Admit the allegations contained in paragraph 91 referring to the failure to have a majority of the commissioners concurring as being insufficient to alter existing policy or take any affirmative action. Intervenors respectfully refer the court to the relevant New York Election Law sections recited herein, at paragraph 7.

52. Deny the allegation contained in paragraph 93, alleging the Board's decision was arbitrary, capricious and legally erroneous.

53. In fact the Board took no action, contrary to the Petitioners' protestations, complaints, and less than accurate allegations.

54. As to the allegations contained in paragraph 95, deny that petitioners are directly affected; and deny knowledge and information sufficient to form a belief as to the allegations contained in the remainder of the paragraph.

55. In fact the Petitioners are seeking by this proceeding to abridge the Free Speech and Associational Rights of Intervenors and others similarly situated that are protected by the provisions of the New York State Constitution, see Constitution, Article I Sec. 8 & 11.

IN AND AS FOR A FIRST AFFIRMATIVE DEFENSE, MOTION TO DISMISS AND OBJECTION IN POINT OF LAW

56. Intervenors respectfully repeat and re-allege each and every allegation contained in the foregoing paragraphs as if same were fully set forth herein.

57. The petitioners seek to engage this Court in an unconstitutional violation of the Doctrine of Separation of Powers.

A. MISAPPROPRIATION OF LEGISLATIVE POWERS

58. The Petitioners whose number include state legislators who have been unsuccessful in securing passage of bills which would choke off the free speech rights of business entities known as LLCs come to this Court and ask, *inter alia,* to have a Judicial Act substituted for the legislation which they have been unable to advance.

59. In fact, Petitioners Kavanaugh and Squadron have introduced several bills on the topic. They include, according to the New York State Assembly web site (http://assembly.state.ny.us/leg/);

a. A2614 (Kavanaugh) no action taken

b. A5089 (Simon) no action taken

c. A6975b (Kavanaugh) passed Assembly

d. S 60A (Squadron) died in Corporations Committee

e. S2052 (Squadron) no action taken

f. S5093a (Squadron) no action taken

60. None of these bills has secured passage by both houses of the Legislature.

61. Moreover, the sponsor's memo in support of S 60 and A 2614 makes the same arguments advanced in this proceeding as the basis for passage of the bill. The Sponsors / Petitioners actually cite the meeting of the State Board of Elections that is attacked in these proceedings, see, http://assembly.state.ny.us/leg/ .

62. Were the Court to substitute its judgement for an act of the Legislature, it would constitute a violation of the Doctrine of Separation of Powers in that the Court would be Judicially Legislating. In addition, the Court would be transgressing on Executive Department powers by substituting its own predilections for the judgment of the State Agency charged with applying and interpreting the State's Election Laws.

63. In short, Legislative power is the exclusive province of the Legislature, see Koch v. Mayor, et. al., City of New York, 152 N.Y. 72 (1897).

B. MISAPPROPRIATION OF EXECUTIVE POWER

64. Moreover, the Courts should not substitute themselves for the Executive and become embroiled in the management of systems that are the responsibility of the Executive Branch of Government to run, see Council 82 v. Cuomo, 64 N.Y.2d 233 (1984).

65. Here it is up to the State Board of Elections to develop and apply policy implementing the Legislative acts. This was done in 1996 when the Board issued its formal opinion.

66. Obviously, a majority of the Board's Commissioners have NOT decided to revisit the 1996 opinion – and the Board of Elections has taken no action.

67. No matter how passionately the Petitioner may feel about the issue of free speech by LLC business entities, it is no excuse for an unconstitutional act by the Courts.

68. Accordingly, the petition must be dismissed in all respects.

IN AND AS FOR A SECOND AFFIRMATIVE DEFENSE, MOTION TO DISMISS AND OBJECTION IN POINT OF LAW

69. Intervenors hereby repeat and re-allege each and every allegation contained in the foregoing paragraphs as if same were fully set forth herein.

70. The New York State board of Elections has taken no action, as defined by the clear language of the Election law, see paragraph 7 hereinabove.

71. Accordingly the Petitioner has failed to state a cause of action cognizable at law, upon which relief can be granted.

72. Accordingly, this proceeding must be dismissed.

IN AND AS FOR A THIRD AFFIRMATIVE DEFENSE, MOTION TO DISMISS AND OBJECTION IN POINT OF LAW

73. Intervenors hereby repeat and re-allege each and every allegation contained in the foregoing paragraphs as if same were fully set forth herein.

74. The Petition is untimely as actual act of the Board of Elections attacked was taken in 1996, when the applicable formal opinion was issued.

75. The statute of limitations has long since expired.

76. Upon information and belief, groups affiliated with these Petitioners sought the State Board of Elections' review and reversal of the rule advanced in its 1996 opinion.

77. Moreover, there was a later effort to overturn the Board's Formal Opinion on LLCs and, upon information and belief, Commissioner Kellner was opposed to such effort and stated that the alteration of the Board's application of the law required a statutory change.

78. The Board's determination was made in 1996 and any injury claimed by the petitioners began to accrue in 1996 as LLCs made legal contributions which Petitioners seek to shut down nearly 20 years later.

79. This was never followed by a Court proceeding challenging the action of the Board until now, nearly twenty years later.

80. Accordingly, the petition must be dismissed for Petitioners' *laches*.

81. Alternatively, the petition must be dismissed for violating the applicable statute of limitations set forth by the CPLR.

IN AND AS FOR A FOURTH AFFIRMATIVE DEFENSE, MOTION TO DISMISS AND OBJECTION IN POINT OF LAW

82. Intervenors hereby repeat and re-allege each and every allegation contained in the foregoing paragraphs as if same were fully set forth herein.

83. It is well settled law that in a summary Election proceeding brought before the Supreme Court, the court is only vested with the limited authority to review that which the statute allows, Delgado v. Sunderland, 97 N.Y.2d 420 (2001); Corrigan v. Board of Elections, 38 A.D.2d 825 (2nd Dept., 1072); DiBenio v. Panara, 34 Misc. 2d 814 (Sup.Ct., Orange Co., 1962. The Election Law specifies the nature of the proceedings that may be brought in Article 16. Nowhere is there an allowance made for some sort of equitable and collateral attack on a nearly 20 year old Formal Opinion issued by the State Board of Elections.

84. In short there is a failure by the Petitioners to set forth a case or controversy cognizable under the Election Law.

85. Further, this Court has no authority to extend the deadlines set by the Election Law, or the CPLR.

86. We rely upon the 3rd Department's ruling in Keal v. Board of Elections, 164 A.D.2d 962 (3rd Dept., 1990), for the proposition that the Courts are without authority to extend the statutory time frames established by the legislature in the Election Law.

87. This is further supported by long standing precedent, see Leemhus v. State Board of Elections, 186 A.D.2d 863, affirming 155 Misc.2d 531; Fitzpatrick v. Ciamarra, 27 A.D.3d 594 (2nd Dept., 2006); Matter of Esiason, 220 A.D.2d 878 (3rd Dept., 1995); Application pursuant to 16-102 Election Law v. Scannapieco, 4 Misc.3d 1015A , affd 10 A.D.3d 439; Kurth v Board of Elections, 65 A.D.3d 642 (2nd Dept. 2009); Augustine v. D'Apice, 153 A.D.2d 714 (2nd Dept., 1989); Kierns v Hinrichs, 286 A.D.2d 458 (2nd Dept., 2001); White v. Bilal, 21 A.D.3d 573 (2nd Dept., 2005).

88. There is no authority to extend the four month Article 78 statute of limitations, see Corbisiero v. NYS Tax Commission, 82 A.D.2d 990 (3rd Dept., 1981), affd 56 N.Y.2d 680.

89. As this Court is without authority to change the statutory deadlines set forth in the Election Law, or the CPLR, this matter must be dismissed.

IN AND AS FOR A FIFTH AFFIRMATIVE DEFENSE, MOTION TO DISMISS AND OBJECTION IN POINT OF LAW

78 Intervenors hereby repeat and re-allege each and every allegation contained in the foregoing paragraphs as if same were fully set forth herein.

79 Pursuant to the CPLR all necessary parties must be named and served with the pleadings and made parties to the action.

80 The CPLR states:

> "Necessary joinder of parties. (a) Parties who should be joined. Persons who ought to be parties if complete relief is to be accorded between the persons who are parties to the action or who might be inequitably affected by a judgment in the action shall be made plaintiffs or defendants. When a person who should join as a plaintiff refuses to do so he may be made a defendant", CPLR 1001.

81 What the Petitioners here really seek is to compel Commissioners Peterson and Kosinski to vote as they see fit on the issue of LLC contributions.

82 Clearly the individual Commissioners must be joined as the relief requested necessarily implicates their vote as a member of the Board.

83 None of the individual commissioners has been named or served as a party to these proceedings.

84 Accordingly, the petition to this Court must be dismissed for the failure to name and serve necessary parties.

IN AND AS FOR A SIXTH AFFIRMATIVE DEFENSE, MOTION TO DISMISS AND OBJECTION IN POINT OF LAW

85 Intervenors hereby repeat and re-allege each and every allegation contained in the foregoing paragraphs as if same were fully set forth herein.

86 The order sought by the Petitioners from this Court would improperly and adversely affect the Intervenors' rights of Free Speech and Association under the provisions of the New York State Constitution, as cited hereinabove.

87 Intervenors regularly receive contributions from LLCs who are expressing their free speech rights by contributing to the New York Republican State Committee.

88 It cannot be said that by reducing the contribution limit for LLCs to five thousand dollars per year as Petitioners seek to do (Petitioner Squadron actually has pressed legislation lowering the limit to one thousand dollars per year) would **not** effectively curtail the Intervenors' relationships with and exercise of free speech rights via the contributions solicited from LLCs.

89 The vilification of LLCs that Petitioners engage in is not warranted. They seek, in the best light, to take away free speech rights from the law abiding business community because they might disagree with their positions on the basis that some people are corrupt.

90 Even if the Petitioners are concerned with the corruption of the system by a few bad actors, that does not justify jeopardizing something so sacred as the right to free speech.

91 Accordingly, the petition must be dismissed.

IN AND AS FOR A SEVENTH AFFIRMATIVE DEFENSE, MOTION TO DISMISS AND OBJECTION IN POINT OF LAW

92 Intervenors hereby repeat and re-allege each and every allegation contained in the foregoing paragraphs as if same were fully set forth herein.

93 The actions and conduct of Respondent New York State Board of Elections, Commissioners, and employees of the State of New York under the direction or control of the Board in regard to the matters alleged in the petition, have, at all relevant times, been fully in compliance with all applicable federal and state constitutional provisions, statutes and regulations.

94 Accordingly, the petition must be dismissed.

WHEREFORE, it is respectfully demanded that this Court dismiss and / or deny the within proceeding for the reasons set forth herein, together with such other, further and different relief as this Court deems to be just and proper in the premises.

DATED: September 9 2015

Sinnreich, Kosakoff & Messina, LLP
by: John Ciampoli, Esq., of counsel
267 Carleton Avenue, Suite 301
Central Islip, New York 11722
631-650-1200

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ALBANY

X

In the matter of

BRENNAN CENTER FOR JUSTICE AT NYU SCHOOL OF LAW; GERALD BENJAMIN; LIZ KRUEGER; JOHN R. DUNNE; DANIEL L. SQUADRON, MAUREEN KOETZ; and BRIAN KAVANAGH,

- Petitioners,

For a Judgment Pursuant to Article 78 of the Civil
-against-

NEW YORK STATE BOARD OF ELECTIONS,

-Respondents.

X

Index No. **3579-15**

ATTORNEY'S VERIFICATION

STATE OF NEW YORK)
COUNTY OF SUFFOLK) s.ss:

JOHN CIAMPOLI, an attorney duly admitted to the practise of law before the Courts of the State of New York, does hereby affirm under the penalties of perjury:

1. He is the attorney for the proposed Intervenors in this action.

2. He has personally reviewed the contents of this document with his client(s), and reviewed the pleadings of this case, and upon the conclusion of said review as to the facts alleged therein, believes same to be true.

3. He has personally reviewed the copies (where available) documents on file with the Board of Elections, together with other ancillary papers thereto, contacted the respondent board, and upon the conclusion of the said review, believes the within allegations to be true, to his personal knowledge.

4. All allegations made upon information and belief are believed to be true by counsel on the basis of his investigation of the subject petition / cause of action.

5. This affirmation is being used pursuant to the provisions of the CPLR and applicable case law, due to the fact that time is of the essence and that petitioner(s) and their counsel are in different counties; Counsel having offices in the County of SUFFOLK and Intervenors residing in Counties other than Suffolk County.

DATED: CENTRAL ISLIP, NEW YORK
September 8, 2015

John Ciampoli, Esq.
Sinnreich, Kosakoff & Messina LLP
267 Carleton Avenue, Suite 301
Central Islip, New York 11722
631-650-1200
Cell 518 - 522 - 3548

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ALBANY

X

In the matter of

BRENNAN CENTER FOR JUSTICE AT NYU SCHOOL OF LAW; GERALD BENJAMIN; LIZ KRUEGER; JOHN R. DUNNE; DANIEL L. SQUADRON, MAUREEN KOETZ; and BRIAN KAVANAGH,

Index No. 3579-15

- Petitioners,

For a Judgment Pursuant to Article 78 of the Civil Practice law and Rules,

-against-

NEW YORK STATE BOARD OF ELECTIONS,

-Respondents.

X

ORDER TO SHOW CAUSE
MOTION TO INTERVENE BY NEW YORK REPUBLICAN STATE COMMITTEE & EDWARD F. COX, CHAIRMAN

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