UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CONSERVATIVE PARTY OF NEW YORK STATE And WORKING FAMILIES PARTY,

Plaintiffs,

-against-

NEW YORK STATE BOARD OF ELECTIONS, JAMES A. WALSH, DOUGLAS A. KELLNER, EVELYN J. AQUILA, and GREGORY P. PETERSON, in their official capacities as Commissioners of the New York State Board of Elections; TODD D. VALENTINE and ROBERT A. BREHM, in their official capacities As Co-Executive Directors of the New York State Board of Elections.

Defendants.

Civil Action No. 10-CV-6923 (JSR)

DEFENDANTS' MEMORANDUM OF LAW IN SUPPORT OF THEIR MOTION TO DISMISS PURSUANT TO FEDERAL RULES OF CIVIL PROCEDURE RULE 12(b)(1) AND (6)

JASPAN SCHLESINGER LLP
Attorneys for New York State Board of Elections, Douglas A. Kellner, Evelyn J. Aquila, & Robert A. Brehm
300 Garden City Plaza
Garden City, New York 11530
(516) 746-8000

BEE READY FISHBEIN HATTER & DONOVAN, LLP
Attorneys for the New York State Board of Elections, James A. Walsh, Gregory P. Peterson, & Todd D. Valentine
170 Old Country Road, Suite 200
Mineola, New York 11501
(516) 746-5599

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PRELIMINARY STATEMENT

Defendants[1] submit this memorandum of law in support of their motion to dismiss plaintiffs' Complaint pursuant to Fed. R. Civ. P. 12(b)(1) and 12(b)(6). For the reasons stated herein, the motion should be granted in its entirety.

Plaintiffs in this action are the Conservative Party of New York State ("Conservative Party") and the Working Families Party ("WFP"), both of which are recognized political parties in New York because each polled at least 50,000 votes for its candidate for governor in the last gubernatorial election in 2006.[2] See Elec. Law §1-104(3).

As required by the enactment of the Help America Vote Act of 2002, 42 U.S.C. §15301 *et. seq.* ("HAVA"), New York enacted the Election Reform and Modernization Act of 2005, requiring votes in future elections in New York to be cast on new optical scanning voting machines instead of the mechanical lever voting machines that were previously used. The Complaint challenges the way "double votes" are counted by these new optical scanning machines. A double vote occurs when a candidate's name appears on more than one ballot line for a particular office and the voter casts his or her vote for the candidate by checking off the candidate's name on two or more ballot lines. Election Law §9-112(4) provides in relevant part:

> If in the case of a candidate whose name appears on the ballot more than once for the same office, the voter shall make a cross X mark or a check √ mark in each of two or more voting squares before the candidate's name, or fill in such voting squares . . . of a ballot entered to be counted by machine, *only the first vote shall*

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[1] The Defendants are New York State Board of Elections ("SBOE"), James A. Walsh, Douglas A. Kellner, Evelyn J. Aquila and Gregory P. Peterson, in their official capacities as Commissioners of the New York State Board of Elections, and Todd D. Valentine and Robert A. Brehm, in their official capacities as Co-Executive Directors of the New York State Board of Elections (collectively, "defendants").

[2] In the 2006 gubernatorial election, the Conservative Party's candidate for governor received 168,654 votes. The WFP's candidate for governor received 155,184 votes. See SBOE website at http://www.elections.state.ny.us/EnrollmentCounty.html.

be counted for such candidate . . . .

Elec. Law §9-112(4) (emphasis added). In accordance with this and other statutory mandates, the SBOE adopted "regulations to provide for uniform, non-discriminatory standards for establishing what constitutes a vote and what shall be counted as a vote for all categories of voting systems and voting procedures used in New York". 9 N.Y.C.R.R. §6210.13 (the "Regulation"). With respect to double votes, the Regulation provides:

> If a ballot is marked in each of two or more target areas or sensitive areas for a candidate whose name appears on the ballot more than once for the same office . . . , *only the first vote for such candidate with multiple markings shall be counted for such candidate.*

9 N.Y.C.R.R. §6210.13(a)(7) (emphasis added). This Regulation is, therefore, in accordance with the requirements of the statute enacted by the legislature.

The Complaint contains one cause of action challenging the manner in which double votes are counted. According to the Complaint, "[t]he State's policy of crediting a double-vote for a single candidate on more than one party line entirely to the 'first' party appearing on the ballot, without any notification to the voter or an opportunity to correct her ballot, places severe burdens on voters and on minor political parties such as the Plaintiffs herein." Complt. ¶41. As a result, plaintiffs assert that they are entitled to a judgment "permanently enjoining Defendants to ensure that the State's optical scanner voting machines adequately inform voters, when they submit ballots containing double-votes, that they can only vote for a candidate on one party line and return double voted ballots to voters for correction. Complt. Ad damnum Clause.

Plaintiffs' constitutional challenge essentially consists of three arguments:

- The procedure established by the legislature and followed by the SBOE for double votes could adversely affect plaintiffs' access to the ballot if they do not meet the

50,000 vote threshold for "party" status.[3] Complt. ¶ 26.

- The procedure established by the legislature and followed by the SBOE for double votes could adversely affect plaintiffs' positions on the ballot. Complt. ¶ 27.
- It is important to count and report the number of votes cast for each political party "in order to facilitate their ability to attract new candidates and members, to raise money effectively, and to plan and strategize for future elections." Complt. ¶ 29.

As discussed below, plaintiffs' constitutional rights are not violated by the manner in which double votes are treated. Plaintiffs and their members have not been denied access to the ballot, nor denied the right to associate for political purposes or to have their candidates appear on the ballot – all of which are rights protected by the First Amendment. Therefore, the Complaint fails to state a claim upon which relief may be granted.

POINT I

PLAINTIFFS' CLAIM IS BARRED BY THE ELEVENTH AMENDMENT

The Complaint must be dismissed in its entirety because plaintiffs' sole cause of action is barred by the doctrine of sovereign immunity. Specifically, the plaintiffs allege that "[a]cting under color of State law, Defendants have deprived Plaintiffs of their rights, remedies, privileges, and immunities guaranteed to every citizen of the United States in violation of 42 U.S.C. §1983,

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[3] Plaintiffs' statement (Complt. ¶ 5) that "only those parties whose previous gubernatorial candidate received at least 50,000 votes are entitled to a place on the ballot" is simply wrong. Election Law §6-138 specifically provides a method for independent bodies which have not received 50,000 votes in the prior gubernatorial election to secure a place on the ballot. Access to the ballot is not limited to those parties which received at least 50,000 votes in the last gubernatorial election. In fact, in the November 2, 2010 general election there were gubernatorial candidates for the "Green Party" (Howie Hawkins), "Rent Is 2 Damn High Party" (Jimmy McMillan), "Libertarian Party" (Warren Redlich), "Freedom Party" (Charles Barron), the "Anti-Prohibition Party" (Kristin Davis), and "Taxpayer Party" (Carl Paladino), none of which received 50,000 votes in the last gubernatorial election.

including but not limited to, rights guaranteed by the First and Fourteenth Amendments to the United States Constitution." Complt. ¶ 44. The Eleventh Amendment to the Constitution, which imposes a limitation on the judicial power of the United States in actions against states, however, bars this action.

A state and its agencies are immune from suit in federal court unless Congress has clearly abrogated immunity or the state has unequivocally waived its immunity. See e.g., Kentucky v. Graham, 473 U.S. 159, 167 n.14 (1985). This immunity is for suits for money damages or injunctive relief, including suits brought pursuant to 42 U.S.C. §1983. See e.g., Quern v. Jordan, 440 U.S. 332, 345 (1979) ("§1983 does not explicitly and by clear language indicate on its face an intent to sweep away the immunity of the States; nor does it have a history which focuses directly on the question of state liability and which shows that Congress considered and firmly decided to abrogate the Eleventh Amendment immunity of the States."); Feingold v. New York, 366 F.3d 138, 149 (2d Cir. 2004) (Section 1983 claim against Department of Motor Vehicles barred by Eleventh Amendment); Iwachiw v. N.Y.C. Bd. of Elections, 217 F. Supp. 2d 374, 379-80 (E.D.N.Y. 2002) aff'd 126 Fed. App'x 27 (2d Cir. 2005) (Eleventh Amendment bars §1983 claim against State Board of Elections).

The SBOE is a state agency for the purposes of the Eleventh Amendment,[4] and it is well-settled that §1983 claims against the SBOE are barred by the doctrine of sovereign immunity and the Eleventh Amendment. See McMillan v. N.Y. Bd. of Elections, 10-CV-2502, 2010 WL 4065434, at *3 (E.D.N.Y. Oct. 15, 2010)(dismissing candidate's §1983 claims for monetary damages and a permanent injunction against the SBOE as barred by the Eleventh Amendment); Iwachiw, 217 F. Supp. 2d at 379-80 (dismissing voter's §1983 claims against SBOE on basis of

[4] Election Law §3-100(1) defines the SBOE as an agency within the New York State Executive Department and provides that its commissioners be appointed by the governor.

sovereign immunity). Plaintiffs' claims are barred by the Eleventh Amendment because the State has not waived its immunity with respect thereto.

While Ex Parte Young, 209 U.S. 123 (1908), and its progeny have carved out a narrow exception to Eleventh Amendment immunity to allow for prospective injunctive relief against State officials sued in their official capacities when necessary to enjoin unconstitutional conduct, that exception is not applicable to the case *sub judice*. As the Supreme Court has recognized:

> [t]he Eleventh Amendment bars a suit against state officials when "the state is the real substantial party in interest." Thus, "[t]he general rule is that relief sought nominally against an officer is in fact against the sovereign if the decree would operate against the latter." And, as when the State itself is named as the defendant, a suit against state officials that is in fact a suit against a State is barred regardless of whether it seeks damages or injunctive relief.

Pennhurst State Sch. & Hosp. v. Holderman, 465 U.S. 89, 101-02 (1984)(internal citations omitted). The Supreme Court further noted in Pennhurst, "the general rule is that a suit is against the sovereign if 'the judgment sought would expend itself on the public treasury or domain, or interfere with the public administration.'" 465 U.S. at 102n.11 (citations omitted). Notwithstanding that plaintiff's requested relief is couched in terms of an injunction against state officials, it is actually relief sought *against the State* and the State is the real party in interest.

Although the Complaint alleges that the manner in which double votes are treated is "flatly unconstitutional," Complt. ¶ 11, plaintiffs are not seeking a judgment declaring Election Law §9-112(4) unconstitutional. Instead, they seek a mandatory injunction affirmatively requiring defendants to reprogram the optical scanning voting machines to "inform voters, when they submit ballots containing double-votes, that they can only vote for a candidate on one party line and return double-voted ballots to voters for correction." See Complt. Ad damnum clause.

However, states retain the power to regulate their own elections. Burdick v. Takushi, 504 U.S. 428, 433 (1992); see also Timmons v. Twin Cities Area New Party, 520 U.S. 351, 358

(1997)(States may "enact reasonable regulation of parties, elections and ballots to reduce election and campaign-related disorder"). In effect, plaintiffs want defendants and this Court to take legislative action by establishing a procedure for double votes that parallels Election Law §7-202(1)(d), which governs the procedure with respect to overvotes. The requested relief would not only require the State to expend public funds to develop and install a new software program for voting machines to warn voters about double votes, it would interfere with the legislature's determination as to how elections should be administered. Indeed, the legislature could have established a procedure for double votes that parallels the overvote procedure set forth in Election Law §7-202(1)(d), but it elected not to do so.

If the Court were to grant plaintiffs' request, it would, in effect, be "legislating" by writing requirements into the statute with respect to a new procedure for double votes that the legislature chose not to enact. As such, although, individual defendants in their official capacities are named as defendants, it is clear that "the state is the real, substantial party in interest." Pennhurst, 465 U.S. at 101. As a result, plaintiffs' claim for relief is barred by the Eleventh Amendment and the Complaint must be dismissed in its entirety.

POINT II

THE COMPLAINT FAILS TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED

Even if the Court concludes that the Eleventh Amendment does not bar this action, the Complaint should still be dismissed pursuant to Fed. R. Civ. P. 12(b)(6) because it fails to state a claim upon which relief can be granted. To withstand a Rule 12(b)(6) motion a plaintiff is obligated to provide the grounds of his entitlement to relief in the complaint. See Bell Atl. Corp. v. Twombly, 127 S. Ct. 1955, 1964-65 (2007). In Twombly, the Supreme Court held that "a plaintiff's obligation to provide the 'grounds' of his 'entitle[ment] to relief' *requires more than*

labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." Id. (emphasis added, alteration in original, and internal citations omitted). It is not enough that the claim be conceivable, it must be plausible". Id. at 1974. "[P]lausibly give[s] rise to an entitlement to relief." Ashcroft v. Iqbal, 129 S. Ct. 1937, 1950 (2009). In addition, at a minimum, a plaintiff must provide the grounds upon which his claim rests through factual allegations that are sufficient "to raise a right to relief above the speculative level." Goldstein v. Pataki, 516 F.3d 50, 56 (2d Cir. 2008).

Plaintiffs' claimed injury in this lawsuit is entirely speculative. Moreover, as discussed more fully below, the "constitutional rights" plaintiffs claim concerning ballot access, ballot order and the use of the ballot to attract candidates and members, raise money, and strategize for future elections do not exist and are, therefore, insufficient to support their §1983 action.

In order to properly plead a claim under §1983, a plaintiff must sufficiently allege: (1) that the defendant acted under color of state law; and (2) as a result of defendant's actions plaintiff suffered a denial of his constitutional rights or privileges. See Knight v. City of N.Y., 303 F. Supp. 2d 485, 501 (S.D.N.Y. 2004), aff'd 147 Fed App'x 221 (2d Cir. 2005)(citing Eagleston v. Guido, 41 F.3d 865, 872 (2d Cir. 1994)). Neither has occurred in this case.

A. Defendants Have Not "Acted Under Color of State Law".

To succeed on a claim under §1983, a plaintiff must first demonstrate that defendants are acting under color of State law. Typically, a plaintiff in a §1983 action seeks to enjoin a defendant from engaging in conduct that violates his constitutional rights. While it is true that the individuals named as defendants in this lawsuit are "state actors", the Complaint does not seek to stop them from engaging in improper conduct. To the contrary, the Complaint seeks to compel them to affirmatively engage in certain conduct, namely to reprogram voting machines to

warn voters of double votes and to afford voters the opportunity to "correct" their ballots.

It is well-settled that one who acts under "color of law" engages in the "misuse of power, possessed by virtue of state law and made possible only because the wrongdoer is clothed with the authority of state law." U.S. v. Giordano, 442 F.3d 30, 42 (2d Cir. 2006)(quoting United States v. Walsh, 194 F.3d 37, 50 (2d Cir. 1999)) (emphasis added)); Puglisi v. Underhill Park Taxpayer Assoc., 947 F. Supp. 673, 703 (S.D.N.Y. 1996)(citing Monroe v. Pape, 365 U.S. 167 (1961)) ("Acting 'under color' of state law is defined as the 'misuse of power, possessed by virtue of state law and made possible only because the wrongdoer is clothed with the authority of state law.'").

In the instant case, defendants have done nothing more than comply with Election Law §9-112(4). Both the statute and the Regulation provide that in the case of a double vote only the *first* vote shall count to the exclusion of the other markings made by the voter for the same candidate. The legislature did not authorize the SBOE to treat double votes the same way it treats overvotes by having voting machines programmed to warn the voter in the event of a double vote and to afford him an opportunity to "correct" the ballot. The Complaint is devoid of any allegation that the individual defendants misused their power. Since plaintiffs are not seeking to enjoin the "misuse of power", the Complaint fails to properly allege a §1983 claim.

B. Plaintiffs Have Not Alleged a Violation of Constitutional Rights.

As discussed infra, plaintiffs' claim is essentially that, in the absence of a notice to voters in the event of a double vote and an opportunity for them to "correct" their ballots, plaintiffs' access to the ballot, position on the ballot, and their ability to attract new candidates and members, raise money, and plan for future elections will all be adversely affected. Complt. ¶¶ 26, 27, 29. None of these alleged "injuries" constitute a constitutional injury.

1. Plaintiffs Are Not Denied Access to the Ballot.

Plaintiffs' principal concern seems to be that, unless a warning regarding double votes is provided to voters, plaintiffs may not be credited with all of the votes they otherwise might be credited with, and therefore they might not reach the 50,000 votes needed in a gubernatorial election to achieve party status and automatic inclusion on future ballots. Elect. Law §1-104(3) & (12). Plaintiffs' alleged harm is merely theoretical because they received more than the required number of votes in 2006 and again in the 2010 gubernatorial election.[5] Theoretical injuries are not sufficient to withstand a challenge pursuant to Rule 12(b)(6). See Small v. Gen Nutrition Cos., 388 F. Supp. 2d 83, 86 (E.D.N.Y. 2005)(finding that, in order to survive a motion to dismiss, plaintiff must plead "a harm that is concrete and particularized and actual or imminent, not conjectural or hypothetical" and that plaintiff must show that he is "immediately in danger of sustaining some direct injury . . . [that is] is both real and immediate").

Political parties have no constitutional right to appear on a ballot. See Person v. N.Y. Bd. of Elections, 467 F.3d 141, 144 (2d Cir. 2006). "[S]tates may limit ballot access in order to prevent 'the clogging of its election machinery, avoid voter confusion, and assure that the winner is the choice of a majority, or at least a strong plurality, of those voting, without the expense and burden of runoff elections.'" Id. at 144 (quoting Bullock v. Carter, 405 U.S. 134, 145 (1972)).

Plaintiffs' claims are similar to those raised and rejected by this Court in New Alliance Party v. N.Y. Bd. of Elections, 861 F. Supp. 282 (S.D.N.Y. 1994). In that case, the New Alliance Party ("NAP") raised a constitutional challenge to Election Law §7-116 with respect to the listing and ordering of candidates for political office on the electoral ballot. See id. at 286.

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[5] The media has reported that the unofficial results of the 2010 general election have the Conservative Party with approximately 204,000 votes and the WFP with approximately 136,000 votes. See http://newsday.com/1.812042/1.2427713, November 4, 2010. See attachment A.

Specifically, NAP claimed that the statutory scheme that places political parties and independent nominating bodies on a ballot "abridg[ed] its First and Fourteenth Amendment rights to cast an effective vote, to associate for the advancement of political ideas and to create and develop a new political party." Id. at 286.

In dismissing NAP's claims, the Court found that, while a political party's right to have access to the ballot is subsumed within fundamental voting rights, "the Constitution protects real and not mere theoretical access to the ballot." Id. at 293-94. The Court recognized that "[t]he states' constitutional power to regulate elections is justified as a way to ensure orderly, rather than chaotic, operation of the democratic process." Id. at 294. Indeed, "[s]tates may enact complex and comprehensive election codes, and while an election law might affect an individual's rights to vote and to associate for political ends, state interests are generally sufficient to justify the restrictions." Id. With respect to NAP's concern about reaching the required 50,000 votes needed for a "party" designation the Court stated,

> NAP itself, its candidates and its policies are the most important factors in determining the extent to which it upgrades its status from an independent body to a party. The independent body can improve its performance in elections and become a party by informing voters of its policies and by publicizing its candidates for office. *To this extent, the State's interest in managing the ballot does not burden NAP's rights to vote, associate politically and develop itself as a party any more than the NFL's rule granting home-field advantage burdens the visiting team's ability to play, practice and develop into a championship contender.*

Id. at 296 (emphasis added).

The "access" cases relied upon by plaintiffs do not support their position that the method for counting double votes is unconstitutional. For example, plaintiffs rely heavily on Anderson

v. Celebrezze, 460 U.S. 780 (1983), to establish the viability of their claim.[6] Plaintiffs' reliance on Anderson, however, is misplaced. Anderson involved a challenge by John Anderson, an independent candidate for President of the United States, and several of his supporters, of an Ohio statute which required that nominating petitions for independent candidates for President be filed with the Ohio Secretary of State on or before March 20, 1980, which was 229 days in advance of the general election. Id. at 782-83. Anderson did not announce his candidacy until April 24, 1980 and, therefore, could not meet the March 20th filing deadline. Id. at 786. When Anderson filed the nominating petition on May 16, 1980, the Ohio Secretary of State refused to accept it on the grounds that it was untimely. Id. at 782-83. As a result, Anderson was *precluded* from having his name appear on the ballot. Within days of this rejection, Anderson and three voters filed a lawsuit challenging the constitutionality of Ohio's early filing deadline. Id. at 783.

In addressing the issue, the Supreme Court recognized that the "primary concern" in ballot access cases is the tendency of ballot access restrictions "to limit the field of *candidates* from which voters might choose." Id. at 786 (quoting Bullock, 405 U.S. at 143)(emphasis added). The Court went on to explain:

> Although these rights of voters are fundamental, not all restrictions imposed by the States on candidates' eligibility for the ballot impose constitutionally suspect burdens on voters' rights to associate or to choose among candidates. We have recognized that, "as a practical matter, there must be a substantial regulation of elections if they are to be fair and honest and if some sort of order, rather than chaos, is to accompany the democratic process." To achieve these necessary objectives, States have enacted comprehensive and sometimes complex election codes. Each provision of these schemes, whether it governs the registration and qualifications of voters, the selection and eligibility of candidates, or the voting process itself, inevitably affects - - at least to some degree - - the individual's right to vote and his right to associate with others for political ends. Nevertheless, the State's important regulatory interests are generally sufficient to justify reasonable,

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[6] Plaintiffs relied extensively on Anderson in their memorandum of law in support of their motion for a preliminary injunction with respect to whether they were likely to succeed on the merits of their claim.

nondiscriminatory restrictions.

Id. at 788 (internal citations omitted). The Supreme Court concluded that Ohio's early filing deadline unreasonably prevented ballot access for independent candidates and found that the reasons offered by the State for the early filing requirements were not sufficient. Id. at 806. In reaching this conclusion, the Court noted, "Our ballot access cases . . . focus on the degree to which the challenged restrictions operate as a mechanism to *exclude certain classes of candidates from the electoral process*. The inquiry is whether the challenged restriction unfairly or unnecessarily burdens the 'availability of political opportunity.'" Id. at 793 (citations omitted) (emphasis added).

In Anderson, John Anderson was denied *total access* to the ballot because of the statutory deadline for filing petitions and was, therefore, unfairly and unnecessarily denied political opportunity. In the case *sub judice*, plaintiffs are not claiming that they have been or will be denied total access to the ballot by the way in which the legislature chose to deal with double votes. They are simply complaining that they may not be able to take advantage of the *automatic access* to the ballot offered by Election Law §1-104(3) and §7-116(1) and will, therefore, be relegated to following the procedures set forth in Election Law §6-138 that independent nominating bodies who wish to have a candidate appear on the ballot must adhere. Plaintiffs have not asserted that the alternate method for gaining access to the ballot is unconstitutional or unduly burdensome – indeed they would be hard pressed to make such an argument in light of the number of independent nominating bodies whose gubernatorial candidates qualified to be on the ballot for the November 2, 2010 general election. Their argument, in reality, is that they simply should not be put to the bother of *possibly* having to gain access to the ballot in the same manner that independent nominating bodies are required to gain access.

2. Ballot Placement Is Not A Constitutional Right.

Plaintiffs' next concern is that, unless voters are notified of their double votes and given an opportunity to submit a "corrected" ballot, plaintiffs may not be credited with all of the votes that they believe they should be credited with, which could affect their placement on ballots in future elections. Failure to receive a particular placement on a ballot, however, does not constitute a violation of constitutional dimension.

The Court in New Alliance Party also addressed this issue. NAP claimed that because it was not listed first on the ballot, it could not capture extra votes of uninformed voters or "anti-party" voters in the gubernatorial election. See 861 F. Supp. at 295. In concluding that NAP had not suffered a violation of its constitutional rights, this Court stated,

> All that plaintiff really alleges is that its opportunity to capture the windfall vote has been impeded. While access to ballot may, at times, be afforded constitutional protection, access to a preferred position on the ballot *so that one has an equal chance of attracting the windfall vote is not a constitutional concern. Indeed, it should not be. The Constitution does not protect a plaintiff from the inadequacies or the irrationality of the voting public; it only affords protection from state deprivation of a constitutional right.*

Id. at 295 (emphasis added).

All plaintiffs have actually alleged is that Election Law §9-112(4) and the Regulation regarding double votes impedes their ability to capture the votes of anti-party voters or multi-party voters who clearly voted for a *candidate* but did not clearly express a preference for any one political party. The statutory scheme and the SBOE's Regulation that simply implements the statutory mandate should not be altered just to allow plaintiffs a marginally better chance of having their names appear slightly higher up on a ballot.

3. Plaintiffs Do Not Have a Constitutional Right to Use the Ballot to Facilitate Their Ability to Attract Candidates and Members, Raise Money, or Plan for Future Elections.

Plaintiffs' third concern is that, unless voters are warned about double votes and given an opportunity to correct them, plaintiffs may not receive all of the votes which they would otherwise be entitled to and that could affect their ability to attract new candidates and members, raise money, and plan and strategize for future elections. Plaintiffs' stated goals are not constitutionally protected interests, nor can plaintiffs legitimately argue that the SBOE, through the manner in which it counts ballots, is somehow required to facilitate plaintiffs' goals of attracting new members, raising more money or organizing for future elections.

It is undisputed that "[t]he First Amendment protects the rights of citizens to associate and to form political parties for the advancement of common political goals and ideas." Timmons, 520 U.S. at 357; see also Socialist Workers Party v. Rockefeller, 314 F. Supp. 984, 989 (S.D.N.Y. 1970) ("The right of individuals to organize and associate for the advancement of their political beliefs and the right of all qualified voters, regardless of political persuasion, to cast their votes effectively for candidates of their choice have been firmly established among our precious freedoms."). However, it is well-settled that while all election laws "necessarily implicate the First and Fourteenth Amendments . . . 'it does not follow . . . that the right to vote in any manner and the right to associate for political purposes through the ballot are absolute.'" Dillon v. N.Y. Bd. of Elections, No. 05-CV-4766, 2005 WL 2847465, at *3 (E.D.N.Y. Oct. 31, 2005) (internal citations omitted)(citing Burdick, 504 U.S. at 433).

The Supreme Court has clearly stated that political parties do not have a right to use the ballot itself "to send a particularized message, to its candidate and to the voters, about the nature of its support for the candidate." Timmons, 520 U.S. at 362-63. The ballot is not an opportunity for parties

to engage in political expression. Its purpose is "primarily to elect candidates, not [to serve] as a fora for political expression." Id. at 363. The fairness and efficiency of state elections would be undermined by allowing elections to take on expressive functions and become "a means of giving vent to 'short-range political goals, pique, or personal quarrel[s].'" Burdick, 504 U.S. at 438 (internal citations omitted); see also Libertarian Party of N.H. v. Gardner, 08-cv-367, 2010 WL 596997, at *6 (D. N.H. Feb. 17, 2010)(noting that "the right to nominate candidates . . . does not translate into a right to control whose name appears or how the name appears on an election ballot").

Regardless of the method used to address double votes, plaintiffs' "minority and dissident political views can be aired in the public forum to serve as alternate solutions to contemporary problems and checks on the representation provided by the established or traditional political parties." Socialist Workers Party, 314 F. Supp. at 989. Plaintiffs' constitutional right to engage in partisan politics and to support candidates of their choice is not violated or denied by Election Law §9-112(4) and the methodology for counting double votes. Plaintiffs can still attract new members and recruit candidates for political office. They can convey their message and express their political views. They can solicit funds. They can advertise, organize rallies, hold fundraisers, and engage in any other lawful activity to promote their political agendas.

4. The Manner By Which Double Votes are Counted Does Not Violate Plaintiffs' Rights or the Rights of Voters.

Although plaintiffs are not seeking a judgment declaring that Election Law §9-122(4) is unconstitutional, they suggest that it is unconstitutional because of the manner in which double votes are counted. In particular, they complain that when a double vote occurs, the vote is credited to the first line on the ballot voted by the voter, which is usually the line of a "major party." Complt. ¶ 10-11. As a result, they claim they might be deprived of votes that should otherwise be credited to them. That manner by which double votes are counted does not violate

plaintiffs' rights.

Plaintiffs' allegations in this regard are, in essence, no different than the arguments raised and rejected by the court in Dillon which concerned Election Law §7-104. Section 7-104 provides that if a candidate has been nominated by more than one party and also by one or more independent bodies, his name shall appear on the ballot in the rows designated for those parties. The nomination by the independent bod(ies) will not receive separate rows on the ballot. Instead, with limited exceptions, they will share a row with one of the parties that nominated that candidate. Elect. Law §7-104(5)(c). As a result, the independent bodies that nominated that candidate do not receive a separate ballot line. The votes counted for that candidate are only credited to the party on whose row the candidate's name appears.

In Dillon, plaintiffs, Denis Dillon, a candidate, and the Integrity Party, an independent body, challenged the constitutionality of Election Law §7-104, which mandated that, because Dillon was nominated by two parties and one independent body, his name would only appear on the rows for the two parties and the independent body's name would appear in the row of the party Dillon chose. See Dillon, supra, at *1-6. Dillon argued that not having a separate third line for the Integrity Party on the ballot violated constitutional rights to freedom of speech, freedom of association, and equal protection, and sought an injunction requiring a distinct ballot line for the Integrity Party nomination. Id. at *2.

In holding that the state's interest in minimizing voter confusion outweighed whatever *de minimis* burden the Election Law imposed on independent bodies, the court first addressed the Integrity Party's desire to "express[] its support for its cross-nominated candidates through a separate vote tally," finding their argument to be "overstated." Id. at *7; see also Cornelius v. Monroe County Bd. of Elections, 398 N.Y.S.2d 246, 246 (Sup. Ct. Monroe County 1977)(upholding a provision denying an additional independent ballot column to a candidate who was also listed as a candidate for

two parties); accord Button v. Donohue, 18 N.Y.2d 792 (1966). The Integrity Party argued that its placement on another party's line would make it impossible to gain the 50,000 gubernatorial votes required to achieve party status. Dillon, supra, at *6. The court dismissed this assertion finding that there was "no evidence that the inability to disaggregate the votes cas[t] in prior elections for candidates cross-nominated by the Integrity Party will impair its ability to get 50,000 votes." Id. The Integrity Party's argument that a separate vote tally was necessary for candidate recruitment was also rejected. Id. at *8.

The effect of Election Law §7-104 is the same as that of §9-112 as it relates to double votes. When a voter votes for the same candidate multiple times on different lines, only the *first* vote counts. This yields a similar result to the application of §7-104, where the vote is credited to the party and not the independent body in the event that the party and independent body appear on the same line. Section 7-104 has consistently been upheld and found to be constitutional in the face of arguments by independent bodies that they are entitled to have their vote separately counted by having a separate line. See e.g., Button, supra; Battista v. Power, 16 N.Y.2d 198 (1965); LaValle v. Canary, 507 N.Y.S.2d 412 (2d Dep't 1986); Doyle v. Coveney, 468 N.Y.S.2d 35 (2d Dep't 1983); Ferran v. Monahan, 387 N.Y.S.2d 719 (3d Dep't 1976); Cherry v. Hayduk, 374 N.Y.S.2d 123 (2d Dep't 1975); McCormack v. Cartledge, 342 N.Y.S.2d 667 (Sup. Ct. Nassau County 1973).

Finally, plaintiffs' have not offered any legal authority for is assertion that voters are entitled to a warning in the event of a double vote. The arguments plaintiff makes regarding ballot access and ballot placement only have relevance in a gubernatorial election. Voters are specifically advised *on the ballot* that with respect to the office of governor they are to "vote ONCE". [7] (emphasis in the

[7] For example, Attachment B is a photocopy of a ballot used in Nassau County for the 2010 election. In the column for the office of governor the voter is specifically advised to vote **once**. This specific instruction with respect to the office of governor is different than for other positions

ballot) Neither the voter's rights nor plaintiffs' rights are infringed by defendants if the voter chooses to ignore the instruction which is explicitly given to him. "The Constitution does not protect a plaintiff from the inadequacies or the irrationality of the voting public; it only affords protection from state deprivation of a constitutional right." New Alliance Party, 861 F. Supp. at 295.

POINT III

THE DOUBLE VOTE PROCEDURE PROVIDED FOR IN ELECTION LAW §9-112(4) IS FAIR AND RATIONAL

The procedure adopted by the legislature in Election Law §9-112(4) for addressing double votes is both fair and rational and provides an appropriate mechanism to record a voter's choice of candidate.

The primary concern in an election is to accurately capture and record votes for candidates running for various public offices. See e.g., Timmons, 520 U.S. at 363 ("[b]allots serve primarily to elect candidates"); see also Burdick, 504 U.S. at 438 (finding function of the election process is "to winnow out and finally reject all but the chosen candidates") (internal quotations and citations omitted). Attributing to elections a more generalized, expressive function, such as monitoring and tabulating voters' political party preferences, would undermine the State's ability to operate and regulate elections fairly and efficiently. See Burdick, 504 U.S. at 438 (citing Storer v. Brown, 415 U.S. 724, 735 (1974)).

Because electing candidates, regardless of a candidate's party affiliation, is the primary purpose of an election, the legislature in accordance with the requirements of HAVA[8] enacted

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appearing on the ballot. For those the voter is told to "vote for ONE" or the number of vacancies to be filled for that office.

[8] 42 U.S.C. §15481(a)(1)(A)(iii) provides in relevant part that,
"Each voting system used in an election for Federal office shall meet the following requirements: Except as provided in subparagraph (B), the voting system (including any

certain provisions of the Election Law to ensure that each voter's intended vote is counted. Where the voter's intent as to which candidate he supports can be discerned, the vote is counted for that candidate. Where the voter's intent cannot be discerned, the vote obviously cannot be counted for any candidate. In the case of a double vote, when the voter votes multiple times for the same candidate for the same office, the vote can be counted because the voter's intent as to which candidate he prefers is clear.

The application of Election Law §9-112(4), which pre-dates HAVA, does not burden any *voter's* rights. "The whole purpose of the Election Law and of the Constitution under which it was enacted, is that, within reasonable bounds and regulations, all voters shall, so far as the law provides, have *equal, easy and unrestricted opportunities* to declare their choice for each office." Matter of Callaghan v. Voorhis, 252 N.Y. 14, 17-18 (1929) (emphasis added); see also Crane v. Voorhis, 257 N.Y. 298, 301 (1931). The voters whose claims plaintiffs appear to raise in this action have the "equal, easy and unrestricted opportunities to declare their choice for each office." Each voter has the opportunity to vote for the minor party if he intends to do so. There is nothing either in the Election Law or on the face of the ballot that prevents a voter from voting for a candidate on any one party line. As a result, there is no denial of any voter's constitutional rights.

Election Law §9-112(4) is therefore a rational and proper exercise of the legislative function. The voter's choice of candidate is captured and recorded and the procedure adopted by the legislature ensures that the candidate selected by the voter gets a single vote without impacting on the administration of the election. As the Supreme Court noted "[s]tates certainly

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lever voting system, optical scanning voting system, or direct recording electronic system) shall - - if the voter selects votes for more than one candidate for a single office - - (I) notify the voter that the voter has selected more than one candidate for a single office on the ballot; (II) notify the voter before the ballot is cast and counted of the effect of casting multiple votes for the office; and (III) provide the voter with the opportunity to correct the ballot before the ballot is cast and counted."

have an interest in protecting the integrity, fairness and efficiency of their ballots and election processes as means for electing public officials." Timmons, 520 U.S. at 364. See also New Alliance Party, 861 F. Supp. at 294 (States' constitutional power to regulate elections is justified as a way to ensure orderly, rather than chaotic, operations of the democratic process).

Other alternatives for addressing the issue of double votes would negatively affect voters and candidates. For example, the legislature could have provided that the vote for the office at issue be treated as a nullity. However, that result would not only be unfair to the voter who clearly expressed his intent to vote for a particular candidate, but would also be unfair to the candidate who would be deprived of a valid vote.

The legislature could have provided that the vote be counted and credited to the minor party line on which the voter voted. That approach, however, would be problematic because there could be more than two minor party lines on which the voter recorded his vote. For example, in the November 2, 2010 election, Carl Paladino was the gubernatorial candidate for the Republican Party, the Conservative Party and the Taxpayers Party. If a voter voted for Paladino on all three lines and the vote was to be credited to a minor party, which minor party would get credit for the vote? If the voter voted for Paladino on only the Conservative Party line and the Taxpayers Party line, which minor party would be entitled to the credit? [9]

The legislature could have provided that all votes on the various party lines must be counted. That would result in the candidate receiving more votes than he was entitled to receive. Those candidates whose names appear on more lines would be at an advantage to win the election not because more voters voted for them but because the vote of a single person was

[9] Applying the statute as it is currently written to this scenario, the Conservative Party would receive credit for the vote. It is doubtful that the Conservative Party would agree that the vote should be credited to the Taxpayers Party in this alternate method.

counted multiple times.

The method chosen by the legislature for counting double votes is the most rational and the fairest. It assures that the voter's choice of candidate is captured and recorded. It assures that only one vote for a candidate is counted. It also treats all minor parties the same. No minor party gets credit for a vote which theoretically could effect ballot placement. Crediting the vote to the first party line voted, which as plaintiffs point out is usually one of the two major parties, does not affect ballot placement because those parties receive so many votes in a gubernatorial election that they will remain in the top two positions on the ballot irrespective of whether they are credited with the vote.

Moreover, by counting the vote on the first line voted, the vote is typically credited to the candidate's own party. For example, in 2010, Andrew Cuomo, a registered Democrat, was the gubernatorial candidate for the Democratic, Independence and Working Families Party. If a voter had voted for Cuomo on all three party lines, the vote would have been credited to the first line (the Democratic Party line), which is also Cuomo's political party. While it is common for the candidate of a major political party to also run for the same office on a minor party line, it is rare for a registered member of a minor party to also be the major party's candidate. Indeed, minor parities sometimes select the major party's candidate simply to benefit from the name recognition and vote-getting ability that the candidate brings to the election, even if that candidate is not the person most ideologically aligned with the minor party's members.[10]

Operating within its constitutional authority, the legislature determined, by its enactment

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[10] This fact was demonstrated in the 2010 gubernatorial election. Rick Lazio was the Conservative Party's candidate for governor having won the Conservative Party's primary election in September. After Lazio lost the Republican Party primary to Carl Paladino, an "arrangement" was made to nominate Lazio for a judicial position so that he could withdraw as the Conservative Party's candidate for governor, thereby allowing Paladino to substitute as its candidate even though Lazio was the Conservative Party members' choice for governor.

of Election Law §9-112(4), that making sure there is an accurate vote count for a candidate has a higher priority than counting of votes for a political party. As such plaintiffs' position that the manner by which double votes are counted "serves to stifle political competition and ensure a perpetual duopoly over the political process in New York" should be rejected. See Complt. ¶ 38. It is well-settled that "a State need not, and indeed probably should not, treat minor parties and independents the same as major parties." New Alliance Party of Alabama v. Hand, 933 F.2d 1568, 1574-1575 (11th Cir. 1991) (citing Williams v. Rhodes, 393 U.S. 23 (1968)). The legislature's "strong interest in the stability of [its] political system[]" permits it "to enact reasonable election regulations that may, in practice, favor the traditional two-party system." Timmons, 520 U.S. at 366-67 (citations omitted). The Constitution permits the State "to decide that political stability is best served through a healthy two-party system." Id. at 367 (citations omitted). In fact, "[t]he State surely has a valid interest in making sure that minor and third parties who are granted access to the ballot are bona fide and actually supported, on their own merits, by those who have provided the statutorily required petition *or* ballot support." Timmons, 520 U.S. at 366 (italics added) (citations omitted). "Indeed, different treatment of minority parties in ballot placement 'that does not exclude them from the ballot, prevent them from attaining major party status if they achieve widespread support, or prevent any voter from voting for the candidate of his or her choice, and that is necessary to further an important government interest does not result in a denial of equal protection.'" Strong v. Suffolk County Bd. of Elections, 872 F. Supp. 1160, 1164 (E.D.N.Y. 1994) (citations omitted).

Plaintiffs' stated goal in the Complaint is, in essence, to have double votes treated as if they were overvotes, with a warning and an opportunity to "correct" the ballot. However, they are not the same and should not be treated as if they were. In the case of an overvote, the vote

cannot be counted because the voter's intent as to which candidate he prefers cannot be ascertained. An overvote notification, as required by federal law, is mandated because it protects against the possibility that the voter might forfeit his right to vote for the candidate of his choice. He is, therefore, afforded the opportunity to correct his ballot. The same opportunity is not needed with respect to a double vote because the voter has clearly expressed his preference for a particular candidate. A double vote is, therefore, a good vote and an overvote is not.

Electing candidates is the primary purpose of an election, not party building. Election Law §9-112(4) effectuates the purpose of an election. A voter's intent to vote for a specific candidate can be discerned and counted. As a result, it is rational for the legislature to treat an overvotes and double votes differently. To treat the two as if they were the same, as plaintiffs would like this Court to do, is simply not appropriate and would unduly interfere in the State's administration of elections.

In sum, the Court should not interfere in the manner by which the legislature has determined double votes should be treated. The fact that it might result in a minor party not being credited with a double vote when a voter ignores the instruction on the ballot to vote "only once," does not warrant the relief plaintiffs' seek since it would adversely impact on the State's chosen method for administering elections.

CONCLUSION

FOR THE FORGOING REASONS DEFENDANTS' MOTION TO DISMISS SHOULD BE GRANTED IN ITS ENTIRETY.

Dated: Garden City, New York
November 8, 2010

JASPAN SCHLESINGER LLP
Attorneys for New York State Board of Elections, Douglas A. Kellner, Evelyn J. Aquila, & Robert A. Brehm

By: _____
STEVEN R. SCHLESINGER
STANLEY A. CAMHI
HALE YAZICIOGLU
300 Garden City Plaza
Garden City, New York 11530
(516) 746-8000

Dated: Mineola, New York
November 8, 2010

BEE READY FISHBEIN HATTER & DONOVAN, LLP
Attorneys for the New York State Board of Elections, James A. Walsh, Gregory P. Peterson, & Todd D. Valentine

By: _____
PETER A. BEE
JOSHUA M. JEMAL
170 Old Country Road, Suite 200
Mineola, New York 11501
(516) 746-5599

EXHIBIT A

newsday.com

http://www.newsday.com/long-island/politics/spin-cycle-1.812042/standing-ballot-lines-an-order-takes-shape-awaiting-word-updated-1.2427713

Spin Cycle

Standing ballot lines: An order takes shape, awaiting word, updated

Thursday November 4, 2010 11:10 AM By Dan Janison

We still want to nail down the official numbers, and they're slow in coming, but from one trusted source, here's how it looks at the moment. Remember, the gubernatorial vote determines a line's ballot positions behind the Democrats and Republicans:

The Conservatives (with Paladino) move back to the Row C position with some 170,000 votes..

Working Families (with Cuomo) outdueled the Greens, who reportedly made the 50,000 cut for standing ballot status without petitions for the first time in a while.

Update: We hear the Working Families folks are figuring they will hit about 136,000 with Cuomo statewide, behind the Conservatives who drew an impressive esimated 204,000 with Paladino. Independence might be down, and in hot competition with WFP for the Row 'D' position

< back to article

EXHIBIT B

OFFICE	GOVERNOR AND LIEUTENANT GOVERNOR GOBERNADOR Y VICE GOBERNADOR (Vote ONCE) (Vote una VEZ)		STATE COMPTROLLER CONTROLADOR DEL ESTADO (Vote for ONE) (Vote por UNO)	ATTORNEY GENERAL FISCAL GENERAL (Vote for ONE) (Vote por UNO)		U.S. SENATE SENADOR DE LOS EE UU (Vote for ONE) (Vote por UNO)	U.S. SENATE SENADOR DE LOS EE UU 2 yr un exp term 2 años termino no vencido (Vote for ONE) (Vote por UNO)		JUSTICE OF THE SUPREME COURT JUEZ DE LA CORTE SUPREMA (Vote for any FOUR) (Vote por Cualquier CUATRO)				SURROGATE COURT JUDGE JUEZ SUCESORIO (Vote for ONE) (Vote por UNO)	FAMILY COURT JUEZ DE LA CORTE DE FAMILIA (Vote for ONE) (Vote por UNO)	DISTRICT COURT JUDGE DISTRICT 4 JUEZ DE LA CORTE DISTRITO 4 (Vote for ONE) (Vote por UNO)
DEMOCRATIC	1A DEMOCRATIC For Governor Andrew M. CUOMO For Lieutenant Governor Robert J. DUFFY		3A DEMOCRATIC Thomas P. DINAPOLI	4A DEMOCRATIC Eric T. SCHNEIDERMAN		6A DEMOCRATIC Charles E. SCHUMER	7A DEMOCRATIC Kirsten E. GILLIBRAND		9A DEMOCRATIC William A. De VORE	10A DEMOCRATIC Robert H. SPERGEL	11A DEMOCRATIC Ralph F. COSTELLO	12A DEMOCRATIC Sondra L. PARDES	13A DEMOCRATIC John B. RIORDAN	14A DEMOCRATIC Adam E. SMALL	15A DEMOCRATIC Joseph M. TERINO, JR.
REPUBLICAN	1B REPUBLICAN For Governor Carl P. PALADINO For Lieutenant Governor Gregory J. EDWARDS		3B REPUBLICAN Harry WILSON	4B REPUBLICAN Dan DONOVAN		6B REPUBLICAN Jay TOWNSEND	7B REPUBLICAN Joseph J. DioGUARDI		9B REPUBLICAN Andrew A. CRECCA	10B REPUBLICAN Daniel R. PALMIERI	11B REPUBLICAN W. Gerard ASHER	12B REPUBLICAN Norman JANOWITZ	13B REPUBLICAN TAX REVOLT Edward W. McCARTY	14B REPUBLICAN TAX REVOLT Merik R. AARON	15B REPUBLICAN TAX REVOLT Margaret C. REILLY
INDEPENDENCE	1C INDEPENDENCE For Governor Andrew M. CUOMO For Lieutenant Governor Robert J. DUFFY		3C INDEPENDENCE Harry WILSON	4C INDEPENDENCE Eric T. SCHNEIDERMAN		6C INDEPENDENCE Charles E. SCHUMER	7C INDEPENDENCE Kirsten E. GILLIBRAND		9C INDEPENDENCE William A. De VORE	10C INDEPENDENCE Robert H. SPERGEL	11C INDEPENDENCE Ralph F. COSTELLO	12C INDEPENDENCE Sondra L. PARDES	13C INDEPENDENCE John B. RIORDAN	14C INDEPENDENCE Merik R. AARON	15C INDEPENDENCE Margaret C. REILLY
CONSERVATIVE	1D CONSERVATIVE For Governor Carl P. PALADINO For Lieutenant Governor Gregory J. EDWARDS		3D CONSERVATIVE Harry WILSON	4D CONSERVATIVE Dan DONOVAN		6D CONSERVATIVE Jay TOWNSEND	7D CONSERVATIVE TAXPAYERS Joseph J. DioGUARDI		9D CONSERVATIVE Andrew A. CRECCA	10D CONSERVATIVE Daniel R. PALMIERI	11D CONSERVATIVE W. Gerard ASHER	12D CONSERVATIVE Norman JANOWITZ	13D CONSERVATIVE Edward W. McCARTY	14D CONSERVATIVE Merik R. AARON	15D CONSERVATIVE Margaret C. REILLY
WORKING FAMILIES	1E WORKING FAMILIES For Governor Andrew M. CUOMO For Lieutenant Governor Robert J. DUFFY		3E WORKING FAMILIES Thomas P. DINAPOLI	4E WORKING FAMILIES Eric T. SCHNEIDERMAN		6E WORKING FAMILIES Charles E. SCHUMER	7E WORKING FAMILIES Kirsten E. GILLIBRAND		9E WORKING FAMILIES William A. De VORE	10E WORKING FAMILIES Robert H. SPERGEL	11E WORKING FAMILIES Ralph F. COSTELLO	12E WORKING FAMILIES Sondra L. PARDES	13E WORKING FAMILIES John B. RIORDAN	14E WORKING FAMILIES Adam E. SMALL	15E WORKING FAMILIES Margaret C. REILLY
GREEN	1F GREEN For Governor Howie HAWKINS For Lieutenant Governor Gloria MATTERA		3F GREEN Julia A. WILLEBRAND			6F GREEN Colia CLARK	7F GREEN Cecile A. LAWRENCE								
RENT IS 2 DAMN HIGH	1G RENT IS 2 DAMN HIGH For Governor Jimmy McMILLAN						7G RENT IS 2 DAMN HIGH Joseph HUFF								
LIBERTARIAN	1H LIBERTARIAN For Governor Warren REDLICH For Lieutenant Governor Aidan LINK	2H FREEDOM For Governor Charles BARRON For Lieutenant Governor Eva M. DOYLE	3H LIBERTARIAN John GAETANI	4H LIBERTARIAN Carl E. PERSON	5H FREEDOM Ramon J. JIMENEZ	6H LIBERTARIAN ANTI PROHIBITION Randy A. CREDICO	7H LIBERTARIAN John CLIFTON								
TAXPAYERS	1I TAXPAYERS For Governor Carl P. PALADINO For Lieutenant Governor Gregory J. EDWARDS	2I ANTI PROHIBITION For Governor Kristin M. DAVIS For Lieutenant Governor Tanya GENDELMAN					7I ANTI PROHIBITION Vivia MORGAN	8I TAX REVOLT Bruce BLAKEMAN							
WRITE-IN															

REPRESENTATIVE IN CONGRESS DISTRICT 3 REPRESENTANTE EN CONGRESO DISTRITO 3 (Vote for ONE) (Vote por UNO)	STATE SENATOR DISTRICT 5 SENADOR ESTATAL DISTRITO 5 (Vote for ONE) (Vote por UNO)	MEMBER OF ASSEMBLY DISTRICT 13 MIEMBRO DE LA ASAMBLEA DISTRITO 13 (Vote for ONE) (Vote por UNO)
17A DEMOCRATIC Howard A. KUDLER	18A DEMOCRATIC Larry SILVERMAN	19A DEMOCRATIC Charles D. LAVINE
17B REPUBLICAN TAX REVOLT Peter T. KING	18B REPUBLICAN Carl L. MARCELLINO	19B REPUBLICAN Robert A. GERMINO, JR.
17C INDEPENDENCE Peter T. KING	18C INDEPENDENCE Carl L. MARCELLINO	19C INDEPENDENCE Charles D. LAVINE
17D CONSERVATIVE Peter T. KING	18D CONSERVATIVE Carl L. MARCELLINO	19D CONSERVATIVE Robert A. GERMINO, JR.
	18E WORKING FAMILIES Larry SILVERMAN	19E WORKING FAMILIES Charles D. LAVINE
	18I TAX REVOLT Carl L. MARCELLINO	

Ballot Style 1

SEE BACK SIDE OF THIS BALLOT FOR VOTING INSTRUCTIONS

OFFICIAL BALLOT FOR THE GENERAL ELECTION NOVEMBER 2, 2010