UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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NAACP NEW YORK STATE CONFERENCE, as an organization and representative of its members, *et al.*,

Plaintiffs,

CV 10-2950 (FB)(RML)

- against -

NEW YORK STATE BOARD OF ELECTIONS, *et al.*,

Defendants.

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Defendants Board of Elections in the City of New York, improperly sued herein as the New York City Board of Elections, Jose Miguel Araujo, Naomi Barrera, Julie Dent, Nancy Mottola-Schacher, Juan Carlos Polanco, Michael J. Ryan, J.P. Sipp, Gregory C. Soumas, Judith D. Stupp, and Frederic M. Umane (collectively, the "Board Defendants"), by their attorney, Michael A. Cardozo, Corporation Counsel of the City of New York, as and for their Answer to the Amended Complaint (the "Complaint"), respectfully alleges as follows:

1. Deny the allegations set forth in paragraph "1" of the Complaint except admit that plaintiffs purport to proceed as set forth therein.

2. Deny the allegations set forth in paragraph "2" of the Complaint and respectfully refer the Court to the full text of the statute referred to therein for its full text and import and admit that the Board Defendants selected a voting system made by Election Systems & Software.

3. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "3" of the Complaint.

4. Deny the allegations set forth in paragraph "4" of the Complaint except deny knowledge or information sufficient to form a belief as to the truth of the allegations concerning how jurisdictions outside of the City of New York have configured their voting systems, and admit that the lever voting machines previously used in the City of New York mechanically prevented voters from casting an overvote.

5. Deny the allegations set forth in paragraph "5" of the Complaint.

6. Deny the allegations set forth in paragraph "6" of the Complaint.

7. Deny the allegations set forth in paragraph "7" of the Complaint and respectfully refer the Court to the documents cited therein for their full text and import.

8. Deny the allegations set forth in paragraph "8" of the Complaint.

9. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "9" of the Complaint.

10. Deny the allegations set forth in paragraph "10" of the Complaint except admit that plaintiffs purport to proceed as set forth therein.

11. Admit the allegations set forth in paragraph "11" of the Complaint.

12. Admit the allegations set forth in paragraph "12" of the Complaint.

13. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "13" of the Complaint.

14. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "14" of the Complaint.

15. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "15" of the Complaint.

16. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "16" of the Complaint.

17. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "17" of the Complaint.

18. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "18" of the Complaint.

19. Deny the allegations set forth in paragraph "19" of the Complaint and respectfully refer the Court to the statutes and website cited therein for their full text and import.

20. Admit the allegations set forth in paragraph "20" of the Complaint.

21. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "21" of the Complaint except admit that Todd D. Valentine and Robert A. Brehm are Co-Executive Directors of the New York State Board of Elections.

22. Deny the allegations set forth in paragraph "22" of the Complaint and respectfully refer the Court to the statute and report cited therein for their full text and import..

23. Admit the allegations set forth in paragraph "23" of the Complaint.

24. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "24" of the Complaint.

25. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "25" of the Complaint and respectfully refer the Court to the statute cited therein for its full text and import.

26. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "26" of the Complaint and respectfully refer the Court to

the record of the proceedings in United States v. N.Y. State Bd. of Elections, No. 06 CV 263 (N.D.N.Y.) for its full contents and import.

27. Deny the allegations set forth in paragraph "27" of the Complaint and respectfully refer the Court to the record of proceedings of the New York State Board of Elections and New York's Election Reform and Modernization Act, Law of New York, Ch. 181 (2006) for their full text and import.

28. Deny the allegations set forth in paragraph "28" of the Complaint except deny knowledge or information sufficient to form a belief as to the truth of the allegations concerning what "many jurisdictions outside of New York" do concerning the handling of overvotes.

29. Deny the allegations set forth in paragraph "29" of the Complaint except admit that in the city of New York, for at least forty years, lever voting machines have been utilized at poll sites and that such machines had an interlock mechanism that prevented voters using that machine from casting an overvote.

30. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "30" of the Complaint.

31. Deny the allegations set forth in paragraph "31" of the Complaint except affirmatively state that the Board of Elections in the City of New York is not using any Dominion ImageCast devices.

32. Deny the allegations set forth in paragraph "32" of the Complaint except admit that the DS200 will alert the voter that he or she has overvoted on the ballot when the voter attempts to scan such a ballot.

33. Deny the allegations set forth in paragraph "33" of the Complaint except admit that where a voter attempts to cast a ballot containing one or more overvotes, the DS200 will notify the voter that he or she is attempting to cast one or more overvotes and afford the voter the option of casting the ballot with the overvote or to have the ballot, uncast, returned to the voter so that the voter might cast a ballot without an overvote.

34. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "34" of the Complaint.

35. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "35" of the Complaint.

36. Deny the allegations set forth in paragraph "36" of the Complaint.

37. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "37" of the Complaint and respectfully refer the Court to the Rule cited therein.

38. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "38" of the Complaint.

39. Deny the allegations set forth in paragraph "39" of the Complaint except deny knowledge or information sufficient to form a belief as to the truth of the allegations concerning what the State Board of Elections has conceded or what its Commissioners have stated.

40. Deny the allegations set forth in paragraph "40" of the Complaint except deny knowledge or information sufficient to form a belief as to how other jurisdictions have programmed the DS200 to respond to overvotes.

41. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "41" of the Complaint.

42. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "42" of the Complaint.

43. Deny the allegations set forth in paragraph "43" of the Complaint and respectfully refer the Court to the Board of Elections in the City of New York's 2010 Poll Worker's Manual for its full text and import.

44. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "44" of the Complaint.

45. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "45" of the Complaint.

46. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "46" of the Complaint.

47. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "47" of the Complaint.

48. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "48" of the Complaint except admit that New York City voters who vote by absentee ballot do not come into contact with the electronic voting system.

49. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "49" of the Complaint.

50. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "50" of the Complaint.

51. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "51" of the Complaint.

52. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "52" of the Complaint.

53. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "53" of the Complaint.

54. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "54" of the Complaint.

55. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "55" of the Complaint.

56. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "56" of the Complaint.

57. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "57" of the Complaint.

58. Deny the allegations set forth in paragraph "58" of the Complaint.

59. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "59" of the Complaint.

60. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "60" of the Complaint.

61. Deny the allegations set forth in paragraph "61" of the Complaint.

62. Deny the allegations set forth in paragraph "62" of the Complaint except admit that the Board of Elections in the City of New York employs the DS200 as part of its

voting system and respectfully refer the Court to the document cited therein for its full text and import.

63. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "63" of the Complaint.

64. Deny the allegations set forth in paragraph "64" of the Complaint except admit that plaintiffs purport to proceed as set forth therein.

65. Deny the allegations set forth in paragraph "65" of the Complaint and respectfully refer the Court to the statute cited therein for its full text and import.

66. Deny the allegations set forth in paragraph "66" of the Complaint and respectfully refer the Court to the statute cited therein for its full text and import.

67. Deny the allegations set forth in paragraph "67" of the Complaint and respectfully refer the Court to the New York Code Rules & Regulations and the 2005 Voluntary Voting System Guidelines for their full text and import.

68. Deny the allegations set forth in paragraph "68" of the Complaint.

69. Deny the allegations set forth in paragraph "69" of the Complaint except deny knowledge or information sufficient to form a belief as to the truth of the allegations concerning what courts have routinely presumed and admit that plaintiffs purport to proceed as set forth therein.

70. Deny the allegations set forth in paragraph "70" of the Complaint.

71. Deny the allegations set forth in paragraph "71" of the Complaint.

72. Deny the allegations set forth in paragraph "72" of the Complaint.

73. In response to the allegations set forth in paragraph "73" of the complaint, defendants repeat and reallege the responses set forth in paragraphs "1" to "72" inclusive of this answer, as if fully set forth herein.

74. Deny the allegations set forth in paragraph "74" of the Complaint and respectfully refer the Court to the statute cited therein for its full text and import.

75. Deny the allegations set forth in paragraph "75" of the Complaint.

76. Deny the allegations set forth in paragraph "76" of the Complaint.

77. Deny the allegations set forth in paragraph "77" of the Complaint.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

78. New York conducted its 2010 Primary Election on September 14, 2010, and will conduct its general election on November 2, 2010.

79. The voting systems have been programmed and any attempt to alter the programming at this late date would place the 2010 General Election in jeopardy.

80. New York's procedure with respect to the handling of overvotes was established long before this action was filed on June 28, 2010.

81. Plaintiffs' have been aware of this since not later than February 3, 2010.

82. By reason of the foregoing, plaintiffs' request for interim injunctive relief is barred by the doctrine of laches.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

83. A party seeking to invoke federal jurisdiction must establish standing to sue under Article III § 2 of the United States Constitution, which limits the courts to hearing actual cases or controversies.

84. To establish standing, the party must set forth, *inter alia*, specific facts identifying an injury in fact that is concrete and particularized and actual or imminent, not merely conjectural or hypothetical.

85. The amended complaint alleges only the mere potential for voter confusion in upcoming elections with respect to overvotes.

86. By reason of the foregoing, plaintiffs lack standing to maintain this action.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

87. Plaintiffs have sued the Commissioners of Election in the City of New York solely in their official capacity.

88. Plaintiffs, in ¶B of the *ad damnum* clause, seek relief against the Commissioners in their individual capacity.

89. In light of the fact that the Commissioners were not sued in their individual capacity, this Court lacks jurisdiction to grant plaintiffs' any such relief.

WHEREFORE, the Board Defendants respectfully request that this Court enter judgment dismissing the complaint in its entirety, together with the costs and disbursements of this action, and for such other and further relief as the Court may deem just and proper.

Dated: New York, New York
October 1, 2010

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