

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF NEW YORK

PHILIP PIDOT, NANCY HAWKINS and
STEVEN AXELMAN, individually and as
representatives of eligible Republican Party
voters in Suffolk, Nassau and Queens Counties
within New York's Third Congressional
District,

Plaintiffs,

v.

NEW YORK STATE BOARD OF
ELECTIONS; SUFFOLK COUNTY BOARD
OF ELECTIONS; NASSAU COUNTY
BOARD OF ELECTIONS; BOARD OF
ELECTIONS IN THE CITY OF NEW YORK;
PETER KOSINSKI and DOUGLAS
KELLNER, in their official capacities as
Commissioners and Co-Chairs of the New York
State Board of Elections; ANDREW J. SPANO
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,

JACK MARTINS,

Intervenor-Defendant,

TOM SUOZZI,

Intervenor.

Civil Action No.
1:16-CV-00859-FJS-CFH

SUPPLEMENTAL STATEMENT OF INTEREST OF THE UNITED STATES

The United States of America (“United States”) respectfully submits this Supplemental Statement of Interest pursuant to 28 U.S.C. § 517, which authorizes the Attorney General to attend to the interests of the United States in any pending lawsuit. This matter continues to implicate the Uniformed and Overseas Citizens Absentee Voting Act (“UOCAVA”), 52 U.S.C. §§ 20301 *et seq.*, as amended by the Military and Overseas Voter Empowerment Act, Pub L. No. 111-84, Subtitle H, §§ 575-589, 123 Stat. 2190, 2318-2335 (2009), a statute over which Congress accorded the Attorney General broad enforcement authority. *See* 52 U.S.C. § 20307(a).

This Court’s August 17, 2016, judgment required Defendants to conduct a Republican primary election for New York’s Third Congressional District on October 6, 2016. *See* Judgment, Aug. 17, 2016, ECF No. 66. Because that date impacts New York’s ability to comply with UOCAVA’s 45-day advance ballot transmission requirement for the November 8, 2016, federal general election, this Court further required New York to seek a waiver from the Department of Defense (“DOD”), pursuant to 52 U.S.C. § 20302(g)(2)(B)(ii), from that advance transmission requirement.¹ *Id.*

Pursuant to the Court’s order, New York applied to the DOD for an undue hardship waiver from UOCAVA’s 45-day advance transmission requirement for the November 8, 2016, federal general election in New York’s Third Congressional District. *See* Decl. of Robert A. Brehm, Ex. D, ECF No. 89-6 at 1. As required by UOCAVA, New York’s waiver application proposed a comprehensive plan for providing UOCAVA voters sufficient time, given the circumstances, to receive, cast, and return their ballots in time to be counted. 52 U.S.C.

¹ The 45th day before the November 8, 2016, federal general election is September 24, 2016.

§ 20302(g)(1)(D). That plan included a proposed extension of the state law deadline for receiving timely cast ballots by UOCAVA voters and New York's promise to seek ratification of that extension by this Court. *See* Decl. of Robert A. Brehm, Ex. D, ECF No. 89-6 at 9. On August 29, 2016, the DOD granted the State's hardship waiver request. *See* Letter of New York State Board of Elections, ECF No. 99.

On August 31, 2016, and in conformity with the State's comprehensive plan, Defendant New York State Board of Elections moved this Court for an order extending by eight days the state law deadline for receiving timely cast and timely postmarked UOCAVA ballots for the November 8, 2016, federal general election for New York's Third Congressional District. *See* Letter Motion of New York State Board of Elections, ECF No. 106.

In light of this Court's August 17, 2016, judgment, and the DOD's August 29, 2016, grant of New York's undue hardship waiver application, the United States respectfully informs the Court that it does not oppose New York's motion.

The United States also respectfully notes that New York's motion appears to implicate this Court's Supplemental Remedial Order in *United States v. New York*, No. 1:10-cv-1214 (N.D.N.Y. Oct. 29, 2015), which incorporates a calendar for the November 8, 2016, federal general election in New York State. *See* Supplemental Remedial Order, *United States v. New York*, No. 1:10-cv-1214 (N.D.N.Y. Oct. 29, 2015), ECF No. 88 at 6 (Sharpe, *J.*) (noting that "portions of the Calendar could change as a result of future legislative enactment or court orders"); *see also* Decl. of Ernest A. McFarland, Ex. A, ECF No. 64-2 (same).

Respectfully submitted,

DATED: September 1, 2016

RICHARD S. HARTUNIAN
United States Attorney
Northern District of New York

VANITA GUPTA
Principal Deputy Assistant Attorney General
Civil Rights Division

JOHN D. HOGGAN, JR. – 511254
Assistant United States Attorney
United States Attorney's Office
James T. Foley U.S. Courthouse
445 Broadway, Room 218
Albany, N.Y. 12207

/s/ Ernest A. McFarland
T. CHRISTIAN HERREN, JR.
REBECCA J. WERTZ
RICHARD DELLHEIM
ERNEST A. MCFARLAND – 515101
NEAL UBRIANI – 520192
RACHEL EVANS – 520206
Attorneys, Voting Section
Civil Rights Division
Room 7265-NWB
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530

CERTIFICATE OF SERVICE

I hereby certify that on September 1, 2016, I served the foregoing on all counsel of record via the Court's ECF Filing System.

/s/ Ernest A. McFarland

ERNEST A. MCFARLAND – 515101

U.S. Department of Justice

Civil Rights Division - Voting Section

Room 7265-NWB

950 Pennsylvania Avenue, N.W.

Washington, D.C. 20530

Phone: (202) 307-6552

Email: ernest.a.mcfarland@usdoj.gov