

# 20-1494

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## In the United States Court of Appeals for the Second Circuit

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ANDREW YANG, individually and on behalf of all others similarly situated,  
*Plaintiffs-Appellees,*

JAY BELLANCA,  
*Intervenors-Plaintiffs-  
Appellees,*

v.

PETER S. KOSINSKI, Co-Chair and Commissioner,  
individually and in his official capacities at the NYS BOE,  
*Defendants-Appellants,*

*(Caption continues inside front cover.)*

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On Appeal from the United States District Court  
for the Southern District of New York

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### **BRIEF AMICI CURIAE OF NEW YORK STATE VOTERS IN SUPPORT OF PLAINTIFFS-APPELLEES AND INTERVENOR-APPELLEES**

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*(Caption continued from front cover.)*

ANDREW SPANO, Commissioner, individually and in his official capacities at the NYS BOE,

*Intervenor-Defendant  
Appellant,*

NEW YORK STATE BOARD OF ELECTIONS, DOUGLAS A. KELLNER, Co-Chair and Commissioner, individually and in his official capacities at the NYS BOE,  
*ADR-Providers-Intervenors-Defendants-Appellants.*

JONATHAN HERZOG, individually and on behalf of all others similarly situated, HELEN SUH, individually and on behalf of all others similarly situated, BRIAN VOGEL, individually and on behalf of all others similarly situated, ALLISON HWANG, individually and on behalf of all others similarly situated, ROGER GREEN, individually and on behalf of all others similarly situated,

*Plaintiffs-Appellees,*

TRACI STRICKLAND, EMILY ADAMS, NESTOR MEDINA, SIMRAN NANDA, KATHRYN LEVY,  
JOSHUA SAUBERMAN, CARI GARDNER, STEPHEN CARPINETA, NANCY DEDELVA,  
TING BARROW, PENNY MINTZ, and GEORGE ALBRO,

*Intervenors-Plaintiffs-  
Appellees,*

v.

TODD D. VALENTINE, Co-Executive Director, individually and in his official capacities at the NYS BOE, ROBERT A. BREHM, Co-Executive Director, individually and in his official capacities at NYS BOE,

*Defendants-Appellants,*

ANDREW CUOMO, as Governor of the State of New York,

*Defendant.*

## **CORPORATE DISCLOSURE STATEMENT**

Pursuant to Fed. R. App. P. 26.1, amici state that they are natural persons and thus neither subsidiaries nor affiliates of a publicly owned corporation.

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## INTEREST OF AMICI CURIAE

Amici<sup>1</sup> are New York State voters currently registered as Democrats. They live, work, and learn throughout the Empire State. Amici come from many different walks of life and are diverse in age, race, and socioeconomic status. Some amici are lifelong Democrats, others registered this year for the sole purpose of participating in the 2020 Presidential Primary; however, amici are united in their strongly held belief that it is of the utmost import that the Primary be held.

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<sup>1</sup> Plaintiff-Appellees, Intervenor-Appellees, and Defendants-Appellants consent to the filing of this brief. This brief has not been authored, in whole or in part, by counsel to any party in this appeal. No party or counsel to any party contributed money intended to fund preparation or submission of this brief. No person, other than *amici* counsel, contributed money that was intended to fund preparation or submission of this brief.

## SUMMARY OF ARGUMENT

Amici respectfully submit that the decision of the Southern District of New York should be affirmed for the reasons set forth in the briefs for Plaintiffs-Appellees and Intervenor-Appellees. Amici further submit this brief to highlight for the Court the perspectives and experiences of New York State voters currently registered as Democrats whose right to choose the presidential primary candidate and delegates of their preference is at stake. Amici offer their personal stories to illustrate that they, like other citizens, strongly value voting. Amici also detail the reasons why they wish to vote in the Primary. Amici also share that they fear their ability to meaningfully participate in future elections will be upended by Defendants-Appellants' proffer that public health emergencies justify suspending elections.



## ARGUMENT

### I. VOTING MATTERS.

Amici believe that “voting is of the most fundamental significance under our constitutional structure.”<sup>2</sup>

Many amici feel duty-bound to vote. *William Fudeman* (age 69), an acupuncturist, has voted in every election since 1972. *T.J. Magno* (age 23), a food service worker who recently lost his job due to the Covid-19 crisis, has also voted in every election since he came of age and takes considerable care to stay abreast of current events so that he can “make an informed decision at the ballot box.” *Alexandra Martin* (age 35), a café manager who also recently lost her job, shares that her immigrant grandparents voted with “hope and pride” in every election, taught her that voting is key to responsible citizenship, and she often accompanied them to the polls. Since coming of age, Alexandra has voted in every election.

Voting serves many purposes. For instance, families depend on regular elections to teach younger generations about civic engagement.

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<sup>2</sup> *Illinois Bd. of Elections v. Socialist Workers Party*, 440 U.S. 173, 184 (1979) (cleaned up).

*David Rankin* (age 44), a civil rights lawyer, shares that talking with his young daughter about voting helps him teach her what it means to live in a true democracy. *Carrie Bramen* (age 56), a professor, feminist, and historian, adds that it is by exercising our “democratic right” that we “instill its importance to young people.” The value of these intergenerational exchanges is apparent in the stories of other amici. For instance, *Rudolph Bravo* (age 89), a retiree, and his sons *Gregory Bravo* (age 49), a teacher, and *Jason Bravo* (age 47), a musician, all vote in every election.

For naturalized citizens, voting can be an important affirmation of their citizenship. *Shane Young* (age 59), a photographer, shares that he has voted in every election since becoming a citizen in 2009. *Jimmy Kristrom* (age 35), a service coordinator, and *Sami Disu* (age 37), a professor and community organizer, both recently became citizens and hope to vote in their first presidential primary this year.

Members of historically marginalized minorities believe that exercising their right to vote is key to combating hatred and bigotry. For instance, *Marcel Rudin* (age 26), a gay man, believes voting helps ensure that LGBT citizens’ rights are honored. *G. Vinton Palazzolo* (age 51), who

is disabled, explains that voting is important because elections can “literally be matters of life and death” for the most marginalized.

Several amici have previously encountered barriers to exercising their right to vote. These experiences had profound impacts. *Emilia Decaudin* (age 21), a student, designer, and transgender woman, was once forced to show photo identification to a poll worker on the pretense that she was not who she held herself out as. *Sarah Schnabel* (age 25), a business owner, did not vote for several years because she did could not get reliable transportation to her polling place. *Zachary Valenti* (age 21), a student, was erroneously removed from the voting rolls in 2019. And *Timothy Brock* (age 33), an architect, shares that his ballot was “purged” in 2016. *Paul Newell* (age 44), a Democratic District Leader and delegate candidate for Elizabeth Warren in NY-07, was denied the opportunity to vote in a state primary in 2004. Because of that painful experience, he feels duty bound to speak up and demand justice for voters.

Amici believe that it is in the public interest to ensure voters have the opportunity to be heard. Afterall, “[t]he political franchise of voting is . . . a fundamental political right, because [it is] preservative of all

rights.”<sup>3</sup> *Mildred Elizabeth Sanders* (age 76), a retired professor, explains that “we need the maximum turnout, the essential experience of democracy.” Primaries play a particularly important role. *YuLing Hsu* (age 38), a freelancer, believes that “Primaries are part of democracy. Primaries mean I have a voice.”

In these trying times, Amici believe that holding elections is imperative. As *Brad Lander* (age 50), a New York City Councilman, explains, “at a time of decreased trust in government and anxiety about the state of our country, it is more important than ever that every voter be allowed to fully express their political will.” *Kyla Bender-Baird* (age 35), a graduate student, adds that “voting is a fundamental right in a democratic society. As we face an unprecedented crisis, we need to protect our democracy, encouraging full participation.”

## II.

### THE 2020 PRESIDENTIAL PRIMARY IS IMPORTANT.

The Presidential Primary is not a beauty contest. Many voters see the Primary as the only meaningful avenue to telegraph their views to state and national Democratic Party leadership. *Andrea Horisaki-*

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<sup>3</sup> *Yick Wo v. Hopkins*, 118 U.S. 356, 370 (1886).

*Christens* (age 39), a graduate student, instructor, and curator, explains, “New York is one of the most populous states in the country, even if we won’t change the ultimate outcome of the presidential nomination, how we vote can change how the nominee approaches campaigning and what he sets as part of his administration’s agenda if elected.” *Rachel Epstein* (age 27), a project manager, adds “being able to voice an opinion within the party is very important.”

Some amici deeply desire to cast a vote for a specific candidate. Many amici are ardent supporters of candidates Joe Biden, Cory Booker, Elizabeth Warren, Bernie Sanders, and Andrew Yang.

*Nelson Nieves* (age 38), a programmer and lifelong Republican, was so inspired by Andrew Yang’s platform that he registered as a Democrat so he could support him in the Primary. *Paulus Dominicus* (age 54), a handyman, invested a whole month’s income to complete the naturalization process in time to cast a vote for Bernie Sanders in the Primary; he adds that he hopes to take a selfie with his mail-in ballot on election day, wearing the same Bernie t-shirt he wore at his naturalization ceremony. *Jessica Levy* (age 42), a clinical social worker, cannot remember being as more excited about a presidential candidate

than she is for Elizabeth Warren; she adds that the opportunity to “vote for a woman who I truly support is kinda emotional.”

For some amici the Primary matters for reasons that go beyond uplifting their preferred presidential candidate. *Robert Lynch* (age 69), a councilperson from the Town of Enfield who backs Joe Biden in the Primary, believes that affording supporters of other candidates the opportunity to be heard is important because “all voters deserve a choice.”

The delegate component of the Primary is also important. Delegates, who run on a platform pledging to vote for a particular presidential candidate at the national convention, are candidates in their own right. Not only do their votes help directly elect the national party nominee, but, as *Deborah Green* (age 68), a retiree, explains the delegates “represent our values at the convention and in the adoption of the party platform.”<sup>4</sup> This role is so important that many delegates and their

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<sup>4</sup> This Court recognizes the significance of delegate elections in *Rockefeller v. Powers*, there explaining that the New York Primary consists of a set of separate elections in each congressional district for delegates, and,

supporters expend considerable time and resources just to qualify to appear on the ballot. *Diane Flood-Taylor* (age 60), an arbitrator who also happens to be a delegate candidate for Bernie Sanders in NY-16, knows all too well how important and arduous that undertaking is.

Some amici hope that their Primary votes sends a clear message about policy priorities. For instance, *Noah Gordon* (age 28), a software developer, hopes that his “vote as a progressive and support for issues like Medicare for All are recognized and backed by delegates in the party.” *Kathleen O’Connell* (age 55), an emergency room nurse working in Queens, has been “been pushed to the maximum of [her] abilities and then some” has “seen nothing but death” in the last eight weeks. She

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Although popular attention may well focus on the number of delegates pledged to each candidate at the convention, *the delegates themselves will also cast votes on platform issues and issues of party governance*. No doubt, the chief purpose of many voters will be to send a message on presidential candidates. But that does not mean that we must treat these . . . elections as if they were a straw poll. In short, registered [party] members in each district will be electing a slate of [] people pledged to vote for a particular candidate, who may be freed to vote for anyone, and who will vote at the convention on other issues as well.”)

74 F.3d 1367, 1380 (2d Cir. 1995) (Jacobs, J.) (emphasis added).

believes this Primary is the “most important election” of her life and wishes desperately to cast her vote backing healthcare reform.

Simply participating in the democratic process is important to many. *Chaumtoli Huq* (age 48), a law professor and first generation immigrant from Bangladesh, explains that primaries are important because “they provide an opportunity for voters to express their point of view and signal to the Democratic Party the values they care about and the issues that impact them on the local and neighborhood level.”

### III. THE COVID-19 CRISIS DOES NOT JUSTIFY UNDULY BURDENING THE FRANCHISE.

Amici appreciate the gravity of the Covid-19 crisis. *Alex Petkanas* (age 27), a recent law school graduate, lost a family member to the virus. *David Siffert* (age 36), a legal academic, has lost six friends and acquaintances. *Daniel Kerpen* (age 35), a social media marketer, and his girlfriend were both diagnosed with the virus earlier this year. While *Kaji Dousa* (age 41), a pastor, has recovered from her bout with the virus, several of her friends and neighbors did not survive.

*Zil Goldstein* (age 36), a nurse, is on the front lines providing care to Covid-19 patients. *Seth Rosen* (age 45), a fundraiser, shares that his



husband is an emergency room doctor and “risks his life to help people.” *Richard Driscoll* (age 71), a grocery clerk, was exposed to the virus at work (thankfully, he later tested negative). *Tiffany Gong* (age 38), a sales associate, worries constantly about her husband, an essential worker, who has been forced to commute an hour to work each-way on New York City subways with inadequate personal protective equipment.

Amici have also endured significant disruptions to their day-to-day lives due to the pandemic. Some amici, like *Stacy Kaufman* (age 70), a retired administrative law judge, and *Alexis Devaney* (age 28), a photographer, have underlying health conditions that put them at high risk if they contract the virus and are consequently sheltering in place indefinitely. *David Isenberg* (age 30), a journalist, has moved in with his girlfriend to mitigate against the risk of catching the virus from his essential worker roommate. Because of school closures, *Heather Kuhn* (age 42), a law student, and other parents are carrying the extra burden of home schooling their kids while juggling their own work and school. Many amici like *Adam McMahon* (age 37), a professor, point out that sheltering in place and the current social distancing rules have proved mentally taxing.

Amici have also made tremendous sacrifices and missed out on major life events. *Florence Burke* (age 77), a consultant, mourns the loss of her “physical freedom and human connection.” *Mackenzie Harte* (age 25), a nonprofit coordinator, lost a member of her family during the shelter in place order—there was no funeral. *Michael Nusbaum* (age 30), a filmmaker and photographer, lost his grandfather and was unable to attend his burial let alone “have any kind of proper memorial for him.” *Susan Sarabasha* (age 74), a retired teacher, can only see her children and grandchildren virtually right now.

The crisis has also exacted a financial toll. Many amici, like *Carol Lipton* (age 69), a lawyer, are working remotely but have lost significant income. *Diego Garena-Quinones* (age 34), a courier, estimates that he has lost about eighty percent of his income due to work shortages. *Kathryn Miechkowski* (age 34), a social worker and landlord, shares that several of her tenants can no longer afford rent. *Amber Duperre* (age 29), a physical therapist, has been furloughed. Among others, *Benjamin Reich* (age 23), who before the outbreak worked as a floor interpreter at the National Museum of Mathematics, and *Janie Dusenberry* (age 29), a

classically trained singer who paid her bills through service work, lost their jobs and are struggling financially.

Nonetheless, Amici steadfastly believe that elections should go forward. As *Brad Lander* (age 50), a New York City Councilman, explains, “at a time of decreased trust in government and anxiety about the state of our country, it is more important than ever that every voter be allowed to fully express their political will.”

Amici are concerned that the State has urged this Court to give undue deference to its claim that there is no less burdensome response to the pandemic than cancelling the Primary. They also worry that the State urges an extreme and dangerous recalibration of the public interest factor.

The State asks that this Court ostensibly afford total deference to its claim that the only means of protecting the public health is to cancel the Primary (NY Op. Br. at 24–25). It goes on to insist that the State’s special responsibility to protect the public health shields the Board of Election’s decisions from searching judicial review during a pandemic (*id.* at 37–38). This is urged on the pretense that the interests of the State are, by definition, aligned with those of the public (*id.* at 23–24). Not so.

Amici submit that the State’s special duty to guard the public health does not give it carte blanche to unduly burden the franchise. This Court has long rejected the notion that the interests of the State are definitionally aligned with those of the public.<sup>5</sup> Moreover, the State has no legitimate interest in the enforcement of Election Law §2-122-a(13), an unconstitutional law.<sup>6</sup> Most certainly, the State should take reasonable steps to prevent the spread of a highly infectious disease. But its claim that the Primary must be cancelled because there is no safe way for voters to participate strains credulity.

*Makini Chisolm-Straker* (age 36), a professor of emergency medicine, understands the devastation the virus can reap better than most—she is currently treating Covid-19 patients in hard-hit Brooklyn, New York and has lost several loved ones and coworkers to the virus. Nonetheless, she urges that “even if social distancing is still needed in June, there are multiple options available that would allow us to vote

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<sup>5</sup> *New York Progress and Protection PAC v. Walsh*, 733 F.3d 483, 488 (2d Cir. 2013) (citing *Am. Civ. Liberties Union v. Ashcroft*, 322 F.3d 240, 247 (3d Cir. 2003)).

<sup>6</sup> *Id.*

safely. Not considering and allowing for those options is a failure of imagination at best, and villainous at worst.”

The less burdensome option is for the State hold the Primary via mail-in ballot. The State has, under the direction of Governor Cuomo, made mail-in ballots available to registered New York voters living in precincts with contested Congressional primaries and other races. There is no legitimate reason why those contests can be settled by mail-in ballot but the Presidential Primary cannot.

Vote-by-mail elections are an obvious means to protect the franchise during the pandemic. *Justine Young* (age 34), a lawyer, points out that before moving to New York she lived and voted in Washington, where all primary and general elections are conducted by mail-in ballot, evidencing that there is “no reason this could not be done here.” Amici *Lindsey Boylan* (age 36), a candidate for Congress in NY-10, adds that there was no legitimate reason for the State to delay the transition to “vote-by-mail,” deeming it an obvious solution, adding “it’s not rocket science.”

Vote-by-mail elections are also safe. *Rosalind Petchesky* (age 77), a retired professor, points out that “making mail-in ballots available to all

voters mitigates the risk of virus infection for both voters and poll workers.” *Carla Muschinske* (age 58), a teacher, adds that voters’ “freedom to choose” need not be impinged when the State “has had plenty of time to organize a safe primary by mail.”

Undue burdens on *any* election are untoward. There exists “a profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open.”<sup>7</sup> As the Supreme Court observes in *Anderson v. Celebrezze*, “[b]y limiting the opportunities of independent-minded voters to associate the electoral arena to enhance their political effectiveness as a group, such restrictions threaten to reduce the diversity and competition in the marketplace of ideas.”<sup>8</sup>

Amici believe it would be dangerous for this Court to allow the State to use the Covid-19 crisis as a shield against meaningful scrutiny. Burdens on the voting process it inevitably have an effect on individual’s rights to vote and associate with others for political purposes.<sup>9</sup> Where

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<sup>7</sup> *New York Times Co. v. Sullivan*, 376 U.S. 254, 270 (1964).

<sup>8</sup> 460 U.S. 780, 794 (1983).

<sup>9</sup> *Green Party of New York State v. New York State Bd. of Elections*, 389 F.3d 411, 419 (2d Cir. 2004).

rights are subject to severe restriction, the regulation must be narrowly drawn to advance a compelling state interest.<sup>10</sup> Here, the State has “interest in enforcing [the] unconstitutional law.”<sup>11</sup> And as this Court recently recognized, during the pandemic the judiciary “can and must help ensure that constitutional boundaries are not transgressed by considerations of expediency.”<sup>12</sup>

Amici appreciate the fragility of American democracy and believe cancelling the Primary imperils the franchise. At bottom, the virus does not empower the State to deprive voters of their “inalienable right to full and effective participation in the political processes.”<sup>13</sup>

*Lisa Posey Krakowsky* (age 58), an Episcopalian priest, believes the State is using the pandemic as a pretext to suppress the vote. *Shi Fang Ruan* (age 34), a designer, worries that if the State is permitted to cancel the Primary “during a pandemic, claiming it’s for the safety of the public, then they can do it again with whatever they may claim in the future.”

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<sup>10</sup> *Id.*

<sup>11</sup> *Walsh*, 733 F.3d at 488.

<sup>12</sup> *Federal Defenders of New York, Inc v. Federal Bureau of Prisons*, 954 F.3d 118, 135 (2d Cir. 2020).

<sup>13</sup> *Board of Estimate v. Morris*, 489 U.S. 688, 693 (1989) (quoting *Reynolds v. Sims*, 377 U.S. 533, 565 (1964)).

*Benjamin de Grasse* (age 36), a producer, likens it to “chipping away at the essence of American democracy.” Meanwhile, *Beena Ahmad* (age 41), an attorney, sees it as yet “another example of disenfranchising marginalized voters.” *Andrea Horisaki-Christens* (age 39), a graduate student, instructor, and curator, thinks “this is unconscionable if you really believe in the importance and centrality of the institution of elections.” And *Joseph Van Ord* (age 36), a tattoo artist, *Kari Belsheim* (age 30), a librarian and archivist, and *Amal Skaros* (age 41), a stay-at-home mom, all fear it sets a “dangerous precedent.”

The burdens amici have been forced to bear up to present are considerable. *Peter Harrison* (age 37), a professor and candidate for Congress in NY-12, points out that many voters in his community are confused about where and how to vote and some mistakenly think all elections are cancelled, which could unnecessarily depress overall voter turnout and harm down-ballot candidates like himself.

Amici will be seriously harmed if the Primary does not go forward. *Lucian Kahn* (age 37), a game designer, says he will feel like a “second-class citizen” and “lose faith in the integrity of our democracy.” *Jeremy Gruber* (age 48), a civil rights attorney, worries many voters will come to



think that “the fix is in, that the party insiders, not the voters, make the decisions, and that engaging in the electoral process is not worthwhile.”

**B. Taylor** (age 33), a law student, thinks it would “exacerbate a feeling that candidates are chosen by party leadership, not the people.” Indeed, **Famous Chrome** (age 51), an acupuncturist, has nearly reached that point, sharing “if I need to show up and vote against Trump in the general, I have to know I had my say in the Primary.”

Amici also fear that minority voters will be hit particularly hard if the Primary does not go forward. While “on paper, Covid-19 may fit the profile of an equal opportunity assassin[,] the trajectory of its rampage throughout the United States strongly indicates otherwise.”<sup>14</sup> “The Covid-19 racial disparity in infections and deaths is viewed as the latest chapter of historical injustices, generational poverty and a flawed health system. The epidemic has hit African-Americans and Hispanics

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<sup>14</sup> Kimberlé Williams Crenshaw, *When Blackness Is a Preexisting Condition*, New Republic, May 4, 2020, <https://newrepublic.com/article/157537/blackness-preexisting-condition-coronavirus-katrina-disaster-relief>. See also Linda Villarosa, “A Terrible Price”: The Deadly Racial Disparities of Covid-19 in America, N.Y. Times, Apr. 29, 2020, <https://www.nytimes.com/2020/04/29/magazine/racial-disparities-covid-19.html> (“The coronavirus pandemic has stripped bare the racial divide in the health of our nation.”).

especially hard, including in New York, where the virus is twice as deadly for those populations.”<sup>15</sup>

The disproportionate burdens minority communities bear during this crisis weigh heavily in favor of permitting the Primary to go forward. Now more than ever minority voters need to be heard.<sup>16</sup> As ***Edgar Cisneros*** (age 37), a member of Bronx Community Board 7, sees it, cancelling the Primary is “a misguided effort” that will ultimately “deprive those communities hardest hit by Covid-19 from voicing their solutions through the electoral process.” ***Evelyn Perez*** (age 26), currently unemployed and living in the Bronx, concurs, explaining that “taking away the primary from people here is to take away the hope that these conditions could change.”

Conversely, the State will not be seriously harmed if it proceeds with the Primary. While the State will have to direct some resources

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<sup>15</sup> Audra D.S. Burch, *Why the Virus is a Civil Rights Issue: “The Pain Will Not Be Shared Equally,”* N.Y. Times, May 7, 2020, <https://www.nytimes.com/2020/04/19/us/coronavirus-civil-rights.html>.

<sup>16</sup> See Clyde V. Yancy, *Covid-19 and African Americans*, J. Am. Med. Assoc., Apr. 15, 2020, <https://jamanetwork.com/journals/jama/fullarticle/2764789> (“A 6-fold increase in the rate of death of African Americans due to a now ubiquitous virus should be deemed unconscionable. This is a moment of ethical reckoning.”).

towards the Primary, that is par for the course with any election. Amici appreciate that additional resources, above what the State initially allocated before this crisis, may be necessary (NY Op. Br. at 31). But, as *Carla Nordstrom* (age 75), a retiree, explains, cancelling an election “due to costs or challenges is a form of voter suppression.” In light of the important interests at stake, any unplanned expenditures are a necessary cost of preserving democracy in New York.

The stakes are high in these trying times. *Jumaane Williams* (age 44), the Public Advocate of New York City, reminds the Court that the “right to vote has been hard-fought.” He adds that it is incumbent upon the State to honor “the constitutional rights of all its citizens, even in the time of Covid-19.” *David Saphra* (age 68), a retiree, adds that “New York should be setting an example during the current health crisis.”

This Court is the last protector of the right to vote. Amici, including *Phyllis Goldberg* (age 77), an educator, writer and activist who as a college student marched with Dr. Martin Luther King Jr., believe that their “right to vote is inalienable” and are “counting on the Court to protect it.” Amici, including *Francesca Rheannon* (age 71), a retired

journalist and radio producer, understand all too well that this “Court has a weighty responsibility to protect democracy now and for the future.”

“[I]n this world, with great power there must also come great responsibility.”<sup>17</sup> As the great Chief Justice Earl Warren teaches in *Reynolds v. Sims*: a “denial of constitutionally protected [voting] rights demands judicial protection; our oath and office require no less of us.”<sup>18</sup>

## CONCLUSION

For the foregoing reasons, the decision of the Southern District of New York should be affirmed.

Respectfully submitted,

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<sup>17</sup> Stan Lee & Steve Ditko, *Amazing Fantasy No. 15: “Spider-Man”* 13 (1962).

<sup>18</sup> 377 U.S. at 566.

## CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation of 7,000 words of Second Circuit Rule 32.1 and Second Circuit Rule 29.1. This brief contains 4,234 words, excluding parts exempted by Fed. R. App. P. 32(f). This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Office Word Mac in 14-point Century style.

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I certify that on the 11th day of May, 2020, I electronically filed the foregoing the Brief Amici Curiae New York State Voters in Support of Plaintiffs-Appellees and Intervenor-Plaintiffs-Appellees with the Clerk of the Court for the United States Court of Appeals for the Second Circuit by using the appellate CM/ECF system. All participants in the case are registered CM/ECF users and service will be accomplished by the appellate CM/ECF system. Additionally, paper copies have been mailed through a third-party commercial carrier for delivery to the Clerk of Court within two business days.

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