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May 5, 2022

The Honorable Gary L. Sharpe
United States District Judge
James T. Foley U.S. Courthouse
445 Broadway, Room 411
Albany, NY 12207

Re: *United States of America v. New York State Board of Elections, et al.*
10-cv-1214 (GLS) – Proposed Supplemental Order

Dear Judge Sharpe:

On January 27, 2012 this Court granted a Permanent Injunction to the United States upon its application to bring the State of New York into compliance with the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) of 1986. The January 27, 2012 Order set the 2012 federal non-presidential primary date as June 26, 2012 and provided that in subsequent even-numbered years, New York's non-presidential federal primary date shall be the fourth Tuesday of June, unless and until New York enacts legislation resetting the non-presidential federal primary for a date that complies fully with all UOCAVA requirements, and is approved by the court. *United States v State of New York* (1:10-cv-1214 [NDNY] ECF # 59).

By means of Chapter 5 Laws of 2019, New York law was amended to provide for a unified state and federal primary to be held on the 4th Tuesday in June. This obviated the need for the New York State Board of Elections to seek any modification of state law to conduct its primaries in compliance with the Move Act as of the elections in 2020.

While the New York State legislature has not enacted legislation resetting the election, the New York State Court of Appeals, in *Harkenrider v Hochul*, (NY Slip Op 02833 decided on April 27, 2022), has affirmed the unconstitutionality, under the State Constitution, of the recently redistricted Congressional (Members of House of Representatives) and State Senate maps adopted by the legislature, and remanded the matter back to the Supreme Court in Steuben County, New York. Accordingly, as of April 27, 2022, New York was without any congressional districts for the upcoming elections. The Court of Appeals directed Steuben County Supreme Court to have an independent Special

Master develop constitutionally compliant maps for both Congress and State Senate and develop and Order a political calendar to effectuate fully UOCAVA compliant primaries to be held this calendar year. Specifically, the Court of Appeals held that:

“[w]e are confident that, in consultation with the Board of Elections, Supreme Court can swiftly develop a schedule to facilitate an August primary election, allowing time for the adoption of new constitutional maps, the dissemination of correct information to voters, the completion of the petitioning process, and compliance with federal voting laws, including the Uniformed and Overseas Citizens Absentee Voting Act see 52 USC § 20302.”

Id.

In furtherance of this directive, the Steuben Supreme Court issued a Preliminary Order on April 29, 2022, ordering that the Special Master, Dr. Jonathan Cervas, have the Congressional maps finalized by May, 20, 2022, that the Congressional primary will be held on August 23, 2022 and that the mailing deadline for Military and Overseas ballots shall be July 8, 2022, a fully compliant UOCAVA date. The Steuben County Order is filed herewith as Exhibit “A”.

The State Board of Elections has been working with the Steuben County Supreme Court to ensure that any political calendar ordered by the Court for the August 23, 2022 primary shall be fully MOVE Act compliant and that any resulting effects of that primary calendar shall also fully support a fully compliant general election in November.

While the State Board is bound by the decisions of the Court of Appeals and the directives issued by them and the Steuben Supreme Court, we are acutely aware of the UOCAVA deadlines and this Court’s above referenced order.

As such, out of an abundance of caution, we are notifying this court of the current situation and alerting Your Honor to the state court orders that have been issued, and we are requesting that the August 23, 2022 primary date set for congress be recognized and ordered by this court as well. New York law remains unchanged and its Congressional primary elections will occur in subsequent years on the fourth Tuesday in June.

We also note that this Court’s January 27, 2012 Order was significantly invoked as part of an application for a Temporary Restraining Order application in *DeGaudemar v Kosinski*, 1:22-cv-03534-LAK seeking to compel New York to continue to advance a June Primary on the lines that have been declared unconstitutional by its state courts. The TRO was denied. As part of the proceedings, the New York State Board of Elections informed the Court that it would make the instant application to Your Honor today, and we agreed to consent to the plaintiffs in that proceeding intervening/joining this proceeding if this court would so allow. The brief transcript of the TRO hearing is provided as Exhibit “B”.

We have advised the Department of Justice that the State Board of Elections will notify the Department immediately if any delays arise that may prevent timely transmission of UOCAVA ballots, and will provide the Department with UOCAVA ballot transmission reports for the 2022 Federal primary and general elections. We are advised that the Department of Justice does not oppose this application.

Very Truly Yours,

s/

Brian L. Quail

s/

Kimberly A. Galvin