

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

John DeRosier,

Plaintiff,

-against-

Dustin M. Czarny, in his official capacity as
Commissioner of the
Onondaga County Board of Elections,

Michele L. Sardo, in her official capacity as
Commissioner of the
Onondaga County Board of Elections,

Peter S. Kosinski, in his official capacity as
Co-Chair of the New York State Board of Elections,

Douglas A. Kellner, in his official capacity as
Co-Chair of the New York State Board of Elections,

Andrew J. Spano, in his official capacity as
Commissioner of the New York State Board of Elections,

Gregory P. Peterson, in his official capacity as
Commissioner of the New York State Board of Elections,

Defendants.

Civ. Action No.: 5:18-CV-0919
(GLS/DEP)

**NOTICE OF MOTION FOR
SUMMARY JUDGMENT**

PLEASE TAKE NOTICE, that upon the attached Affidavit of Benjamin M. Yaus, Esq., with annexed exhibits, and the accompanying Memorandum of Law and Statement of Material Facts, the Defendants, Dustin M. Czarny and Michele L. Sardo (together, "County Defendants"), will move through its attorney, Benjamin M. Yaus, Esq., at the U.S. District Court, James T. Foley U.S. Courthouse, 445 Broadway, Albany, New York at 9:00 A.M. on December 27, 2018 for an Order, pursuant to Rule 56 of the Federal Rules of Civil Procedure, granting County

Defendants summary judgment and dismissing, with prejudice, for the reasons set forth in County Defendants' accompanying memorandum of law, Plaintiff's Complaint.

DATED: October 24, 2018
Syracuse, New York

s/ Benjamin M. Yaus
Benjamin M. Yaus, Esq.
(Bar Roll No. 519691)
Counsel for County Defendants
Deputy County Attorney
Onondaga County Law Department
John H. Mulroy Civic Center
421 Montgomery Street – 10th Floor
Syracuse, New York 13202
(315) 435-2170 x 5918 (Office)
(315) 435-5729 (Fax)
BenjaminYaus@ongov.net

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Defendants.

**AFFIDAVIT OF BENJAMIN M. YAUS, ESQ.
IN SUPPORT OF COUNTY OF ONONDAGA, NEW YORK'S
MOTION FOR SUMMARY JUDGMENT**

STATE OF NEW YORK)
COUNTY OF ONONDAGA) SS.:

BENJAMIN M. YAUS, being duly sworn deposes and says that:

1. I am a Deputy Onondaga County Attorney and attorney of record in this
proceeding for Defendant County of Onondaga, New York ("County") and its Onondaga County

Board of Elections (“CBOE”) Commissioners Michele L. Sardo and Dustin M. Czarny (“County Commissioners”).

2. I offer this Affidavit, together with the attached Exhibits, Memorandum of Law, Statement of Material Facts, and joint Affidavit of the County Commissioners (Exhibit 1), including the exhibits referenced therein and attached thereto (Exhibit 1A – 1C), in support of the County Defendants’ motion for summary judgment pursuant to Fed.R.Civ.P. 56.

3. After this action was commenced by filing of the Complaint and prior to this motion for summary judgment, the New York State Attorney General’s Office provided me with a copy of New York State Board of Elections (“SBOE”) electioneering guidance prepared subsequent to the U.S. Supreme Court’s Minnesota Voters Alliance v. Mansky decision, 138 S.Ct. 1876 (2018), a copy of which guidance is attached hereto as Exhibit 2.

4. On or about September 10, 2018, Defendants provided to Plaintiff’s counsel via email a copy of Exhibit 2, a copy of additional post-Minnesota Voters Alliance SBOE electioneering guidance, see Exhibit 1A, and a copy of a June 20, 2018 letter prepared by CBOE which summarized SBOE guidance on this topic. See Exhibit 1B.

5. A true and accurate copy of New York State Election Law of 1909, c. 22 §§ 59 & 352 is attached hereto as Exhibit 3 for this Court’s benefit.

6. A true and accurate copy of 1933 N.Y. Op. Atty. Gen. No. 1973 is attached hereto as Exhibit 4 for this Court’s benefit.

WHEREFORE, given the facts established by the attached Exhibits and for the reasons set forth in the accompanying Memorandum of Law, the undersigned respectfully submits that County Defendants’ motion for summary judgment should be granted in full.

s/ Benjamin M. Yaus
Benjamin M. Yaus
Counsel for County Defendants
(Bar Roll No. 519691)
Deputy County Attorney
Onondaga County Law Department
John H. Mulroy Civic Center
421 Montgomery Street – 10th Floor
Syracuse, NY 13202
(315) 435-2170 x 5918 (Office)
(315) 435-5729 (Fax)
BenjaminYaus@ongov.net

Sworn to before this
24th day of October, 2018

Nancy L. Moran
Notary Public

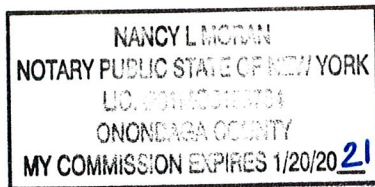


Exhibit 1

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

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Gregory P. Peterson, in his official capacity as
Commissioner of the New York State Board of Elections,

Defendants.

**JOINT AFFIDAVIT OF ONONDAGA COUNTY BOARD OF ELECTIONS
COMMISSIONERS MICHELE L. SARDO AND DUSTIN M. CZARNY**

STATE OF NEW YORK)
COUNTY OF ONONDAGA) SS.:

DUSTIN M. CZARNY and MICHELE L. SARDO, being duly sworn, depose and say:

1. The Onondaga County Board of Elections ("CBOE") consists of two elections' commissioners, with one Commissioner appointed from each of the two major political parties

(“County Commissioners”).

2. We are the duly appointed County Commissioners of the CBOE.

3. We, the County Commissioners, have the authority to make certain policies on behalf of the CBOE.

4. The CBOE, pursuant to New York State Election Law, is statutorily mandated to enforce state anti-electioneering laws or face criminal conviction for failing to enforce said statutes inside or within 100 feet of polling places. See Election Law §§ 5-204, 8-104, 17-102.

5. The CBOE does not have any distinct formal or *de facto* custom or policy concerning electioneering; rather, CBOE enforces state anti-electioneering laws solely and strictly in accordance with state law and guidance.

6. On June 20, 2018, in the wake of the U.S. Supreme Court’s Minnesota Voters Alliance v. Mansky decision, 138 S.Ct. 1876 (2018), the New York State Board of Elections (“SBOE”) emailed guidance to us, the County Commissioners, containing a review of New York’s electioneering laws and concluding that such remain constitutional, a copy of which is attached hereto as Exhibit 1A.

7. Subsequently, on June 20, 2018, the CBOE prepared and distributed a letter to CBOE election personnel merely summarizing, and dispensing with the legalese and citations contained within, the June 20, 2018 SBOE guidance (“CBOE Letter”), a copy of which is attached hereto as Exhibit 1B.

8. The CBOE also prepared, as mandated by Election Law § 3-412, a training manual for election inspectors, last revised March 12, 2018 (“CBOE Training Manual”), a copy of which is attached hereto as Exhibit 1C.

9. Besides the CBOE Letter and Training Manual, CBOE has not prepared or promulgated any document which addresses or mentions electioneering.


10. The CBOE Letter and Training Manual contain recitations from and summaries of state guidance and law and were not intended to be, and are not, a distinct Onondaga County policy or custom; nor do such documents go beyond the confines of existing state law and guidance and CBOE's mandate to enforce the same.

11. The CBOE is not aware of any incidents involving Plaintiff at or in the vicinity of any polling places, much less any incidents concerning prohibited electioneering activities by Plaintiff.

WHEREFORE, County Commissioners request that this Court grant County Defendants' motion for summary judgment and dismiss Plaintiff's Complaint, together with such other and further relief as this Court deems just and proper.



DUSTIN M. CZARNY

Sworn to before me this
23 day of October, 2018.


CHRIS SHEPHERD
Notary Public, State of New York
Qual. in Onondaga Co. No. 01SH4000905
Notary Public, Commission Expires Oct 12 2019


MICHELE L. SARDO

Sworn to before me this
23 day of October, 2018.


CHRIS SHEPHERD
Notary Public, State of New York
Qual. in Onondaga Co. No. 01SH4000905
Notary Public, Commission Expires Oct 12 2019

Dear Commissioners and Directors:

As you may know, the United States Supreme Court has just recently held in *Minnesota Voters Alliance v. Mansky* that Minnesota's law banning "political" apparel at poll sites was unconstitutional.

This has no direct impact on New York law, as our law, prohibits "electioneering" (meaning statements for, or against, a candidate or referendum on the ballot). A similar portion of the Minnesota law was found by the Supreme Court to be valid.

In light of the *Minnesota* decision and an impending primary on June 26, 2018, what follows is a brief review of New York's law on the subject of electioneering.

New York Law

Election Law § 8-104 (1) prohibits "electioneering within the polling place, or in any public street, within a one hundred foot radial" from the designated entrances to a polling place. The statute further provides that "no political banner, button, poster or placard shall be allowed in or upon the polling place." See also Election Law §§ 5-206 (9) (prohibiting electioneering at local registration); 17-130 (4) (providing for electioneering as a misdemeanor).

This prohibition on "political banner[s]," "button[s]," and "poster[s] and placard[s]" applies only in the narrow context of the prohibition on "electioneering within the polling place" and the "one hundred foot radial." That is to say, to constitute a violation of New York law a banner, button, poster or placard must constitute "electioneering."

An "electioneering" communication is one which seeks the election of a candidate or a vote for a political party or independent body on the ballot within the poll site. Accordingly, a violation of New York's prohibition on electioneering banners, buttons, posters and placards typically must contain the name of a candidate, political party, independent body or direct reference to a ballot proposal on the ballot which contextually seeks votes.

Application of New York Law to Political Apparel

Persons wearing clothing or donning buttons that include political viewpoints — i.e. support of the Second Amendment, Marriage Equality, Environmental Sustainability, Immigration Reform, Support for Voter ID Laws — do not violate New York's electioneering prohibition unless the issue itself is unambiguously on the ballot in the form of a ballot proposal.

New York's anti-electioneering law was intended to prevent the political campaigns from intruding into the polling place. It was not designed to prohibit political expression generally. New York has long interpreted its anti-electioneering law as not prohibiting political messages. "Voters may wear political attire when casting their vote. After casting their vote, all voters must leave the polling site." *New York Poll Worker Training Program*, p.11 (rev. 2010). The *New York City Basic Poll Worker Manual* similarly defines electioneering as "efforts to encourage voters to vote a certain way and includes distributing, wearing or carrying political literature, posters, banners or buttons or soliciting votes." P. 86.

Please contact us with any questions.

Robert A. Brehm
Co-Executive Director
New York State Board of Elections

Todd D. Valentine
Co-Executive Director
New York State Board of Elections



COUNTY OF ONONDAGA

Office of the Board of Elections

1000 ERIE BLVD WEST
SYRACUSE, NY 13204

DUSTIN M. CZARNY
COMMISSIONER

PHONE: 315-435-3312 • FAX: 315-435-8451
www.ongov.net/elections

MICHELE L. SARDO
COMMISSIONER

June 20, 2018

In light of the recent Supreme Court ruling and guidance from the NYS Board of Elections, the Commissioners of the Onondaga County Board of Elections give the following clarification on what is acceptable attire in a polling place.

No voter shall be restricted from voting for their political attire. Any voter with such political messaging must be allowed to vote but must immediately be asked to remove themselves from the polling place upon casting said vote. Any voter wearing attire with a candidate's will be asked to cover up or remove that attire before being issued a ballot.

For the primary on Tuesday, June 26th, the names "Dana Balter" or "Juanita Perez-Williams" cannot appear in any form on attire.

A handwritten signature in black ink, appearing to be "Dustin M. Czarny".

Dustin M. Czarny

A handwritten signature in black ink, appearing to be "Michele L. Sardo".

Michele L. Sardo

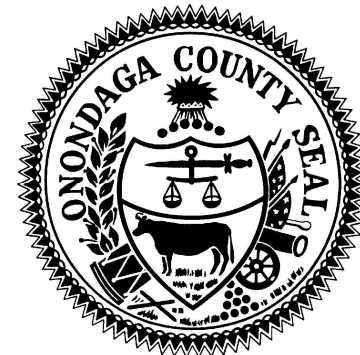
Commissioners of Elections



Onondaga County Board of Elections

Election Inspector Certification Course

Revised 3/12/18



Welcome

from Commissioners
Dustin Czarny and Michele Sardo

As an Election Inspector, you play an important part in the process that enables citizens to exercise their constitutional right to vote.

The success or failure of the election process depends to a great extent on how well you carry out your responsibilities at the polls.

The work of an Inspector can be difficult and tiring, but when you have done the job well, you will know that the voters of your election district have been well served.

On their behalf, and on behalf of all of Onondaga County's citizens *we thank you for your service.*

Introduction

Election inspectors must reside within the County in which they will serve. Appointments for these positions are equally divided between the major political parties (Republicans and Democrats). **The chair of their political parties recommends the inspectors.** The Commissioners appoint inspectors for a one year term.

Inspectors are required to attend a mandatory training session and pass an examination each year. Training sessions are required so that the inspectors actually handle all paperwork used at a polling site.

ALL inspectors must pass the test to be appointed for a one year term.

Responsibilities and Qualifications of Election Inspectors

Elections must be conducted in a fair and impartial manner, according to the requirements of the New York State Election Law. As an Election Inspector, these are two of your most important responsibilities - ***making sure that ALL eligible voters exercise their right to vote, and that the law is applied uniformly.***

This may seem difficult when you're working at the polling site for many reasons. Certain voters can present problems and Election Law and policy change over time. It is important to be thorough in your work. **Always keep in mind that as an Inspector, you are performing an important service for the public.**

Inspector Qualifications

To Serve as an Inspector, you must:

- **Be a registered voter** and a resident of the county in which you will work.
- **Be able to clearly speak, read, and write** the English language.
- **Be certified as an Inspector** by the County Board of Elections after attending an official training class and passing the written exam.
- **Not hold any public elective office** or be a candidate for any public office or party position to be voted on by voters of the district in which you will work.
- **Not be a spouse, parent or child** of a **candidate running** for office in the district in which you will work.

Inspector's Overall Duties

You should be **familiar with:**

- Qualification of voters pursuant to Election Law and BOE Policies
- The casting of emergency and affidavit ballots
- Processing a court order
- Properly filling out the Statement of Canvass and Ballot Transmittal forms
- General knowledge of Election Law as it relates to poll site operation and voting

Oath of Election Inspector

I do solemnly swear I will support the Constitution of the United States and the Constitution of the State of New York, and that I will faithfully discharge the duties of the Office of Inspector of Elections for the County of Onondaga, New York, according to the best of my ability.

I do further solemnly swear [or affirm] that I will not in any manner request or seek to persuade or induce any elector to vote any particular ticket, or for any particular candidate, and that I will not keep or make memoranda or entry of anything occurring within the booth, and that I will not, directly or indirectly, reveal to any person the name of any candidate voted for by any elector, or which ticket he has voted, or anything occurring within the voting booth, except when I may be called upon to testify in a judicial proceeding for violation of the Election Law.

Prohibited Practices

Under New York Election Law it is a felony punishable by fine, imprisonment or both for a Poll Worker to:

- Destroy, remove, alter or mark ballots
- Campaign, distribute campaign literature, knowingly and willfully permit campaign literature to be present or electioneer at the polls
- Commit or even knowingly permit fraud of any kind during the election
- Threaten or intimidate voters
- Knowingly permit an unqualified voter to vote, or permit someone to vote more than once
- Intentionally make or attempt to make a false canvass of the ballots
- Communicate with others regarding someone's vote or unfold a ballot prepared for voting

Prohibited Practices, Continued

- Unless the voter requests assistance, do **NOT** enter a privacy booth with a voter
- Destroy or alter the list of voters, the registration poll ledgers, challenges or affidavits
- When helping a voter who has requested assistance in voting, induce the voter to vote a certain way, reveal a vote, or keep a record of anything that occurred
- Knowingly deny a qualified voter the right to cast his or her ballot
- Under the Voting Rights Act, it is illegal to:
Discriminate against voters or candidates on the basis of race or color or language or to administer the election on different terms for the different racial groups, even without the intention to discriminate

Types of Inspectors

Polling sites with three or more Election Districts
will have a ***POLL SITE MANAGER***

The manager responsibilities are:

- Must be willing to travel
- Arrive 1 hr before the polls open
- Assign inspectors to their election district
(1 Republican -1 Democrat per table)
- Assign work to all inspectors in the site
- Oversee that the voting machine is up and running
- Direct voters to the correct election district (in the absence of a Gatekeeper)
- Oversee the work of the VSS and Regular Inspectors
- Fill in where needed (such as breaks, etc.)
- Make sure payroll sheets for Inspectors and Gatekeepers are signed and returned to the Board of Elections
- Return all the ballots and election supplies to the designated location after the polls close

Types of Inspectors

There will be one or two
VOTING SYSTEM SPECIALISTS at every site.

The specialists responsibilities are:

- Must be willing to travel
- Arrive 1 hr before the polls open
- Locate the Ballot Box key and statement of canvass form
(located in the lowest district black suitcase)
- Open and close the voting machine
- Assist voters with the machine if asked. You only need to approach the Imagecast if a voter requires assistance.
- Handle any machine failures during the day
- Fill in where needed with processing the voter
- Complete the Statement of Canvass
- Record the seal number from the back of the ADA Blank Paper envelope **ONLY IF YOU HAVE A BMD VOTER**

Types of Inspectors

Regular Inspectors responsibilities are:

- Arrive ½ hr before the polls open
- Process the voters by:
 - Locating voter's name in poll book
 - Assigning a stub # to the voter
 - Distributing and accounting for ballots **(Only 1 open booklet of ballots should be on the table at a time)**
 - Processing Affidavit and Court order voting as needed
 - Managing Spoiled/Replacement Ballots
 - Reminding voters to completely fill in the circles on the ballot

These inspectors will receive no additional machine training.

Types of Inspectors

There is no guarantee you will be assigned to the position you may have signed up for.

When working at a site **without** a polling site manager, **ONE of the inspectors from the SITE** will be required to return all the election supplies **in the black suitcase(s) for that site**. This person is called a Chairperson and will be paid **\$25.00**.

Because of the nature of the voting system, not every election district will have 4 Inspectors assigned to it. You must make sure to share inspectors from table to table to ensure at least 1 Republican and 1 Democrat is present at all times.

Election Inspectors are appointed by polling site not election district.

Opening the Polls

- General Election Polls Open at 6:00 A.M. - Primary Elections at 12 Noon.
- Inspectors are to arrive at the assigned site as follows:
 - **Poll Site Managers/Voting System Specialists – 1 hour before**
 - **Regular Inspectors – 30 minutes before**
 - **Work together as a team - there must be at least ONE inspector from each political party before you can start to open the polls. Call the Board of Elections immediately if an inspector is missing. Please have the name(s) and party(s) of the inspector(s) that are at the polling site. Call back if missing inspector shows up to work.**

First thing in the morning

Check the Following

- Make sure the correct polling location and election district is on the front of the black suitcase.
- There will be one suitcase for each election district.
- Open the suitcase by breaking the plastic tab in the lock. Turn the end of the lock to release the seal to open the lock. Record the plastic seal number on the Ballot Transmittal Form.
- Open the black suitcase and remove the green canvass bag.
- Make sure the **Town / Ward and Election District** on the front of the green canvass bag is for your election district.

First thing in the morning

- Remove all of the supplies from the **green** canvass bag and verify the **Town/Ward and Election District**:
 - ✓ **Poll Book**
 - ✓ **Clear Plastic Folder w/ Statement of Canvass and Ballot Box Door Key and a coin envelope with the black suitcase seal (in lowest district only). Give this folder to the Voting System Specialist**
 - ✓ **Street Finder (General Election Only)**
 - ✓ **Ward/Election District Sign**
 - ✓ **City/Town Return of Supply Form**
 - ✓ **Polling Place Evaluation Form (General Election Only)**
 - ✓ **Sample Ballots**

Ballot Transmittal and Reconciliation

- *Remove the stubbed / affidavit ballots and Ballot Transmittal Form from the blue canvass bag located in the Imagecast Ballot Box.*
- *Make sure to check for the correct election district.*
- *The Voting System Specialist will give the ballots to the Regular Inspectors at the appropriate district table.*

Ballot Transmittal and Reconciliation

- *Record the following information in the Section of the Ballot Transmittal/Reconciliation Form:*

Black Suitcase Seal

- ❖ *Record the opening suitcase number*

Affidavit Ballots (Non-Stubbed)

- ❖ *Record the number of Affidavit Ballots received*

Stubbed Ballots

- A. *Record the number of Ballot Booklets received*
- B. *Record the number of Ballot received*
- C. *Record the number of Spanish Booklets received (if applicable)*
- D. *Record the number of Spanish Ballot received (if applicable)*

ADA Paper

- ❖ *Locate the blank ADA paper in the manilla envelope which is located in the ImageCast Ballot Box – DO NOT OPEN UNLESS NEEDED*

Black Suitcase Supplies

- Remove all of the supplies from the **side zipper compartment of the black suitcase**:
 - **Map** (lowest district number)
 - **Distance Markers AND Signage** (lowest district number)
 - **ImageCast Voting Instructions** (lowest district number)
 - **Yellow Inspector Folder (to include: Payroll with Chairman form and Manuals and Poll Site Layout)** (lowest district only)
 - **Red Folder Voted Ballots with Write-Ins** (lowest district number)
 - **Manila Folder for Unscanned Emergency Ballots** (lowest district number)
 - **Affidavit Ballot Envelopes**
 - **Spoiled Ballot Envelopes**
 - **Large Manila Envelope for Spoiled Ballots**
 - **Ballot Privacy Sleeves**
 - **Ziploc bags with supplies**
 - **Voter Registration Forms**
- Supply Bags
 - Post-It notes
 - Black Pens ONLY
 - Envelope of tacks
 - Envelope of paper clips
 - Tape
 - BOE Referral Cards
 - Masking Tape
 - Scissors (Lowest District only)
 - Jr. Paper Pad

Black Suitcase Supplies

Green Canvass Bag

- Ward/Election District Sign
- Poll Book
- City/Town Return of Supply Form
- Polling Place Evaluation (General Election only) (Lowest District only)
- Street Finder (General Only)
- Clear Plastic Folder
- Sample Ballots

Clear Plastic Folder

- Statement of Canvass for Imagecast
- Ballot Box Door Key (Lowest District only)
- Envelope with closing seal for Black Suitcase

Blue Canvass Bag

- Imagecast Stubbed Ballots
- Affidavit Ballots
- Poll Site Ballot Transmittal/Reconciliation Form

Black Suitcase

- Green Canvass Bag
- Red Memory Card Case (Side pocket on County Seal side of suitcase) (Lowest District Only)

Black Suitcase Supplies

- If you have more than one district in your site, only one suitcase will contain signage, maps and the ballot box door key (lowest district number).
- Sample ballots and the diagram of the voting instructions must be posted near the voters waiting in line
- **Call the Board if anything is missing...before the polls open.**

Arrangement of the Polling Site

The Voting System Specialists and the Poll Site Managers are provided with the proper layout of each polling place. The diagram of the polling place is located in the yellow inspector folder in the lowest district.

Voting booths should be positioned so that no one can see how the voters casting their ballot are voting. **The biggest complaint we have from voters is the lack of privacy.**

Make sure the monitor on the BMD side of the Imagecast is turned in the direction to give the voter the privacy needed when voting.

Arrangement of the Polling Site

**This is the
Privacy Booth.**

**You need to arrange the
privacy booths to service the
privacy of the voter.**



**These Privacy Booths will
also replace the American
Flag at every polling place
since they have the
American Flag displayed on
its side.**

**Privacy Booths can be
stand alone, double stand
alone or table top. You will
also have a ADA Privacy
Booth.**

Arrangement of the Polling Site

These are NEW LAMINATED signs. They are to be returned with the tape removed at the end of the day.

Post Distance Markers 100 feet from site entrance.

No campaigning is allowed within this 100-foot area.

Post the Polling Site sign outside of the building to assist voters in locating the voting site.

Bumper stickers, hats, buttons, shirts
all that....not allowed.



Opening of Polls

2 Republican and 2 Democrat Inspectors must sign the following:

- ***Poll Site Ballot Transmittal/Reconciliation Form***
 - *Will be found in the blue canvass bag inside the Imagecast Ballot Box with the ballots*
 - *Verify and record number of stubbed ballot booklets and total ballots received*
 - *Verify and record number of affidavit ballots received*
 - *Record seal number from the black suitcase*
- ***Statement of Canvass (Verify Poll Site)***
 - *Will be found in the clear plastic folder in the green canvass bag*
 - *Record all seal numbers on the Imagecast*

Poll Watchers

**Must present a Poll
Watcher's Certificate.**

Who can be a Poll Watcher?

Any qualified voter in the County.

**Candidates can NOT be a
poll watcher.**

**WATCHER'S CERTIFICATE
FOR USE ON ELECTION DAY**

**COUNTY OF ONONDAGA
STATE OF NEW YORK**

TO WHOM IT MAY CONCERN:

THIS IS TO CERTIFY THAT PURSUANT TO
SEC. 8-500 OF THE ELECTION LAW OF
THE STATE OF NEW YORK

(name of person appointed as watcher)

a duly qualified voter of the County of Onondaga,
State of New York, has hereby been
appointed to act as a **WATCHER** on behalf of

(political party/independent body)

at the _____ Election to be held on

(Date of Election)

City/Town of _____, in County of Onondaga.

Chairman, Political Committee or Candidate

Dated: _____

Poll Watchers

Poll Watchers MAY:

- Arrive 15 minutes before to witness the opening of the voting machine
- Challenge Voters
- Observe proceedings
- Be given information as to who has voted, ***provided it does not interrupt the proceedings***
- Observe the canvass and tally at the end of the day

Poll Watchers may NOT:

- Electioneer
- Disrupt the proceedings
- Sit at the Inspector Table, ***they are NOT a member of the Inspector Team***

Candidates

Candidates MAY:

- Observe the opening of the Polling Place
- Observe the canvass and tally at the end of the day

Candidates MAY NOT:

- Electioneer within the distance marker, which is 100 feet from the OUTSIDE entrance to the polling place
- Disrupt the proceedings
- May **not** serve as an Election Inspector at a Poll Site where their name appears on the ballot

VOTING

Polling Site Managers and Voting System Specialists should open and prepare the Imagecast Voting System for voting. The Regular Inspectors should set up the table for voter sign in and ballot distribution. If there is a disagreement, the majority rules. If you can't agree on something. Call the Board of Elections.

Two Inspectors, one from each political party, should jointly supervise verifying voter sign in at the inspectors' table.

When a person approaches the Inspectors' table, complete the following steps:

- **Greet the Voter**
- **Ask the voter his or her name**, Party Enrollment (*if Primary*) and residence address. You should repeat the person's name and address.

VOTING - The Poll Book

Check the Poll Book to determine if the voter is ELIGIBLE to vote. ***(During a primary election, look in each party's poll book for the voter's name.)*** Do NOT give a voter a stubbed ballot if he or she are not registered to vote from that election district, Call **Board of Elections.** Once you have found the voter by name in the poll book, confirm the voter's address to what is printed in the book.



Processing Voters

Turn the book toward the voter and have him or her sign in the space provided. **Compare this signature to the original, pre-printed signature.** If the signatures match, the Election Inspectors must initial in the space provided to the right of the page next to voter's name, address, etc. Place the stub number in the space provided (to the left of the barcode).

Madison County Board of Elections
Poll Book Form for 11/06/2018 General Election
Town - Nelson District 006

Page 30
GCR - 006

STUB NO.	NAME	ADDRESS	APR	DOB	Reg. Date
100101	GOBDEL, JOSHUA	104 LAKE DR	DOB	01/04/1997	05/22/2008
	<i>[Signature]</i>				
100102	GOBDEL, SARAH A.	600 WIDE ST. APT. 100	DOB	09/01/1990	12/15/2008
	<i>[Signature]</i>				
100103	GRAY, SHERLEY A.	400 WIDE ST. APT. 10	DOB	05/01/1947	05/15/2008
	<i>[Signature]</i>				
100104	GRAY, DANIEL W.	100 N. WILSON ST. APT. 1000	DOB	03/09/1968	05/15/2008
	<i>[Signature]</i>				
100105	GRAY-MCLAUGHLIN, JOYCE	608 WIDE ST.	DOB	08/11/2008	06/17/2008
	<i>[Signature]</i>				
100106	GREENELL, CYNTHIA J.	200 WIDE ST.	DOB	02/10/1961	06/09/2008
	<i>[Signature]</i>				

Stub 188
51
JK

GCR - 006

Processing Voters

- Rip off a ballot at the perforation of the ballot book and place in a ballot privacy sleeve.
- Give the voter a black pen and tell the voter to fill in the small ovals completely. **In a General Election remind the voter of any propositions on the back of the ballot.** If the voter wishes to do a write-in, they should place the name in the write-in square at the bottom of the ballot.
- Direct the voter to a privacy booth, so he or she can vote their ballot.
- Do NOT remove any ballot from the ballot book until a voter is present and has signed the poll book.
- Remember that you have a magnifying glass and/or a magnifying sheet. These should be placed on the table and made available to the voters.

Processing Voters

- The Imagecast offers the option to visually review a ballot. **The voter must request a review to an inspector prior to inserting the ballot into the scanner!!** The Voting System Specialist can set up a **ballot review** for the voter. Once a review is set up for the voter, their selections will be displayed on the small LCD screen above the Cast and Return buttons.
- Once the voters have completed their ballot they should be directed to the **scanner** to scan their own ballot. Do not stand where you can see any voter's ballot.
- Have the voters return the pen and ballot privacy sleeve to you, after the ballot is scanned.

Processing Voters

- If the voter requests a new ballot because of a mistake made while filling out their selection, the voter shall return to the inspector table.
 - Have the voter write the word **spoiled** across the face of the ballot and place it in the spoiled ballot envelope.
 - Be sure to write the Town/Ward and District Number on the spoiled envelope.
 - The inspector will place the spoiled envelope in the large manilla envelope.

Processing Voters

- The inspector shall find the voter's name in the poll book and record the stub number for the second ballot near the stub number for the original ballot.
- The inspector shall also check the **replacement box** on the stub of the ballot. Never give a voter a new ballot until they have returned the spoiled ballot.
- A voter is allowed to spoil two ballots – the third ballot a voter is given is the last.
- If a voter has returned for a third ballot, you may want to offer to assist them. Remember, if you do, it must be 1 Democrat and 1 Republican.
- If the ballot does not scan, place the ballot in the EMERGENCY BALLOT BOX. Do NOT give the voter an Affidavit Ballot or tell them their vote will not count.

Processing the Voter – BMD Ballot

- *Locate the voter in the poll book following the usual procedure.*
- *Give the voter a blank ADA sheet of paper*
- *Record the voter's election district on the front of the ADA Paper Envelope. Record the number of the ADA sheet of paper (ie: BMD#1) next to the voter's name in the pollbook*
- *Instruct the voter to go to the Voting System Specialist at the machine who will insert the ADA paper into the printer.*
- *The Voting System Specialist will set-up an **Audio Session** on the Ballot Marking Device and assist the voter as necessary.*
- *Once the ballot is printed, the voter will insert it into the scanner which is located on the opposite end of the Imagecast.*

Name and Address Changes within the Election District

- Name change – Have voter sign previous name over the existing signature in the poll book. Then have the voter sign their **NEW NAME** in the box.
- Address change – Check the street finder. Locate the street address in question. If the voter's new address is in your district, change the address in the poll book and let them vote on the Imagecast machine with a stubbed ballot. If the new address is not in your district, do not let the voter vote. Call the Board of Elections or give the voter a white inquiry card to call the Board of Elections.
- **Name and Address changes should be recorded on the challenge report.**

VOTING - Poll Book

Name and Address Changes within the Election District -

San Diego County Board of Elections
Poll Book Report For 11/02/2016 General Election
Town - Salina District 904

Page 7
ATK - AVE

Voter ID	Name	Address	DOB	Reg Date
833507	ATKINS, NOREEN A	481 CYPRESS ST	DOB 02/27/1943	10/31/2014
	<i>Noreen A Atkins</i>	<i>Noreen A Johnson</i>		Stab 26
		<i>Noreen A Atkins</i>		Stab 22
1210004	ATWELL, ANNA E	104 CLEVELAND ST	DOB 11/29/1963	06/27/2007
	<i>Anna E Atwell</i>			Stab
				Stab
279059	AURINGER, KELLY A	117 MEMPHIS ST	DOB 05/28/1971	10/08/2001
	<i>Kelly Auringer</i>			Stab
				Stab
011862	AUSTIN, CHARLES R JR	921 VINE ST	DOB 09/10/1945	10/05/1993
	<i>Charles R Austin Jr</i>			Stab
				Stab
1042075	AVERSA, ALYSSA L	224 CYPRESS ST 317 Tower Ln	DOB 10/06/1987	10/18/2010
	<i>Alyssa L Aversa</i>	<i>Alyssa L Aversa</i>		Stab 7
	<i>Alyssa L Aversa</i>			Stab 26
081055	AVERY, GORDON G	109 THURSTON ST	DOB 10/07/1954	08/10/1995
	<i>Gordon Avery</i>			Stab
				Stab

ATK - AVE

Voter Inquiry Card

***Any Questions?
call***

***The Onondaga County
Board of Elections***

***435-VOTE or
435-3312***

Street Address: _____

Polling Place Location: _____

Ward/Town: _____ ***ED:*** _____

VOTING - Poll Book

If the voter's name has the instructions of "**ID Required**", you will have to request ID from the voter prior to allowing them to vote on the Imagecast voting machine. Types of ID which are acceptable are listed on the inside of the front cover of the poll book. Write the proof of ID above the voter's signature (example; Driver license number or last four digits of voter's social security number). If they do not have the accepted form of ID, they will be required to vote by **Affidavit Ballot** and mark the envelope where indicated in Part B or seek a court order.

VOTING - Poll Book

Santago County Board of Elections
Poll Book Report For 11/02/2010 General Election
Town - Salina District 006

Page 24
DEL - DER

Voter ID	Name	Address	PART	DOB	Reg Date	Stub	Insp
094381	DELONG, ALFRED H	850 VINE ST Apt 240	REP	01/27/1947	02/29/1988	58	514
1062873	DENARDO, MICHAEL A	108 SALINA ST Apt B-2	INN	06/30/1980	07/06/2010	170	DR
068720	DENEVE, SHIRLEY A	850 VINE ST Apt 250	CON	08/30/1948	12/13/1978	40	RR
1016682	DENNISTON, CHRISTOPHER C	101 CLEVELAND SE	ELK	05/26/1984	08/27/2007		
857419	DEROSE, NICHOLAS F JR	208 FOURTH ST	DEM	04/21/1965	12/04/2004	227	DR
1023811	DEROSE, YOLANDA D	208 FOURTH ST	DEM	10/02/1964	03/06/2008	236	DR

DEL - DER

Emergency Ballots

ONLY when the Imagecast breaks down should you follow this procedure:

- Use the same Stubbed Ballot that the regular voter uses.
- Place a check mark in the Emergency Box on the ballot stub.
- Record the Stub Number in the poll book, just like any other voter.
- Have the Voter sign the poll book signature box.
- Voter goes to vote their Stubbed Ballot.

Emergency Ballots continued:

- The Voting System Specialist unlocks the Emergency Ballot Box door (below the scanner).
- The **Voter** places their completed ballot into the **Emergency Ballot Box**.
- Call the Board of Elections and a custodian will be dispatched to your site.
- Should the Imagecast get fixed, the Voting System Specialist secures the Emergency Ballot Box and the Voters resume scanning their own ballots.

Emergency Ballots continued:

- The Voting System Specialists (a Democrat and a Republican) will scan the VOTED Emergency Ballots once the polls are closed and the last voter has voted, but **BEFORE THE MACHINE IS CLOSED and SHUT DOWN.**
- If the Imagecast has not been repaired, the voted ballots are placed in the manilla **UNSCANNED EMERGENCY BALLOT** folder and returned to the Board of Elections.

Absentee Ballots

Occasionally, circumstances will change and the voter who has cast an Absentee Ballot prior to Election arrives at the polling place to vote in person. The voter must be allowed to vote on the Imagecast voting machine with a stubbed ballot, but the Inspectors must:

1. Find the voter's name in the poll book. Printed in the signature box will be the words **VOTED ABSENTEE**.

NAME	DOB	APR	DOB	POL. DATE
SCARNACE, EDWARD E.	01/10/1950	01/10/1950	01/10/1950	01/10/1950
SCARNACE, EDWARD E. JR.	01/10/1950	01/10/1950	01/10/1950	01/10/1950
SCARNACE, ELIZABETH A.	01/10/1950	01/10/1950	01/10/1950	01/10/1950
SCARNACE, MICHAEL	01/10/1950	01/10/1950	01/10/1950	01/10/1950
SCARNACE, EDWARD E.	01/10/1950	01/10/1950	01/10/1950	01/10/1950
SCARNACE, EDWARD E.	01/10/1950	01/10/1950	01/10/1950	01/10/1950
SCARNACE, EDWARD E.	01/10/1950	01/10/1950	01/10/1950	01/10/1950
SCARNACE, EDWARD E.	01/10/1950	01/10/1950	01/10/1950	01/10/1950

Absentee Ballots

2. Have the voter sign his or her name in the signature box of the poll book following the normal procedure.
3. The voter is then allowed to vote on the Imagecast voting machine with a stubbed ballot.
4. Once the voter has left the polling place, **the Inspector MUST call the Board of Elections at 435-3312 with the Voter's Name, Ward or Town and Election District Number.**

The Board of Elections will then pull the voter's voted absentee ballot, so that it is not opened and counted.

A voter may drop off a voted absentee ballot at any polling place. Return these voted ballots with the supplies at the end of the night.

ABSENTEE BALLOTS are counted electronically at the Board of Elections

Affidavit Ballots

An **affidavit ballot** is a special non-stubbed paper ballot which, once voted, goes into a special envelope which must be accurately and completely filled out by the voter.

These ballots are not opened on election night, because the Board of Elections must do additional research before determining if this voter is eligible to vote in this election.

*Do Not Open
Affidavit Ballots.*



Affidavit ballots should be used by any voter whose poll record is missing and who claims to be a registered voter in your election district. In Primaries they are also used when a voter claims to be enrolled in a political party other than the one indicated on the poll book.

Affidavit Ballots

Affidavit ballots may also be used when a person is currently registered in the county, **but has recently moved into your district.**

If any of these situations arise, have the voter read the “Notice to Voters” form, which outlines the voter’s legal options.

NOTICE TO
PERSONS WHOSE REGISTRATION POLL RECORD CANNOT BE FOUND OR,
IN THE CASE OF A PRIMARY ELECTION, WHOSE POLL RECORD DOES NOT
SHOW ENROLLMENT IN THE PARTY IN WHICH THE VOTER CLAIMS TO BE
ENROLLED

If your poll record is missing from the poll book or your poll record does not show that you are
enrolled in the party in which you claim you are enrolled, you may seek to vote by one of the
following methods:

1. **Affidavit Ballot** - If you are able to swear under oath that you live in the election
district in which you are seeking to vote, (in primary election - also enrolled in the
appropriate party) the election inspectors will give you a paper ballot on which to cast
your vote. You will then place the voted ballot in an envelope, seal, sign and date the
envelope. This is your Affidavit. The envelope will be returned, **UNOPENED**, to the
Board of Elections. If the Board determines that you are a proper voter of that election
district, your ballot will be counted.

2. **Court Order** - You may seek to obtain a court order compelling the election
inspectors to allow you to vote on the voting machine. Your Board of Elections will be
able to tell you where a Justice of the Supreme Court or a County Judge can be found.
The Board of Elections' phone number is 435-3312.

COMMISSIONERS OF ELECTIONS
OWENHARRIS COUNTY

Voting by Affidavit Ballot

✓ A voter's poll record may be "missing" from your set of records because the ***voter actually is registered in a different district, or is currently INACTIVE in the voter system.*** If you believe this is the case, check the other ED'S in your polling site. If the voter is NOT found, then give the voter a white inquiry card and direct them to call the Board of Elections to find the correct polling location or call the Board of Elections if you have time.

✓ **DO NOT GIVE A VOTER AN AFFIDAVIT BALLOT UNTIL YOU OR THE VOTER SPEAKS TO THE BOARD OF ELECTIONS.**

Voting by Affidavit Ballot

Each affidavit voter is given:

- Affidavit ballot envelope
- Non-Stubbed Affidavit ballot

When a person decides to vote on an affidavit ballot, **have the voter complete the affidavit envelope, including all necessary information on the voter's qualifications.** Any information missing from the envelope may prevent the Board from counting this voter's ballot.

A voter with no ID must mark Box B.

51

Voting by Affidavit Ballot

- ❖ **Direct the voter to the privacy booth to privately mark the ballot, fold it, and seal it in the affidavit envelope. No other materials can be enclosed in this envelope.**
- ❖ **Make sure the voter signs the affidavit on the front of the envelope** or the vote will not be counted!
- ❖ **Record voter's information on the challenge report** located in the back of the poll book under section IV (affidavit/court order)
- ❖ **Inspectors no longer need to sign the Affidavit Envelope.**
- ❖ **Do not make any marks on back of envelope**

Court Orders

NOTE: COURT ORDERS DO NOT VOTE AN AFFIDAVIT BALLOT

- A voter may apply for a court order for a number of reasons. Usually it is because the voter is not registered or has missed the registration deadline.
- When a voter comes to your polling location with a court order:
 - The voter must sign the top of the court order.
 - Record the stubbed ballot number.
 - The voter votes on a STUBBED ballot and then scans the ballot into the ImageCast.
 - Record the voter's information on the challenge report located in the back of the poll book under section IV (affidavit/court orders).
 - Return the court order with the election night supplies.

Court Order

Signature of Voter _____

Stubbed Ballot No. _____

STATE OF NEW YORK
SUPREME COURT
COUNTY COURT

COUNTY OF ONONDAGA

In the Matter of the Application
of _____

For an Order Permitting _____
to Cast Her/His Vote in
Town/City of _____
Ward _____ Election District _____
Onondaga County, New York
on
Election Day, November 2, 2010

On reading and filing the annexed affidavit of _____
it is hereby
ORDERED, that the Board of Inspectors of the _____
Town/City of _____ permit _____
to cast his or her vote in the aforesaid district between the
8:00 PM on the 2nd day of November, 2010, upon affiding
to the truth of this order and it is further
ORDERED, that the said voter complete registration
may be necessary as soon as practicable at the Office of
Onondaga County, Civic Center, 421 Montgomery Street,
Dated: November 2, 2010

Justice of the Peace _____

Notice of Application Waived
Board of Elections of
Onondaga County by: _____

Commissioner of Elections _____

STATE OF NEW YORK)
COUNTY OF ONONDAGA) ss:

_____, being duly sworn, deposes and says:

1. That _____ he resides at _____ in the _____
Election District of the _____ Ward, Syracuse, New York, or Town of _____

2. That _____ he is a citizen of the United States, at least 18 years of age and has
been a resident of the State of New York and of the County of Onondaga for 30 days

_____ or in the _____
_____ but has been refused the right
_____ to be entitled to vote for the _____
_____ per to vote in the aforesaid
_____ order.
_____ he relief herein sought.

Signature of Voter

Stubbed Ballot No.

STATE OF NEW YORK
SUPREME COURT
COUNTY COURT

Providing Assistance To Voters

The following suggestions will help you provide assistance to voters. Remember that voters requesting assistance must be treated with genuine politeness and helpfulness:

Any voter who requires assistance to vote may request help from the Board of Inspectors. The voter may get help from someone other than the Inspectors, but that person cannot be the voter's employer or union agent.

A voter can be assisted if he or she:

- Cannot read or write;
- Does not speak or read English;
- Cannot see, even with eyeglasses, the names on the ballot;
- Is disabled and cannot operate the voting machine or complete a paper ballot. An individual may request assistance, even if they do not appear to have a disability. People may have sensory, cognitive or hidden disabilities and anyone within those categories may need assistance.

Remember, Power of Attorney (POA) cannot sign pollbook or affidavit envelope for the voter.

Providing Assistance To Voters

If a voter requests assistance from the Board of Inspectors:

- The needed assistance should be provided in a way that will guard the voter's privacy, but not influence the vote. Therefore one Democrat and one Republican must assist together.
- Enter the name and address of the voter that received assistance, along with why the voter needed assistance and the name and relationship of the person providing assistance in Section III of the Challenge Report.

Challenge Report *

The Challenge Report is found in the BACK of the printed poll book. It is used to report:

- o Name or Address Changes
- o Voters who have been Challenged
- o Voters who have been Assisted
- o What kind of assistance was provided?
- o *Relationship to Voter*
- o Voters who have voted by Court Order or Affidavit Ballots

The form is divided into four sections, each with multiple rows for data entry:

- SECTION I: NAME OR ADDRESS CHANGE**
 - NAME: _____
 - ADDRESS: _____
 - SERIAL# _____
 - NEW NAME _____
 - NEW ADDRESS _____
- SECTION II: CHALLENGES**
 - NAME: _____
 - ADDRESS: _____
 - SERIAL# _____
 - REASON FOR CHALLENGE _____
- SECTION III: ASSISTANCE PROVIDED**
 - NAME: _____
 - ADDRESS: _____
 - SERIAL# _____
 - REASON FOR ASSISTANCE: _____
 - PERSON PROVIDING ASSISTANCE: _____
 - NAME: _____
 - RELATIONSHIP TO VOTER: _____
- SECTION IV: AFFIDAVIT BALLOTS/COURT ORDERS**
 - NAME: _____
 - ADDRESS: _____
 - SERIAL# _____
 - Check One: _____
 - AFFIDAVIT BALLOT ☐
 - OR
 - COURT ORDER ☐

A green arrow points from the bottom of Section II to the bottom of Section III.

ALL INSPECTORS MUST SIGN THE LAST PAGE OF THE CHALLENGE REPORT IN THE POLL BOOK.

Closing the Polls and Canvassing the Vote

At 9:00 P.M. the Polling Site Manager or chairperson announces that the polls are closing.

- Any person in line at the time of the announcement has the right to vote
- Place an inspector behind the last person in line to ensure no one else gets in line
- Only after the last person votes can the poll closing procedures begin
- Remember to return the Ballot Box Key and the Security Key in the magnetic bag
- Remember to return Pollworker Memory Card in the **RED** canvass pouch to:
 - ***CITY – The Board of Elections***
 - ***TOWN – Will be picked up at your site by a memory card runner***
- Return all supplies to the designated location after the polls are closed

After the Polls Close

On the Ballot Transmittal/Reconciliation Form

Record the following:

Affidavit Ballots (Non-Stubbed)

1. Record the number of Used Ballots
2. Record the number of Spoiled Ballots
3. Record the number of Unused Ballots (Total of Received at the Opening of the Polls **LESS** Used and Spoiled)

Stubbed Ballots

1. Record the number of Scanned Ballots on the Imagecast from the close of poll tape
2. Record the number of Spoiled Ballots
3. Record the number of UNSCANNED Emergency Ballots (if any)
4. Record the number of Unused Ballots (Total of Received at the Opening of the Polls **LESS** Scanned, Spoiled and Emergency)
5. Record the number of the last open booklet at the close of the polls

ADA Blank Paper Envelope (ONLY IF OPENED)

Throughout the day you should have recorded the sheet number and election district for each voter in the spaces provided

1. Record the seal number and number of blank sheets of paper received
2. Record the number of Voted Ballots
3. Record the number of Spoiled Ballots
4. Record the number of Unused Paper (Total of Received at the Opening of the Envelope **LESS** Used and Spoiled)

Returning Election Supplies

- If you have **ONE IMAGECAST**, place all **VOTED** Ballots into the Blue Canvass Bag from the lowest district number
- If you have **MORE THAN ONE IMAGECAST** then follow the same procedure using the next highest district number. **DO NOT MIX VOTED BALLOTS FROM ONE IMAGECAST WITH THE OTHER IMAGECAST BALLOTS.**
- Place all **UNUSED** ballots in the Blue Canvass Bag from the appropriate district number
- Place the Blue Canvass Bag inside the **BLACK** Suitcase from the appropriate district
- Return the **BLACK** Suitcase(s) to the designated location

Election Results

CITY POLLING PLACES:

The Poll Site manager or chairperson will return the ballots, memory card, results tape and other supplies to the Board of Elections Office.

TOWN POLLING PLACES:

The Voting System Specialists should power down the Imagecast, remove the memory card for the entire polling site from the Imagecast and place it in the red memory card pouch, seal the pouch and give it to the Memory Card Runner or Voting Machine Technician. The Memory Card Runner will be wearing a name tag.

Please do NOT lock the doors before the memory card runner arrives.

The Poll Site manager or chairperson will return the supplies to the designated location.

Reminder Checklist and Final Notes

Before leaving the polling site, be sure you have:

- Filled out all documents correctly;
- Correctly dated all poll records;
- Signed all Reports;
- Secured all notes written throughout the day concerning election day events, situations, breakdowns, etc. Attach them to your Challenge Report.
- Removed Pollworker memory card from the ImageCast **after** the machine has been properly turned off.



Check list of supplies to be returned must be filled out. All items on the check list must be returned in the green canvass bag and the black suitcase.

Emergency Procedures For The Poll Site

Safety – both your safety and the voters' safety must always be the first priority. In case of an emergency that interrupts voting at the polling site, the Polling Site Manager or Chairperson must:

- Call the County Board to notify them of the emergency situation at your site as soon as it is safe to do so.
- After conferring with the County Board, building personnel and, if necessary, emergency services personnel, assess the situation and determine if it is possible to move the voting machine, signage, supplies, etc. to another room on the premises or to a nearby site to permit voting to continue.
- If you can safely relocate the voting equipment and materials to another suitable room, do so. If you cannot, consider whether you can move paper ballots, poll books, signage, supplies, etc. to the safe room/site so that voting can continue on an emergency basis.

Emergency Procedures Continued:

- IF THE POLL SITE MUST BE VACATED, the Polling Site Manager or Chairperson, working in conjunction with emergency personnel must make certain that everyone gets out safely. If the site must be vacated and there is NO IMMINENT DANGER to personal safety, the Polling Site Manager or Chairperson should attempt to protect the integrity of the voting process and voting materials as much as possible, by doing the following:
- Close the polls, print a close poll tape and shutdown the voting system.
- Gather and secure the following: voter registration poll book, all stubbed ballots, all voted affidavit and emergency ballots, payroll sheets and close poll tape. Place these items in the Blue Bag and then in the Black Suitcase.
- Make sure to take the ballot box key and security key with you.
- When a site must be evacuated, it is recommended that a running total of the number of voters that voted in an election and the totals of voted emergency and affidavit ballots be maintained throughout the day so that it will be easy to determine if any tampering occurred after the evacuation of the site.

Glossary of Terms

- **Absentee Ballot** – Paper ballots voted prior to Election Day. May also be delivered by voters to the polls on Election Day.
- **Affidavit Ballot** – Ballot used when a voter's name is **NOT** in the Poll Book. Check other election districts in your site.
- **Challenge Report** – Court orders, assisted voters, affidavit voters, and name and/or address changes are recorded on this report.
- **Court Order** – A voter goes to a Judge to get this document that allows them to vote with a stubbed ballot even though the voter's name doesn't appear in the poll book.
- **Electioneering** – Anything that promotes a candidate (Political buttons, T-Shirts, hats, Campaign Signs, etc.)
- **Poll Book** – Voters sign their name in this before being allowed to vote on the machine.
- **Street Finder** – List of street addresses.
- **Watcher's Certificate** – Poll Watchers must present this to Inspectors.
- **Write-in Vote** – Candidate not on ballot.

Concerns and Problems from PAST General Elections -

- **LACK of TEAM WORK**
- **NO Use of rubber stamps**
- Power of Attorney (POA) not allowed to sign for voter
- Voter who is unable to sign
 - Voter must make their mark “X” **OR**
 - Inspectors write ***Unable to Sign*** in signature box
- MISSING Inspector Initials in the poll book
- MISSING Stub Numbers in the poll book
- **BLACK INK – NO PENCIL!**
- **DO NOT WRITE OR MARK ON ANY PAPER**
BALLOT!
- **PRIVACY!**

Concerns and Problems from PAST General Elections – cont'd

- **Lack of carefulness in comparing voters' names (father and son with same name)**
- **Making voter with Court Order use an Affidavit Ballot!**
- **Inspectors NOT completing all paperwork**
- **Writing on Signage and Privacy Sleeves (\$1.50 each)**
- **Not returning the large town/ward maps (\$14.00 each)**
- **DO NOT tape objects to the pens**
- **Keeping a tally of names is NO longer necessary**
- **Name change can be done in poll book**

Concerns and Problems from PAST General Elections – cont'd

- EMERGENCY Ballots vote with a stubbed ballot
- AFFIDAVIT Ballots are different. They are non-stubbed and have their own envelopes.
- COURT ORDERS vote on the ImageCast with a stubbed ballot ONLY
- DO NOT direct voters to the wrong polling place
 - Be sure to check other districts within the polling site
 - Check the Street Finder
 - Use the White Inquiry Card!

INDEX

TOPIC	PAGE
Absentee Ballots	45-46
ADA Paper	18,36
Address Change	37
Affidavit Ballots	40, 47-53
After Closing Polls	59
Arranging Poll Site	22
Ballot Box Key	16, 58
Ballot Review	33
Ballot Transmittal and Reconciliation	15, 17-18, 25, 59
Black Suitcase Seal	15-16, 18
Black Suitcase Supplies	19-21, 60
Blue Canvass Bag	17, 20, 60
BMD Ballot	36
Candidates	28
Challenge Report	57

Clear Plastic Folder	16, 20
Closing the Polls/Canvassing the Vote	58
Concerns from Past Elections	66-68
Court Orders	53-54
Distance Markers	24
Duties	6
Election Results	61
Emergency Ballots	42-44
Emergency Procedures	63-64
Glossary of Terms	65
Green Canvass Bag	16, 20
ID	40-41
Inspector Types	10-13
Introduction	3
Memory Card	58
Name Changes	37

Oath of Inspectors	7
Opening of Polls – Ballot Trans. Form/Statement of Canvass	25
Opening the Polls - Times	14
Poll Site Manager	10, 14
Poll Book	30, 38, 40
Poll Watchers	26-27
Processing Voters	31-35
Processing Voters – BMD Ballot	36
Prohibited Practices	8-9
Providing Assistance to Voters	55-56
Qualifications	5
Red Canvas Pouch	58
Regular Inspectors	12,14
Reminder Checklist & Final Notes	62
Responsibilities & Qualifications	4
Returning Election Supplies	60

Sample Ballots	16
Security Key	58
Spoiled Ballots	34-35
Statement of Canvass	25
Street Finder	16
Stubbed Ballot	17-18
Voter Inquiry Card	39
Voting	29-30
Voting System Specialist	11,14
Welcome	2
Write-ins	19

August 16, 2018

Minnesota Voters Alliance v Mansky

- The Court held that a Minnesota law regulating voters' political attire violates the First Amendment.
- The Court found that Minnesota's law was too vague. Any apparel with a political message could have been banned under the Minnesota law.
- Per State Board of Elections Guidance, New York's Anti-Electioneering Statute (Election Law § 8-104 (1)) is still valid.
- Generally, a person cannot wear apparel that contains the name of a candidate, political party, independent body or direct reference to a ballot proposal on the ballot which contextually seeks votes.
- Under New York Law, persons wearing clothing or donning buttons that include political viewpoints – i.e. support of the Second Amendment, Marriage Equality, Environmental Sustainability, Immigration Reform, Support for Voter ID Laws....do not violate New York's electioneering prohibition unless the issue itself is unambiguously on the ballot in the form of a ballot proposal.

**THE
CONSOLIDATED LAWS
OF THE
STATE OF NEW YORK**

1909

PREPARED UNDER THE DIRECTION AND CONTROL OF THE
BOARD OF STATUTORY CONSOLIDATION, COMPOSED OF
ADOLPH J. RODENBECK, WILLIAM B. HORNBLOWER,
JOHN G. MILBURN AND ADELBERT MOOT

COMPRISED IN FIFTY-NINE CHAPTERS

AND

The Public Service Commissions Law and the Railroad Law, constituting
all the General Statutory Law of the State of New York,
except that contained in the Code of Civil Pro-
cedure and Code of Criminal Procedure

Certified by the Secretary of State as correct transcripts of the original laws

CONTAINING ALSO

The Consolidated Schedule of Repeals; the Historical Record of General
Statutes; chapters amending the Code of Civil Procedure and Code of
Criminal Procedure generally; and the Consolidators' and Revisers' Notes;
embracing all the work of the Board of Statutory Consolidation

Edited by

FREDERICK E. WADHAMS

of the Albany Bar

Secretary of the Board of Statutory Consolidation

With a Complete Analytical Index, and the Constitution of the State of New York

In Seven Volumes

VOLUME II

NEW YORK CITY
THE AMERICAN LAW BOOK COMPANY
60 WALL STREET
1909

ELECTION LAW

L. 1909, Ch. 22. "An Act in relation to the elections, constituting chapter seventeen of the Consolidated Laws."

(In effect February 17, 1909.)

CHAPTER 17 OF THE CONSOLIDATED LAWS

[Formerly L. 1896, Ch. 909, being chapter 6 of the General Laws.]

- Article
1. Short title (§ 1).
 2. Primaries; general provisions (§§ 2-7).
 3. Enrollments and primaries in cities and in villages having five thousand inhabitants or more (§§ 20-74).
 4. Enrollments and primaries in towns (§§ 90-104).
 5. Nominations (§§ 120-137).
 6. Registration of voters (§§ 150-184).
 7. Boards of elections in cities of the first class containing one or more counties (§§ 190-201).
 8. Commissioner of elections in the county of Erie (§§ 210-221).
 9. Commissioner of elections in the county of Monroe (§§ 230-242).
 10. Commissioner of elections in the county of Onondaga (§§ 250-260).
 11. Commissioner of elections in the county of Westchester (§§ 270-281).
 12. Times, places, notices, officers and expenses of elections (§§ 290-320).
 13. Ballots and stationery (§§ 330-345).
 14. Conduct of elections and canvass of votes (§§ 350-381).
 15. Voting machines (§§ 390-421).
 16. Boards of canvassers (§§ 430-444).

Explanation.—For location and disposition of former sections of the Election Law see L. 1896, Ch. 909, in "Consolidated Schedule of Repeals," Vol. 7.

thereof shall be visible. The inspector to whom such ballot is so delivered shall, at once and in the presence of the voter, deposit it in the proper ballot box. When a voter shall have offered his ballot, and it shall be in the ballot box, he shall deliver all of the unvoted ballots which were delivered to him, each of them so folded as to conceal the inside thereof, to such inspector, and such officer shall, forthwith and without opening the same or revealing the contents thereof, deposit such ballots in the box for unvoted ballots. Such unvoted ballots shall, on completion of the canvass, be removed from such box, and without being examined be destroyed. No person shall cast more than one ballot. No ballot which shall have any printing, writing or mark on the outside thereof, shall be received. No ballot shall be in any way marked for identification. At all primary elections, all ballot boxes to be used thereat shall be opened and examined by the board of primary inspectors in the presence of the watchers, if any, before any ballots are received; and when empty shall be closed and sealed, and not be opened again until the close of the polls at such primary election. The procedure shall, as far as possible, except as changed by the provisions of this article, be the same as that provided for the reception and deposit of ballots on the day of general election. When the voter shall have cast his ballot, that fact shall be recorded by the board of primary inspectors by the entry of the word "voted," opposite his name in the proper column of the original enrollment books provided therefor.

Formerly L. 1898, ch. 179, § 7, subd. 1, as am'd by L. 1899, ch. 473, § 1.

§ 57. Challenges at official primary elections. The right of an enrolled voter to participate in any official primary election shall be subject to challenge at any time before his ballot is deposited in the ballot box. When any enrolled voter shall be challenged, the chairman, or one of the members, of said board, shall forthwith put to him an oath or affirmation to answer truly such questions as shall be put to him, and he shall be allowed to vote if, and only if, he shall make such oath or affirmation, and shall answer in the affirmative each of the following questions:

"Are you (using the name which he has given as his name)?"

"Do you reside, and have you, for thirty days last past, resided at (giving the address which he has given as his residence)?"

Formerly L. 1898, ch. 179, § 7, subd. 2, as am'd by L. 1899, ch. 473, § 1.

LAWS

housand or More. Art. 3

to whom such ballot is so presence of the voter, de- When a voter shall have he ballot box, he shall de- vere delivered to him, each e thereof, to such inspector, ithout opening the same or such ballots in the box for shall, on completion of the id without being examined ore than one ballot. No riting or mark on the out- allot shall be in any way imary elections, all ballot and examined by the board of the watchers, if any, hen empty shall be closed until the close of the polls re shall, as far as possible, s of this article, be the and deposit of ballots on the voter shall have cast by the board of primary ted," opposite his name in ment books provided there-

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Primary elections. The te in any official primary any time before his ballot any enrolled voter shall be e members, of said board, affirmation to answer truly and he shall be allowed to h oath or affirmation, and the following questions: (using the name which he

irty days last past, resided g the address which he has

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ELECTION LAW

865

Art. 3 Enrollments, Primaries; Five Thousand or More. §§ 58-60

§ 58. Persons within the guard-rail. From the time of the opening of the polls, until the result of the canvass of the votes cast thereat shall have been announced, and the official statements of such canvass shall have been signed, the ballot boxes and all voted ballots shall be kept within the guard-rail. No person shall be admitted within the guard-rail during such period, except primary election inspectors, duly authorized watchers, persons admitted by the inspectors to preserve order or enforce the law, and persons duly admitted for the purpose of voting; provided, however, that any candidate voted for may be present at the canvass of the votes.

Formerly L. 1898, ch. 179, § 7, subd. 3, as am'd by L. 1899, ch. 473, § 1.

§ 59. Watchers; challengers; electioneering. Watchers, not exceeding one for each election district, may be appointed by any political committee, and by any two or more of the persons whose names are upon any ticket to be voted for at such primary election. Such watchers may be present at such polling place and within the guard-rail from at least fifteen minutes before the examination of any ballot box at the opening of the polls of such primary election until after the announcement of the result of the canvass of the votes cast thereat and the signing of the statements thereof by the inspectors. A reasonable number of challengers, at least one person for any three or more persons of each party holding its primary election at that polling place, whose names are upon any ticket to be voted for at such primary election, shall be permitted to remain just outside the guard-rail of each such polling place, where they can plainly see what is done within such rail outside the voting booths, from the opening to the close of the polls thereat. No person shall, while the polls are open, at any polling place do any electioneering within such polling place, or within one hundred feet therefrom, in any public street or in any building or room, or in a public manner, and no political banner, poster or placard shall be allowed in or upon such polling place on any primary day.

Formerly L. 1898, ch. 179, § 7, subd. 4, as am'd by L. 1899, ch. 473, § 1.

§ 60. Canvass of votes. As soon as the polls at any official primary election shall close, the board of primary inspectors shall forthwith publicly canvass and ascertain the result thereof, and they shall not adjourn or postpone the canvass until it shall be fully completed. All questions touch-

The inspectors shall thereupon open the sealed packages of instruction cards and cause them to be posted conspicuously, at least one, and if printed in different languages, at least one of each language, in each of the voting booths of such polling place, and at least three of each language in which they are printed in or about the polling place; shall open the sealed packages of official ballots and sample ballots, and place them in charge of the ballot clerks, and shall place the poll books in charge of the poll clerks, and shall cause to be placed at a distance of one hundred feet from the polling place the visible markers designated herein as "distance markers," to prohibit "loitering or electioneering" within such distance. They shall also, before any ballots are cast, see that the voting booths are supplied with pencils having black lead only, unlock the ballot boxes, see that they are empty, allow the watchers present to examine them, and shall lock them up again while empty in such manner that the watchers present and persons just outside the guard-rail can see that such boxes are empty when they are relocked.

After such boxes are so relocked they shall not be unlocked or opened until the closing of the polls of such election, and, except as authorized by law, no ballots or other matter shall be placed in them after they are so relocked and before the announcement of the result of such canvass and the signing of the original statement of canvass and the two certified copies thereof. The instruction cards and distance markers posted as provided by law shall not be taken down, torn or defaced during such election. The ballot clerks with the official and sample ballots, the inspectors with such boxes and register of voters, and the poll clerks with their poll books, shall be stationed as near each other as practicable within such inclosed space. One of the inspectors shall then make proclamation that the polls of the election are open, and of the time in the afternoon when the polls will be closed.

Formerly L. 1896, ch. 909, § 100.

§ 351. Persons within the guard-rail. From the time of the opening of the polls until the announcement of the result of the canvass of the votes cast thereat, and the signing of the official returns of such canvass and the copies thereof, the boxes and all official ballots shall be kept within the guard-rail. No person shall be admitted within the guard-rail during such period, except inspectors, poll clerks, ballot clerks, duly authorized watchers, persons admitted by the inspectors to preserve order or enforce the law, and persons duly admitted for the purpose of voting; provided, however, that candidates for pub-

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ELECTION LAW

993

Art. 14 Conduct of Elections and Canvass of Votes. §§ 352, 353

lic office voted for at such polling place may be present at the canvass of the votes.

Formerly L. 1896, ch. 909, § 101.

§ 352. Watchers; challengers; electioneering. Each political party or independent body duly filing certificates of nomination of candidates for offices to be filled at any such election, may, by a writing signed by the duly authorized county, city, town or village committee of such political party or independent body, or by the chairman or secretary thereof charged with that duty, and delivered to one of the inspectors of election, appoint not more than two watchers to attend each polling place thereof. Such committee, chairman or secretary thereof for a city, county, town or village shall not appoint watchers for any polling place outside of such city, county, town or village, respectively. Such watchers may be present at such polling place and within the guard-rail from at least fifteen minutes before the unlocking and examination of any ballot box at the opening of the polls of such election until after the announcement of the result of the canvass of the votes cast thereat and the signing of the original statement of canvass and copies thereof by the inspectors.

A reasonable number of challengers, at least one person of each such party or independent body, shall be permitted to remain just outside the guard-rail of each such polling place, where they can plainly see what is done within such rail outside the voting booths, from the opening to the close of the polls thereat.

No person shall, while the polls are open at any polling place, do any electioneering within such polling place or within one hundred feet therefrom in any public street or in any building or room, or in a public manner, and no political banner, poster or placard shall be allowed in or upon such polling place during any day of registration or of the election.

Formerly L. 1896, ch. 909, § 102.

§ 353. General duties of inspectors. One of the inspectors of election at each polling place shall be designated by the board of inspectors of election to receive the ballots from the voters voting; or if a majority of the inspectors shall not agree in such designation, they shall draw lots for such position. If it be an election for which voters are required to be registered, the other inspectors shall, before any ballots are delivered by the ballot clerks to a voter, ascertain whether he is duly registered. The ballot clerks shall not deliver any ballot to such voter until the inspectors announce that he is so registered. As each voter votes, the inspectors shall check his name upon such register and

Exhibit 4

INFORMAL OPINIONS — BENNETT

173

Attorney-General

[Vol. 48]

Election Law, sections 195, 160.

The inspectors of election have the duty of preserving order at the polls on registration and election days. The board may order the arrest of any person refusing to obey their lawful commands or guilty of disorderly conduct.

I acknowledge your inquiry of October 24th, in which you request advice concerning the election held last November, and you also inquire what authority the police have in a polling place.

Informally and unofficially, I desire to call your attention to section 195 of the Election Law, relating to the general provisions as to conduct of elections. The holding of elections in each election district is governed by the board of inspectors in each district. It is provided in subdivision 2 of section 195 that while the polls are open no person shall do any electioneering within the polling place, or within one hundred feet therefrom in any public street, or within such distance in any place in a public manner; and no political banner, poster or placard shall be allowed in or upon the polling place during the election. Subdivision 4 of section 195 states that the provisions of section one hundred and sixty, concerning the preservation of order and apprehension for crime on a day of registration, shall apply to a day of election. It is provided in part in section 160 that the inspectors, and each of them, shall preserve good order within and around the place of registration and keep access thereto unobstructed. The board or any member thereof by order in writing may direct the arrest of any person refusing to obey the lawful commands of the inspectors, or guilty of disorderly conduct disturbing their proceedings, or violating, or attempting to violate, any of the provisions of this chapter or of the article of the penal law specifying crimes concerning the elective franchise. Any peace officer or any person designated by the board shall execute the order. The inspectors of election, therefore, have the duty of conducting the meetings for registration, and on election day seeing that order is preserved in the polling places, and they

[Vol. 48]

Attorney-General

may designate any peace officer, or any other person, to arrest any person refusing to obey their lawful commands.

In view of the provision of section 195 of the Election Law, and of the various provisions of the Penal Law, relating to the elective franchise, I do not believe that it would be advisable for any watcher or other person to display campaign buttons for the purpose of electioneering within the polling place.

While, as hereinabove stated, the inspectors of election have the duty of preserving order and conducting the election or registration in the polling places, it may well be that a police officer, if a crime was being committed in his presence, and no objection was made by the inspectors, would have the authority to arrest the person committing such crime in his presence within the polling place. Needless to say the inspectors and the police officers stationed at the polls should cooperate and see that the provisions of the Election Law are carried out and that no violations occur within the polling place.

This is not, however, an opinion of the Attorney-General, but is written rather for your information in response to your request in the hope that it may be of service to you.

Dated November 4, 1933.

To William H. Tuch,
Woodmere, L. I.

Election Law, section 150.

Person registered in new district, whose name is kept on the register in the district in which he voted last, is not debarred from voting this year in the new district to which he has moved and in which he is registered.

I acknowledge receipt today of your inquiry in which you ask concerning the Election Law.

You inquire if a single man, coming from and living in an election district out of the county, and being registered in said district, and registering in your district without having his name taken from the register

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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

John DeRosier,

Plaintiff,

-against-

Dustin M. Czarny, in his official capacity as
Commissioner of the
Onondaga County Board of Elections,

Michele L. Sardo, in her official capacity as
Commissioner of the
Onondaga County Board of Elections,

Peter S. Kosinski, in his official capacity as
Co-Chair of the New York State Board of Elections,

Douglas A. Kellner, in his official capacity as
Co-Chair of the New York State Board of Elections,

Andrew J. Spano, in his official capacity as
Commissioner of the New York State Board of Elections,

Gregory P. Peterson, in his official capacity as
Commissioner of the New York State Board of Elections,

Defendants.

Civ. Action No.: 5:18-CV-0919
(GLS/DEP)

MEMORANDUM OF LAW

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TABLE OF CONTENTS

	<u>Page</u>
Table of Contents.....	i
Table of Authorities.....	ii
I. Preliminary Statement.....	1
II. Standard of Review.....	2
III. Statement of Facts.....	2
IV. Argument.....	4
A. The County is Not Liable because it does Not Have a Policy that Caused the Alleged First Amendment Violation.....	4
B. The County is Not Liable under Any Failure to Properly Train/Educate Theory.....	10
V. State of New York’s Motion for Summary Judgment.....	12
VI. Conclusion.....	12

TABLE OF AUTHORITIES

	<u>Page</u>
 <u>Statutes:</u>	
42 U.S.C. § 1983.....	1
Education Law § 2031-a.....	8
Election Law of 1909, c. 22 §§ 59 & 352 (<u>See</u> Yaus Aff. – Exhibit 3).....	2, 11-12
Election Law § 3-412.....	9
Election Law § 5-204.....	3, 6, 8, 9, 10
Election Law § 8-104.....	3, 6, 7, 8, 9, 10
Election Law § 17-102.....	6, 8
Election Law § 17-128.....	9
Election Law § 17-130.....	3, 6, 8, 9
Fed.R.Civ.P. 56.....	2
 <u>Opinions:</u>	
1933 N.Y. Op. Atty. Gen. No. 1973 (<u>See</u> Yaus Aff. – Exhibit 4).....	7
1951 N.Y. Op. Atty. Gen. No. 214, 1951 WL 81786.....	7
 <u>Cases:</u>	
<u>Anderson v. Liberty Lobby, Inc.</u> , 477 U.S. 242 (1986).....	2
<u>Bloomquist v. Brady</u> , 894 F.Supp. 108 (W.D.N.Y. 1995).....	2
<u>Board of County Com'rs of Bryan County, Okl. v. Brown</u> , 520 U.S. 397 (1997).....	11
<u>Carnegie v. Miller</u> , 811 F.Supp. 907 (S.D.N.Y. 1993).....	2
<u>Celotex Corp. v. Catrett</u> , 477 U.S. 317 (1986).....	2
<u>City of Canton v. Harris</u> , 489 U.S. 378 (1989).....	11
<u>Connick v. Thompson</u> , 563 U.S. 51 (2011).....	11

<u>Correction Officers Benev. Ass'n of Rockland County v. Kralik</u> , 04-CV-2199, 2011 WL 1236135 (S.D.N.Y. 2011).....	10
<u>Ferreira v. Westchester County</u> , 917 F.Supp. 209 (S.D.N.Y. 1996).....	2
<u>Graziano v. County of Albany</u> , 2003 N.Y. Slip Op. 51035(U), 2003 WL 21497332 (N.Y. Sup. Ct. 2003).....	5
<u>Jones v. Town of East Haven</u> , 691 F.3d 72 (2d Cir. 2012).....	11
<u>Kentucky v. Graham</u> , 473 U.S. 159 (1985).....	4
<u>Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.</u> , 475 U.S. 574 (1986).....	2
<u>McCluskey v. Imhof</u> , 17-CV-5873, 2018 WL 4521207 (E.D.N.Y. 2018).....	7
<u>Minnesota Voters Alliance v. Mansky</u> , 138 S.Ct. 1876 (2018).....	1, 2, 3, 10, 12
<u>Monell v. New York City Dept. of Social Services</u> , 436 U.S. 658 (1978).....	4, 5, 10
<u>Moray v. City of Yonkers</u> , 924 F. Supp. 8 (S.D.N.Y. 1996).....	11
<u>N.N. ex rel. S.S. v. Madison Metropolitan School Dist.</u> , 670 F.Supp.2d 927 (W.D. Wis. 2009).....	6
<u>Okin v. Vill. of Cornwall-On-Hudson Police Dep't</u> , 577 F.3d 415 (2d Cir. 2009).....	11
<u>People ex rel. Borgia v Doe</u> , 109 A.D. 670 (N.Y. App. Div. 1905).....	8
<u>Russitano v. Brown</u> , 6:12 CV 1641, 2013 WL 4806455 (N.D.N.Y. 2013).....	10
<u>Szabla v. City of Brooklyn Park</u> , 486 F.3d 385 (8th Cir. 2007).....	11
<u>Townes v. City of New York</u> , 176 F.3d 138 (2d Cir.1999).....	11
<u>Vaher v. Town of Orangetown, N.Y.</u> , 133 F.Supp.3d 574 (S.D.N.Y. 2015).....	5, 7
<u>Vives v City of New York</u> , 524 F.3d 346 (2d. Cir. 2008).....	1, 5, 6, 7, 8, 9, 10
<u>Whitesel v. Sengenberger</u> , 222 F.3d 861 (10th Cir. 2000).....	10
<u>Wolongevicz v. Town of Manlius</u> , 5:17 CV 933, 2018 WL 3769857 (N.D.N.Y. 2018).....	10

I. Preliminary Statement

Plaintiff John DeRosier, a registered voter residing in the County of Onondaga, New York (“County”), has commenced this 42 U.S.C. § 1983 action against the Onondaga County Board of Elections (“CBOE”) Commissioners Dustin M. Czarny and Michele L. Sardo (“County Commissioners”) and named New York State Board of Elections (“SBOE”) officials, in their official capacities, seeking an order declaring that New York State’s longstanding anti-electioneering statutes are facially unconstitutional under the First Amendment and the U.S. Supreme Court’s recent Minnesota Voters Alliance decision. See Minnesota Voters Alliance v. Mansky, 138 S.Ct. 1876 (2018). Plaintiff alleges that said statutes prohibit protected political speech and are ambiguous/overly broad to the extent that they restrict Plaintiff’s ability to wear or carry certain political buttons, placards, and apparel within, or within 100 feet of, a polling place. Complaint at ¶¶ 41, 47. With respect to County Commissioners, they have been sued by virtue of their statutory “authority to control polling places within the county” and corresponding “informal policy or *de facto* policy” of enforcing, and training/educating election personnel to enforce, allegedly unconstitutional state anti-electioneering laws in an unconstitutional manner. Complaint at ¶¶ 16, 25.

By this motion for summary judgment, County Commissioners seek to dismiss Plaintiff’s Complaint in its entirety or, in the alternative, to dismiss all allegations asserted against the County and its County Commissioners pursuant to Vives v. City of New York, 524 F.3d 346 (2d. Cir. 2008) and on the grounds set forth herein; primarily, that the County does not have a policy, *de facto* or otherwise, which has caused a violation of Plaintiff’s constitutional rights.

II. Standard of Review

The party moving for summary judgment pursuant Fed.R.Civ.P. 56 bears the burden of demonstrating the absence of evidence to support the non-moving party's case. See Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986). The burden then shifts to the non-moving party to set forth specific material facts showing that there is a genuine issue for trial. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 249-250 (1986); see Carnegie v. Miller, 811 F.Supp. 907, 910-11 (S.D.N.Y. 1993). Furthermore, the non-moving party "must do more than simply show there is some metaphysical doubt as to the material facts." Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp., 475 U.S. 574, 586 (1986). The non-moving party must set forth concrete evidence from which a reasonable juror could return a verdict in his favor. See Id.; Anderson, 477 U.S. at 256. The Court is to grant summary judgment where the non-movant's evidence "is merely colorable, conclusory, speculative or not significantly probative." Ferreira v. Westchester County, 917 F.Supp. 209, 214 (S.D.N.Y. 1996). For the reasons set forth herein, this Court should grant County Defendants' motion for summary judgment. See generally Bloomquist v. Brady, 894 F.Supp. 108, 113 (W.D.N.Y. 1995); Affidavit of Benjamin M. Yaus ("Yaus Aff.") at ¶ 4 (describing documents transmitted to Plaintiff in advance of this motion).

III. Statement of Facts

For over 100 years New York State has forbidden electioneering within, or within 100 feet of the entrance to, a polling place, see, e.g., Election Law of 1909, c. 22 §§ 59, 352 (banning "any electioneering within such polling place, or within one hundred feet therefrom"), and the remaining 49 States and the District of Columbia currently have on their books laws curbing similar forms of speech in and around polling places on Election Day. See Minnesota Voters Alliance, 138 S.Ct. at 1883. In its current form, New York's anti-electioneering law provides

that “no person shall do any electioneering” within the polling place or within 100 feet of such polling place “and no political banner, button, poster or placard shall be allowed in or upon the polling place or within such one hundred foot radial.” Election Law § 8-104(1); see also Election Law § 5-204(9) (prohibiting electioneering at local registration). Similarly, Article 17 of the state Election Law makes it a misdemeanor for any person to electioneer within 100 feet of a polling place on Election Day or days of registration. Election Law § 17-130(4).

In the wake of the June 14, 2018 Minnesota Voters Alliance decision finding that Minnesota’s anti-electioneering political apparel ban was not capable of “reasoned application” and thus violated the First Amendment, 138 S.Ct at 1892, on June 20, 2018 the SBOE emailed to the County Commissioners a document containing a “brief review of New York’s law on the subject of electioneering” and concluding that such state laws remain constitutional (“SBOE Guidance”). Exhibit 1A; see Exhibit 1 at ¶ 6. SBOE’s reasoning was that the prohibition on political banners, buttons, posters and placards applies only in the limited context of electioneering, which means such displays “must contain the name of a candidate, political party, independent body or direct references to a ballot proposal on the ballot which contextually seeks votes.” Exhibit 1A. According to SBOE, the state’s anti-electioneering laws were “not designed to prohibit political expression generally” and the state “has long interpreted its anti-electioneering law as not prohibiting political messages,” although it does apply to certain electioneering “attire.” Id. (citing *New York Poll Worker Training Program*, p. 11 (rev. 2010)).

Upon receipt of the SBOE Guidance by the CBOE, on June 20, 2018, in advance of the June 26 primary, the County Commissioners issued a letter summarizing, and dispensing with the legalese contained within, the SBOE Guidance to CBOE personnel (“CBOE Letter”). See Exhibit 1 at ¶ 7; Exhibit 1B. The only other document promulgated by CBOE which addresses

or mentions electioneering is the 2018 CBOE Training Manual for the “Election Inspector Training Course,” last revised March 12, 2018, (“CBOE Training Manual”) which simply restates the statutory prohibitions on electioneering by poll workers, watchers, and candidates and, in discussing 100-foot distance markers, states that “[n]o campaigning is allowed” within said markers, including “[b]umper stickers, hats, buttons, shirts all that . . . not allowed.” Exhibit 1C, pp. 8, 24, 27-28; see Exhibit 1 at ¶¶ 8-9.

Plaintiff, a resident of the County and registered voter intending to vote in the upcoming election on November 6, 2018, desires to wear political buttons and carry political placards “expressing support for his favored candidates and/or conservative causes” inside, and within 100 feet of, his designated polling place. Complaint at ¶¶ 5, 12-14, 39. Plaintiff claims that he is unconstitutionally prohibited from doing so by state anti-electioneering law and that, upon information and belief, election inspectors “at various polling places” have directed voters to remove or turn inside out political clothing based on apparent interpretations of the law, even though the statute does not expressly address “apparel.” Complaint at ¶ 16. However, Plaintiff has never himself experienced such a prohibition in or within 100 feet of his polling place. Rather, Plaintiff “would have worn political buttons and or brought political placards into the polling place” during the 2016 general election, such as a “Trump, MAGA, and/or Trump/Pence button or other apparel,” but for allegedly unconstitutional state law. Complaint at ¶ 43.

IV. Argument

A. The County is Not Liable because it does Not Have a Policy that Caused the Alleged First Amendment Violation

Plaintiff’s suit against the County Commissioners solely in their official capacities is functionally equivalent to an action against the entity of which the County Commissioners are agents, i.e., the County. See Kentucky v. Graham, 473 U.S. 159, 165-166 (1985); Monell v.

New York City Dept. of Social Services, 436 U.S. 658, 690 n. 55 (1978); see generally Graziano v. County of Albany, 2003 WL 21497332 (N.Y. Sup. Ct. 2003) (“The [County] Board [of Elections] is the primary County agency . . .”). Therefore, construing this official capacity lawsuit as an action against the County, the issue becomes whether or not the County has a policy that caused the alleged violation of Plaintiff’s First Amendment rights. See Vives, 524 F.3d at 350; see also Monell, 436 U.S. at 690-691. More precisely, the “threshold question is, does [the County] merely carry out a state law?” Vaher v. Town of Orangetown, N.Y., 133 F.Supp.3d 574, 606 (S.D.N.Y. 2015) (internal citation omitted).

“Congress did not intend municipalities to be held liable unless action pursuant to official municipal policy of some nature caused a constitutional tort. In particular . . . a municipality cannot be held liable *solely* . . . on a *respondeat superior* theory.” Monell, 436 U.S. at 691. Such municipal policy can take the form of “a policy statement, ordinance, regulation, or decision officially adopted and promulgated by that body’s officers” as well as a more informal governmental custom “so permanent and well settled as to constitute a ‘custom or usage’ with the force of law.” Id. “[T]he word ‘policy’ generally implies a course of action consciously chosen from among various alternatives.” Vives, 524 F.3d at 350 (internal citation omitted). This “conscious choice requirement” means that “if a municipality decides to enforce a [state] statute that it is authorized, but not required, to enforce, it may have created a municipal policy” within the meaning of Monell and liability may attach. Id. at 353. However, “a mere municipal directive to enforce all state and municipal laws” does not constitute a municipal policy to enforce a particular unconstitutional statute and a municipality’s decision to honor a state law mandating municipal enforcement “is not a conscious choice” and cannot result in municipal liability. Id. Evidence of a “conscious choice” may be direct or circumstantial and resolution of

this issue depends on: (1) whether the County “had a meaningful choice as to whether it would enforce” state anti-electioneering laws; and (2) if so, whether the County “adopted a discrete policy to enforce” such laws that “represented a conscious choice by a municipal policymaker.”

Id. In the case at hand, CBOE merely carries out state anti-electioneering law without any meaningful or conscious choice.

Addressing first the “meaningful choice” element, and unlike in Vives, the County and County Commissioners do not have the power to instruct CBOE personnel not to enforce Election Law §§ 8-104(1) and 17-130(4). Id. at 354. Pursuant to Election Law § 5-204, local inspectors “*shall* preserve good order within and around the place of registration,” which includes ensuring lawful commands are obeyed, disorderly conduct disturbing election proceedings is prevented, and no one violates or attempts to violate any provision of the Election Law. Election Law § 5-204(9) (emphasis added). Election Law § 8-104(3) renders all such provisions of the Election Law concerning “preservation of order and apprehensions for crime on a day of registration” applicable to Election Day; however, a person “shall not be prohibited from voting.” Election Law §§ 8-104(1) and 5-204(9) prohibit electioneering and Election Law § 17-130(4) makes it a misdemeanor for any person to electioneer. In addition, Election Law § 17-102(10) and (12) make it a misdemeanor for local inspectors to “permit electioneering within the polling place or within [100] feet therefrom, or [to] fail[] to keep order within the polling place.” Election Law § 17-102(10).

As demonstrated by the repeated use of the word “shall”, on its face, state electioneering laws do not give the County a choice whether to comply. See N.N. ex rel. S.S. v. Madison Metropolitan School Dist., 670 F.Supp.2d 927, 937 (W.D. Wis. 2009) (discussing use of “shall” to denote a mandatory action when it appears in a statute); see also Vives, 525 F.3d at 354 n. 6.

Local election inspectors must preserve order and prohibit electioneering or face criminal consequences. See generally 1951 N.Y. Op. Atty. Gen. No. 214, 1951 WL 81786 (election inspectors “who are charged by law to preserve good order”); 1933 N.Y. Op. Atty. Gen. No. 1973 (describing state-mandated Election Day duties of inspectors). Were the County to instruct CBOE and its personnel not to enforce Election Law § 8-104 it would be in direct violation of express state law and would subject local election personnel to criminal convictions; in no manner could such a scenario be considered a meaningful choice. See generally McCluskey v. Imhof, 2018 WL 4521207, at *9 (E.D.N.Y. 2018); Vaher, 133 F.Supp.3d at 607.

Seeing as though the County lacked a meaningful choice, there is no need to address the second question, i.e., whether the County adopted a discrete policy to enforce Election Law § 8-104(1) representing a conscious choice by a municipal policymaker. See Vives, 524 F.3d at 353. Nevertheless, the answer to this question is likewise no.

The County does not have a particular official anti-electioneering policy or custom within the meaning of Monell and did not make the conscious choice to enforce Election Law § 8-104(1) in an allegedly unconstitutional manner. See Vives, 524 F.3d at 356; see also Exhibit 1 at ¶¶ 3-5, 9-10. Rather, the County simply carries out its state-mandated duty to enforce state anti-electioneering statutes in accordance with state law and state guidance and any “examples of how an individual can violate” Election Law § 8-104(1) came from the State. Vives, 524 F.3d at 356; see Exhibit 1 at ¶¶ 5, 10.

As can be seen from the content of the CBOE Letter, which was prepared and circulated immediately after receipt of the SBOE Guidance and on the heels of the Minnesota Voters Alliance decision, the letter was a mere summary of the SBOE Guidance which simplified the state-issued guidance/clarification and dispensed with citations and legalese for the benefit of

CBOE personnel. Compare Exhibit 1A with Exhibit 1B; see Exhibit 1 at ¶ 7. The CBOE Letter expressly states that it was prepared in light of the “guidance from the [SBOE].” Exhibit 1B. The first two sentences of the second paragraph of the CBOE Letter are a simple rephrasing of the last paragraph in the SBOE Guidance which quotes from the *New York Poll Worker Training Program* (rev. 2010). Compare Exhibit 1A with Exhibit 1B. The sentence stating that “[a]ny voter wearing attire with a candidate’s [name] will be asked to cover up or remove the attire before being issued a ballot” is derived directly from the statements in the SBOE Guidance that electioneering can include “attire” and the “wearing” of certain messages and that apparel “contain[ing] the name of a candidate ” on the ballot constitutes electioneering, as well as the longstanding legal requirement that a voter must not be prohibited from voting on Election Day. Compare Exhibit 1A with Exhibits 1B; see Election Law § 8-104(3) (“a person taken into custody shall not be prohibited thereby from voting”); see also *People ex rel. Borgia v Doe*, 109 A.D. 670, 673 (N.Y. App. Div. 1905) (“He must be afforded the privilege of voting before he is removed from the polling place”); see generally Education Law § 2031-a (prohibiting electioneering and any “banner, poster or placard *on behalf of or in opposition to any candidate or issue to be voted upon*” (emphasis added)). Merely asking a voter to cover up or remove prohibited attire is the logical result of, and truly only means at the County’s disposal to comply with, state-mandated statutory duties to prevent such electioneering and keep order or face criminal charges, see Election Law §§ 5-204(8)-(9), 8-104(3), 17-102(10) & (12), while not prohibiting a person from voting, which would likewise result in misdemeanor charges. See Election Law §§ 8-104(3), 17-130(3); see generally *Borgia*, 109 A.D. at 673. Such cannot represent an “action consciously chosen from among various alternatives” because there are no viable alternatives. Vives, 524 F.3d at 350 (internal citation omitted). Attire with a candidate’s

name on it has been determined by the state to be prohibited electioneering which the County must enforce, so a potential voter must either comply with state anti-electioneering law by covering up the prohibited speech or face arrest. See Election Law § 5-204(9). In either case, said voter will be permitted to cast a vote. See Election Law § 8-104(3). The final sentence in the CBOE Letter simply names the candidates who are on the June 26th primary ballot. See Exhibit 1B.

Lastly, while a training manual can be “one indication of departmental policy,” Vives, 524 F.3d at 357, the March 12, 2018 CBOE Training Manual does not constitute a Monell policy for the same reasons set forth above. See generally Exhibit 1C. Election Law § 3-412(1-a) requires the SBOE to “establish a mandatory core curriculum for poll worker training;” but also mandates CBOE “to augment the core curriculum with [consistent] local procedures . . . and which includes procedures relating to proper operation of . . . the voting machine or system in use in that jurisdiction.” Election Law § 3-412(1-a) (“shall augment...”). CBOE was required to prepare the CBOE Training Manual to account for its voting machines and systems. See Exhibit 1, ¶ 8. To the extent the CBOE Training Manual references campaigning/electioneering in, or within 100 feet of, a polling place, such was likewise derived directly from state law/guidance and does not evidence a distinct County policy. See Exhibit 1 at ¶ 10. The CBOE Training Manual merely restates state law in providing that electioneering is prohibited by poll workers, poll watcher and candidates, without further elaboration. See Exhibit 1C, pp. 8, 27-28; Election Law § 17-130(4); see also Election Law § 17-128. The only other mention of electioneering in the CBOE Training Manual is the statement in the section concerning distance markers that “[n]o campaigning is allowed” within said markers, including “[b]umper stickers, hats, buttons, shirts all that” Exhibit 1C, p. 24. Again, the SBOE Guidance and state law include such items

within state anti-electioneering prohibitions, see Exhibit 1A; Election Law §§ 5-204(9), 8-104(1), and campaigning is synonymous with electioneering. See generally Minnesota Voters Alliance, 138 S.Ct. at 1887, 1892; Russitano v. Brown, 2013 WL 4806455, at *7 (N.D.N.Y. 2013). In other words, it was not the County who “put flesh on the bones of [Election Law § 8-104(1)].” Vives, 524 F.3d at 356.

As can be seen from the text of the CBOE Letter and CBOE Training Manual, surrounding circumstances and state law/guidance, CBOE has not “gone beyond merely enforcing the state statute” or “differed” in any manner from state law and corresponding state guidance/policy. Vives, 524 F.3d at 351; see Correction Officers Benev. Ass'n of Rockland County v. Kralik, 2011 WL 1236135, at *7-12, 26-27 (S.D.N.Y. 2011) (finding that action was “mandated” by the State Commission and its memorandum and legal opinions); see also Whitesel v. Sengenberger, 222 F.3d 861, 872 (10th Cir. 2000) (“emphasiz[ing] that the [municipal entity] cannot be liable for merely implementing a policy created by the state [entity]”). CBOE’s enforcement of state anti-electioneering laws was not the result of a “conscious choice,” Vives, 524 F.3d at 353, and, therefore, the County was not the “moving force” behind the alleged constitutional violation. Monell, 436 U.S. at 694; see Wolongevicz v. Town of Manlius, 2018 WL 3769857, at *12 (N.D.N.Y. 2018).

B. The County is Not Liable under Any Failure to Properly Train/Educate Theory

To the extent Plaintiff’s fleeting reference to CBOE’s alleged failure to properly educate/train election inspectors on the subject of electioneering in a manner that does not violate the First Amendment in the factual section of the Complaint can be construed as a cause of action, a contention the County disputes, the County is likewise not liable. Complaint at ¶ 16.

Municipal liability may be “premised on a failure to train employees when inadequate training ‘reflects deliberate indifference to . . . constitutional rights.’” Okin v. Vill. of Cornwall-On-Hudson Police Dep’t, 577 F.3d 415, 440 (2d Cir. 2009) (quoting City of Canton v. Harris, 489 U.S. 378, 392 (1989)). “A municipality’s culpability for a deprivation of rights is at its most tenuous where a claim turns on a failure to train.” Connick v. Thompson, 563 U.S. 51, 61 (2011). Only if Plaintiff can demonstrate that the County’s failure to train “amounts to deliberate indifference to the rights of those with whom municipal employees will come into contact” will an actionable policy or custom be established. Moray v. City of Yonkers, 924 F. Supp. 8, 12 (S.D.N.Y. 1996) (internal quotation marks omitted). Deliberate indifference “is a stringent standard of fault, requiring proof that a municipal actor disregarded a known or obvious consequence of his action.” Board of County Com’rs of Bryan County, Okl. v. Brown, 520 U.S. 397, 410 (1997). “[D]eliberate indifference requires a showing that the official made a conscious choice, and was not merely negligent.” Jones v. Town of East Haven, 691 F.3d 72, 81 (2d Cir. 2012), cert denied 571 U.S. 940 (2013). In addition, “a municipal policymaker cannot exhibit fault rising to the level of deliberate indifference to a constitutional right when that right has not yet been clearly established.” Szabla v. City of Brooklyn Park, 486 F.3d 385, 393 (8th Cir. 2007) (quoting Townes v. City of New York, 176 F.3d 138, 143-44 (2d Cir. 1999), cert denied 528 U.S. 964 (1999)).

In no way can Plaintiff make out a claim under this standard. Plaintiff cannot make out a claim of deliberate indifference because, as argued above, the County did not make a conscious choice and, therefore, does not have a policy which was the moving force behind Plaintiff’s claimed constitutional violations. For over 100 years this State has forbidden electioneering within, or within 100 feet of the entrance to, a polling place, see, e.g., Election Law of 1909, c.

22 §§ 59, 352, and all 50 States and the District of Columbia currently have on their books laws curbing similar forms of speech in and around polling places. See Minnesota Voters Alliance, 138 S.Ct. at 1883. In Minnesota Voters Alliance the U.S. Supreme Court reaffirmed that polling places are nonpublic forums and the constitutionality of a “100-foot campaign-free zone around polling place entrances.” 138 S.Ct. at 1886, 1888. The U.S. Supreme Court also did not forbid electioneering restrictions; rather, it found the particular Minnesota statute incapable of “reasoned application” while also at least implicitly endorsing two similar, albeit “more lucid,” state statutes. Id. at 1891-1892. Under these circumstances, it can hardly be said that any alleged inadequate training by the County and its CBOE regarding a yet-to-be-determined unconstitutional electioneering statute reflected a deliberate indifference to clearly established constitutional rights.

V. State of New York’s Motion for Summary Judgment

The County hereby joins in the motion for summary judgment filed by the State of New York on behalf of the SBOE Defendants to the extent applicable to the County.

VI. Conclusion

For the foregoing reasons, Defendant County’s motion for summary judgment should be granted, and Plaintiff’s Complaint dismissed in its entirety.

Dated: October 24, 2018

s/ Benjamin M. Yaus
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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

John DeRosier,

Plaintiff,

Civ. Action No.: 5:18-CV-0919
(GLS/DEP)

-against-

Dustin M. Czarny, in his official capacity as
Commissioner of the
Onondaga County Board of Elections,

Michele L. Sardo, in her official capacity as
Commissioner of the
Onondaga County Board of Elections,

Peter S. Kosinski, in his official capacity as
Co-Chair of the New York State Board of Elections,

Douglas A. Kellner, in his official capacity as
Co-Chair of the New York State Board of Elections,

Andrew J. Spano, in his official capacity as
Commissioner of the New York State Board of Elections,

Gregory P. Peterson, in his official capacity as
Commissioner of the New York State Board of Elections,

Defendants.

**STATEMENT OF MATERIAL FACTS
LOCAL RULE 7.1(a)(3)**

Pursuant to Local Rule 7.1(a)(3), County Defendants hereby set forth below each material fact about which County Defendants contend there exists no genuine issue, and note that Plaintiff's facial challenge to the constitutionality of specified state anti-electioneering laws primarily concerns matters of law and legal interpretations for which no genuine issues of material facts exist:

1. Dustin M. Czarny and Michele L. Sardo are the duly appointed Commissioners of the Onondaga County Board of Elections (“County Commissioners”). Exhibit 1 at ¶ 2; Complaint at ¶¶ 23-24.

2. The challenged statutes are New York State statutes. Complaint at ¶¶ 1, 47, 57, 64.

3. On June 20, 2018, County Commissioners received an email from the New York State Board of Elections (“SBOE”) containing guidance on New York’s anti-electioneering laws in the wake of Minnesota Voters Alliance v. Mansky, 138 S.Ct 1876 (2018), from Co-Executive Directors of the SBOE Robert A. Brehm and Todd D. Valentine, a true and accurate copy of which is attached to County Commissioners’ joint affidavit. Exhibit 1A; Exhibit 1 at ¶ 6.

4. Subsequent to receipt of the aforementioned state guidance, see Exhibit 1A, on June 20, 2018, County Commissioners prepared and distributed a letter to County election personnel “in light of” the Minnesota Voters Alliance decision and the aforesaid “guidance from the NYS Board of Elections,” a true and accurate copy of which is attached to County Commissioners’ joint affidavit. Exhibit 1B; Exhibit 1 at ¶ 7.

5. The Onondaga County Board of Elections (“CBOE”) has a training manual for election inspectors that was last revised March 12, 2018, a true and accurate copy of which is attached to County Commissioners’ joint affidavit. Exhibit 1C; Exhibit 1 at ¶ 8.

6. Aside from Exhibits 1B and 1C, CBOE has not prepared or promulgated any document which addresses or mentions electioneering at, or within 100 feet of, polling places. Exhibit 1 at ¶ 9.

7. Plaintiff has not been involved in any incidents with CBOE or CBOE personnel concerning prohibited electioneering activities. Exhibit 1 at ¶ 11; Complaint at ¶¶ 1, 5, 13-14,

39-40, 43.

DATED: October 24, 2018
Syracuse, New York

s/ Benjamin M. Yaus
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Gregory P. Peterson, in his official capacity as
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Defendants.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on October 24, 2018, he caused to be electronically filed with the Clerk of this Court County Defendants Dustin M. Czarny's and Michele L. Sardo's Notice of Motion for Summary Judgment, pursuant to Fed.R.Civ.Pro. 56, and the accompanying Affidavit of Benjamin M. Yaus, Esq., with attached exhibits, and an accompanying Memorandum of Law and Statement of Material Facts, using the CM/ECF system, which sent notification of such filing to all counsel of record as per the CM/ECF system.

DATED: October 24, 2018
Syracuse, New York

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