

**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.

**RESPONSE TO PLAINTIFF'S CROSS-MOTION STATEMENT OF MATERIAL
FACTS PURSUANT TO LOCAL RULE 7.1(a)(3)**

Pursuant to Rule 7.1(a)(3) of the Local Rules of this Court, County Defendants submit this response to Plaintiff's Cross-Motion Statement of Material Facts:

1. DeRosier moves for summary judgment declaring Election Law § 8104(1) to be unconstitutionally vague and in violation of the First Amendment, and thus declared null and void, and to have the Statute-related enforcement policies of the New York State Board of

Elections (“SBOE”) and the Onondaga County Board of Elections (“County BOE”) likewise declared unconstitutional in violation of the First Amendment.

Response: The statement is immaterial to the underlying motion and does not contain any “fact” related to the lawsuit. The statement is thus outside the scope of L.R. 7.1(a)(3). The statement merely contains a summary of the procedural posture of the case and a characterization of Plaintiff’s legal claim. County Defendants state that the statement calls for an improper legal conclusion. Subject to the foregoing limitations, County Defendants deny the statement.

2. The SBOE has moved for summary judgment (Dkt. No. 21), and has submitted a Local Rule 7.1(a)(3) Statement (Dk. No. 21-1), which will be addressed herein.

Response: The statement is immaterial to the underlying motion and does not contain any “fact” related to the lawsuit. The statement is thus outside the scope of L.R. 7.1(a)(3). The statement merely contains a summary of the procedural posture of the case. Subject to the foregoing limitations, County Defendants admit the statement.

3. The County BOE has moved for summary judgment (Dkt. No. 19), and has submitted a Local Rule 7.1(a)(3) Statement (Dk. No. 19-10), which will be addressed herein

Response: The statement is immaterial to the underlying motion and does not contain any “fact” related to the lawsuit. The statement is thus outside the scope of L.R. 7.1(a)(3). The statement merely contains a summary of the procedural posture of the case. Subject to the foregoing limitations, County Defendants admit the statement.

4. Plaintiff intends to, and would wear certain buttons and apparel while voting but for the improper chilling of his speech and First Amendment rights by the vague Statute, which purports to ban “political” buttons and establishes the misdemeanor of “electioneering,” an undefined and unknown range of acts and speech that causes him to refrain from any speech while voting for fear of prosecution. DeRosier Decl. ¶ 1.

Response: The statement calls for an improper legal conclusion, which is outside the scope of L.R. 7.1(a)(3). Subject to the foregoing limitation, County Defendants deny the statement.

5. Plaintiff is entitled to summary judgment based on the plain text of the Statute and case

law as set forth in the accompanying legal memoranda.

Response: The statement calls for an improper legal conclusion, which is outside the scope of L.R. 7.1(a)(3). Subject to the foregoing limitation, County Defendants deny the statement.

DATED: February 12, 2019
Syracuse, New York

s/ Benjamin M. Yaus
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