UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

JOHN DeROSIER,

Plaintiff,

-against- 18-CV-0919

DUSTIN M. CZARNY, ET AL. (GLS/DEP)

Defendants.

REPLY MEMORANDUM OF LAW IN FURTHER SUPPORT OF AG DEFENDANTS' MOTION FOR SUMMARY JUDGMENT AND IN OPPOSITION TO PLAINTIFF'S CROSS MOTION FOR SUMMARY JUDGMENT

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PRELIMINARY STATEMENT

Stymied by the clear State Board of Elections' ("Board") official guidance that unambiguously establishes N.Y. Elec. Law §§8-104(1), 17-130(4) & (23) ("Anti-Electioneering Laws") as constitutional under the holding in Minnesota Voters' Alliance v. Mansky – Plaintiff's Opposition and Cross Motion scrambles to articulate a plausible theory to facially attack the State's Anti-Electioneering laws. Rather than address the ready distinctions between New York's Election law and the stricken law in Minn. Voters, or face the dispositive impact of the Board's official guidance, or contend with the clear constitutionality of the narrowly drawn electioneering ban, Plaintiff unconvincingly relies on artificially manufactured definitional problems, intentionally outrageous (yet easily answered) hypotheticals, and an incomplete analysis of controlling case law.

Defendants Kosinski, Kellner, Spano and Peterson ("AG Defendants") offer this dual memorandum of law both in further support of their motion for summary judgment and in opposition to Plaintiff's cross-motion for summary judgment. Plaintiff's Opposition and Cross Motion ("Opposition") [Dkt. No. 24-5] fails to state any viable rebuttal to the fully dispositive legal grounds set forth within AG Defendants' underlying motion ("Underlying Motion"). As AG Defendants have already established ample legal grounds upon which a grant of summary judgment would be appropriate, rather than simply reiterating the points set forth in their Underlying papers, this dual brief endeavors only to address the more glaring errors, inconsistencies and misstatements within Plaintiff's Opposition.

STATEMENT OF RELEVANT FACTS AND LAW

As this matter turns exclusively on issues of well-established Constitutional law, the

relevant facts are straightforward and fully set forth in AG Defendants' underlying motion papers. As Plaintiff's Opposition does not raise any additional factual grounds requiring further development of the record, AG Defendants incorporate by reference hereto and respectfully refer the Court to their prior submission for a complete synopsis of the facts.

ARGUMENT

POINT I

PRE-ANSWER SUMMARY JUDGMENT IS APPROPRIATE TO DISPATCH THIS ISSUE OF LAW

Despite cross moving for summary judgment and conceding the exclusively legal nature of the inquiry, Plaintiff contradictorily argues that summary judgment is premature for the AG Defendants. Opposition at 2-3. Federal Rule of Civil Procedure 56 permits a party to file a "motion for summary judgment at any time". FRCP 56(b) (emphasis added). The rule includes no proscription against pre-answer motions. Id.; All Am. Tel. Co. v. AT&T Corp., 328 F. Supp. 3d 342, 370 (S.D.N.Y. 2018). Moreover, this Court routinely grants pre-answer summary judgment motions that rely upon extrinsic evidentiary showings, as such motions expedite resolution of cases involving pure questions of law. Bennett v. Fischer, 2010 U.S. Dist. LEXIS 139587 (N.D.N.Y. Aug. 17, 2010) (Peebles, J.) (Pre-Answer MSJ with extrinsic evidence granted in part); Teal v. Cross, 2012 U.S. Dist. LEXIS 37297 (N.D.N.Y. Feb. 8, 2012) (Peebles, J) (Pre-Answer MSJ with extrinsic evidence granted); Sanchezmartino v. Demmon, 2017 U.S. Dist. LEXIS 26176 (N.D.N.Y. Feb. 23, 2017) (Peebles, J.) (Pre-Answer MSJ with extrinsic evidence granted); Castro v. Heath, 2013 U.S. Dist. LEXIS 137828 (N.D.N.Y. Aug. 1, 2013) (Peebles, J.) (Pre-Answer MSJ granted in part). In short, Plaintiff's position that pre-answer summary judgment relying on "evidentiary materials" is "patently improper" [Opposition at 2-3] is simply

erroneous – such motions are both permissible and common.

If the Court interprets Plaintiff's objection to pre-answer summary judgment as being based on a need for discovery – such argument would also fail[1]. To oppose on this ground the non-movant must make a showing that "for specified reasons it cannot present facts essential to justify its opposition". FRCP 56(d). Plaintiff does not even attempt to articulate such a need here, as it is clear, based on the issues and evidence that no such need actually exists.

The materials supporting AG Defendants' Underlying Motion constitute either public record or uncontroverted fact for which there is no need for discovery. First, the legislative history and law review articles attached to AG Defendants' Underlying Motion are part of the public record and equally accessible by both parties. J.L. v. E. Suffolk Boces, 113 F. Supp. 3d 634, 645 (E.D.N.Y. 2015) (legislative history is a matter of public record). A request for discovery into publicly available records is not a bar to summary judgment. Wik v. Swapceinski, No. 11-CV-6220 CJS, 2012 U.S. Dist. LEXIS 27218, at *12-13 (W.D.N.Y. Mar. 1, 2012). Moreover, there is no articulable discovery inquiry to which AG Defendants could even respond concerning law review articles and legislative history materials. A request for discovery into these items would be tantamount to seeking discovery into case law or legal treatise, which AG Defendants did not author.

Second, with respect to the Board's guidance materials included with the Underlying Motion, Plaintiff has not set forth any basis for needing fact discovery concerning these self-explanatory materials. To obtain a postponement "under Rule 56(d), the party opposing summary

1 It appears from Plaintiff's Opposition that he is not actually claiming a need for discovery, but merely objecting to the inclusion of "evidentiary materials" to a motion at the pre-answer phase. Plaintiff Opp. at 3. As set forth above, this objection is meritless as summary judgment can be entertained at any phase of litigation [FRCP 56] and such motions require the presentation of extrinsic evidence. See FRCP 56.

judgment must show that the motion is premature by filing an affidavit affirmatively demonstrating . . . how postponement of a ruling on the motion will enable him, by discovery or other means, to rebut the movant's showing of the absence of a genuine issue of fact." Minn. Majority v. Mansky, 62 F. Supp. 3d 870, 877 (D. Minn. 2014). Of course, Plaintiff has offered no such showing here – his motion neither expressly asks for not articulates a reason why discovery is necessary to rebut the self-explanatory official guidance.

Like the central issue in this case, the Board's official guidance materials are legal in nature and exist solely to clarify the scope of the Anti-Electioneering laws in the wake of the Minn. Voters decision. See Connolly Decl. Exs. 2-3. In matters of legal interpretation a speculative request for discovery is insufficient to bar summary judgment.

> [Where] the facts are largely undisputed, and the real issue is simply one of … interpretation. The relevant documents are already in the record before the court, and I am not persuaded by plaintiffs' speculation that some unspecified additional documents might shed any light on any disputed issues in this case, since those issues are legal rather than factual in nature." Edwards v. Akzo Nobel, Inc., 193 F. Supp. 2d 680, 686-87 (W.D.N.Y. 2001)

Finally, both the Supreme Court and lower courts in Minn. Voters case considered Minnesota State guidance materials in rendering summary decisions, without leave of discovery into said materials. Minn. Voters, 138 S. Ct. at 1888 (contemplating the effect of the State's official guidance concerning the challenged law). In fact, the District Court in Minn. Voters expressly rejected plaintiff's attempt to postpone summary judgment on the basis of discovery, noting "the Plaintiffs' affidavit and arguments are inadequate to warrant Rule 56(d) relief" as none of the requested discovery had any relevance to the central legal issue at stake. Minn. Majority v. Mansky, 62 F. Supp. 3d 870, 877 (D. Minn. 2014). Certainly, if the materials were considered without discovery by the very decision at the heart of Plaintiff's case, they should likewise be

considered here at the same procedural posture[2].

In sum, pre-answer summary judgment is both permissible and warranted to dispatch with this issue of law. The AG Defendants' submission of public and uncontroverted record evidence to support such motion is proper, and Plaintiff has not articulated any basis to postpone summary dismissal for the purpose of discovery.

POINT II

NEW YORK'S ANTI-ELECTIONEERING LAWS ARE CONSTITUTIONAL

The crux of Plaintiff's Opposition is focused on the purported unconstitutionality of New York's Anti-Electioneering laws. See Opposition at 3-25. At the heart of Plaintiff's substantive argument are three (3) main contentions: (1) The Anti-Electioneering laws are vague insofar as they utilize the terms "electioneering" and "political"; (2) Statutory interpretation of the laws dictates a finding of unconstitutionality, and; (3) Application of Minn. Voters and Burson v. Freeman undermines the legality of the laws.

Each of these points was fully addressed and dispatched by AG Defendants' Underlying Motion. As such, in the interest of avoiding redundancy this memorandum will focus solely on the more glaring misstatements of fact and law.

A. VAGUENESS

Plaintiff argues that inclusion of the terms "electioneering" and "political" within the Anti-Electioneering laws renders them impermissibly vague and unconstitutional. Opposition at 3, 5-6. The terms, as utilized in the election law, are neither vague nor overbroad.

2 In fact, Justice Sotomayor, in dissent, was not satisfied with the court's consideration of official guidance alone and counseled her colleagues that "the Court should have considered the history of Minnesota's implementation of the statute in evaluating the facial challenge…that history offers some assurance that the statute has not been interpreted or applies in an unreasonable manner". Minn. Voters, 138 S. Ct. 1896 (Sotomayor dissent).

1. **"Electioneering"**

With respect to "electioneering" Plaintiff asserts that the "term…is so vague as to deprive voters of fair notice of what speech is permitted versus what speech could result in criminal prosecution". Id. at 6. This argument strains credibility and stands out as a transparent attempt to introduce ambiguity where none actually exists.

The term "electioneering" has a single, plain and popular meaning and is not capable of more than one definition. The term is consistently defined across multiple platforms to mean:

- To work for the success of a particular candidate, party, ticket, etc., in an election. [www.dictionary.com/browse/electioneering, last accessed January 29, 2019]

- The activity of trying to persuade people to vote for a particular political party. [dictionary.cambridge.org/us/dictionary/english/electioneering, last accessed January 29, 2019]

- To take part actively and energetically in a campaign to be elected to public office. [oxforddictionaries.com/definition/electioneer, last accessed January 29, 2019]

Unsurprisingly, these near verbatim definitions match the Board's own definition of the term utilized in Board guidance documents provided to poll workers. See Connolly Decl. Ex. 3 at 86 ("[E]fforts to encourage voters to vote a certain way…").

It is a fundamental precept of statutory construction that, absent a statutory definition, a term must be interpreted in its "plain and ordinary sense". Does v. Mills, 2005 U.S. Dist. LEXIS 6603, at *33 (S.D.N.Y. Apr. 18, 2005). Where a term has a singular, objective meaning it is not unconstitutionally vague, by definition. See Brush Wellman, Inc. v. Jeneric Pentron, Inc., 2008 U.S. Dist. LEXIS 374, at *14-15 (N.D. Ohio Jan. 3, 2008) ("The Court is legally bound to give

these words their plain and popular meaning. The language is not vague, ambiguous, nor capable of more than one definition").

The term electioneering describes the very specific conduct of encouraging voters to vote in a particular manner on a particular issue on the ballot or for a designated candidate. As utilized in the challenged statute, electioneering proscribes ballot-specific campaigning conduct within the polling place, exclusively. Far from depriving "voters of notice" as to what conduct is impermissible [Opposition at 6], use of the precise, singularly defined term provides voters adequately defined, understandable guidance. Plaintiff's unreasonable and semantic reading of the term notwithstanding, it well exceeds Constitutional vagueness scrutiny.

2. "Political"

Plaintiff also challenges the term "political" as utilized in New York's Anti-Electioneering law as unconstitutionally vague. Opposition at 3, 5-6, 10-12. Unsurprisingly, Plaintiff relies on an overly simplified and incomplete rehashing of Minn. Voters as its sole basis for this argument. Id. In Plaintiffs' view, New York's use of the term "political" is precisely analogous to the stricken usage of the word in Minn. Voters. Unfortunately, for Plaintiff, he is not simply re-litigating the Minnesota case – but is, instead facing a completely different statutory paradigm and State regime. Plaintiff is either unwilling or unable to grasp the dispositive distinctions between New York's Anti-Electioneering laws and the stricken Minnesota apparel ban, which render his vagueness argument meritless.

AG Defendants' Underlying Motion sets forth many of the significant differences between the two laws. As pertinent to Plaintiff's vagueness challenge regarding the term "political" the New York law expressly proscribes "electioneering", to include a restriction on "political" buttons, banners, posters and placards proliferating electioneering conduct. AG Underlying Brief at 9-20.

Thus, the proscription in New York's law concerns only the particularized behavior of electioneering, which includes the use of ballot/candidate specific political buttons, banners, posters, and placards. Id.

This was simply not the case with the stricken Minnesota Law. That law contained a proscription on political apparel that was not fixed, limited or narrowed whatsoever. Minn. Voters, 138 S. Ct. at *1883. The Minnesota law did not contain the word "electioneering" at all – and did not, through either statutory arrangement or syntax, tie the "political" apparel ban to the context of electioneering. This lack of limitation over the term "political" was the Supreme Court's fundamental basis for finding use of the term too "expansive". Id. New York's Anti-Electioneering laws are not analogous as they expressly limit the term "political" to the electioneering context. This distinction obviates Plaintiff's "vagueness" challenge.

Additionally, and perhaps even more stark is the fundamental difference in official State guidance between the two laws. In rendering Minnesota's use of the term "political" vague, the Supreme Court was particularly jaundiced by the lack of official guidance defining the parameters of term. Id. at *1888. To this end, the Court stated:

> [T]he unmoored use of the term 'political' in the Minnesota law, combined with haphazard interpretations the State has provided in official guidance and representations to the Court, cause Minnesota's restriction to fail even this forgiving test. Id. (emphasis added)

As demonstrated within AG Defendants' Underlying Motion papers, this is simply not the case with the New York law. The Election Board's official guidance has the exact opposite impact as that in Minnesota. The full scope of the official guidance was detailed by AG Defendants' Underlying Motion and, as such, will not be fully rehashed here. In most relevant part the official guidance: (1) specifically and clearly emphasizes the distinction between ballot-specific

electioneering and a more broad general apparel ban, and (2) concretely draws the line between prohibited electioneering conduct and permissible displays of political viewpoint[3].

Finally, Plaintiff seeks to demonstrate the vagueness of the term "political" by posing a series of hypothetical questions purportedly aimed at demonstrating ambiguity in the application of the laws. Opposition at 7, 21. For starters, the mere fact that Plaintiff could theoretically "conceive of some impermissible applications of the statute is not sufficient to render it unconstitutional". Minn. Voters at *1895 (concur. Sotomayor, J.), citing United Sates v. Williams, 553 U.S. 285, 303 (2008). As noted by the majority in Minn. Voters "perfect clarity and precise guidance have never been required even of regulations that restrict expressive activity". Minn. Voters at *1891.

Regardless, Plaintiff's hypothetical questions do not strain application of the law in any fashion, as all are easily resolved under the anti-electioneering parameters and official State guidance.

For example:

- Q: "Is a button with [Donald] Trump's face permissible in 2020?" [Opposition at 7].
- A: A button bearing an individual's face or name worn at the polling place for an election in which that person appears on the ballot as a candidate for elected office would constitute impermissible electioneering conduct under the law.
- Q: "Are MAGA[4] buttons always permitted because it is not a candidate's name?" Id.

3 As unable to substantively explain the dispositive impact of the Board's official guidance on this case, Plaintiff resorts to attacking the guidance as both "informal" and "after the fact". Opposition at 1, 7. These arguments are both erroneous and misdirected. First, the guidance is not "informal" – it was "issued" by the Board "to local and county boards of election" on two separate occasions. Underlying Motion, Connolly Decl. ¶¶ 13, 20. Second, the guidance was not "after the fact" – the poll workers' training manuals, which define the electioneering ban consistently with the Board's later guidance, were both published well prior to the Minn. Voters decision. Id. Exs. 2-3. Finally, Plaintiff's quest to disregard the guidance flies in the face if the Supreme Court's decision in Minn. Voters. There the Court considered the State's guidance materials in rendering its decision. Minn. Voters at *1888. It should be considered here, as well.

4 Plaintiff does not formally define MAGA in his brief, but for purposes of this, Opposition AG Defendants assume it is a reference to Donald Trump's 2016 campaign slogan "Make America Great Again".

- A: Unless MAGA refers to a specific referendum or issue on the ballot at the time the voter wears the button, then a button bearing the phrase "MAGA" would be permissible under the law as not specifically on the ballot.

- Q: "Is a button with [Donald] Trump's name OK in 2019, but not 2020?" Id.

- A: A button bearing an individual's name worn at the polling place for an election in which he/she appears on the ballot for elected office would constitute impermissible electioneering conduct under the law. If the individual is not on the ballot for elected office, a button bearing his/her name or face would be permissible under the law.

- Q: Can a "Tea Party", "Republican", "conservative" or "Conservative" shirt be worn to a polling place. Id. ¶21.

- A: Unless these phrases refer to a specific referendum or issue on the ballot at the time the voter wears the shirt, then any of these phrases would be permissible under the law.

The ease of resolution of these inquiries further demonstrates the certainty and consistency of the New York's Anti-Electioneering laws. In short, there is nothing vague or amorphous about the law.

In sum, the term "political" as used in New York's law is fundamentally different from the stricken use of the term in Minn. v. Mansky. The two laws are not nearly analogous – rendering Plaintiff's over-simplified and exclusive reliance on the precedent unavailing. The term "political" as used in New York's law is contextually limited by the prohibition on electioneering and the clear state guidance. As such, it is not unconstitutionally vague.

B. STATUTORY INTERPRETATION OF THE LAWS

AG Defendants' have proffered a common sense, reasonable construction of the laws that avoids an absurd result, exists consistently within the framework of the entire statute (including §§17-130(4) & (23)) and fully comports with the supporting legislative history and Board guidance. Underlying Motion at 9-13. Plaintiff, on the other hand, offers an alternate construction,

which creates both an unconstitutional outcome and a reading inconsistent with the law's history and guidance. Opposition at 12-13.

Unsurprisingly, Plaintiff disregards the law's inclusion of the term "electioneering" and adopts a reading that creates a generic and limitless prohibition on the use of political banners, buttons, posters or placards in or around the polling place. Opposition at 4. Such a reading is illogically parochial – as it requires a complete disregard for the context and harmony of the paragraph as a whole – and unnecessarily causes an unconstitutional result. Both of these consequences, of course, are disfavored under the canons of statutory construction. McKinney's Statutes, Constr. & Interpretation §98 ("All parts of an enactment shall be harmonized with each other as well as with the general intent of the whole enactment"); In re Agent Orange Prod. Liab. Litig., 597 F. Supp. 740, 815 (E.D.N.Y. 1984), citing McKinney's Statutes, Constr. & Interpretation §150(c) (Wherever possible, "a statute is required to be construed … in such a manner as to uphold its constitutionality").

Plaintiff's interpretation artificially removes the "political button" sentence from the entirety of the paragraph, and then, stripped of all context, holds it up as evidence that no further construction is necessary. Opposition at 4-5, 12. This construction tactic is patently improper.

> Language of a portion of an act, which, when separated from the rest is plain and unambiguous, may, when read in connection with the whole act, be thereby rendered ambiguous, ad thereupon the necessity for construction arises. McKinney's Statutes, Constr. & Interpretation §76.

Moreover, even where words in a statute are not themselves ambiguous, the court is not prohibited from considering: (1) the canons of construction, (2) surrounding circumstances (such as official guidance) and (3) legislative intent in fashioning a proper construction. Id. These three elements

are discussed within AG Defendants' Underlying Motion.

In arguing against a reasoned construction of the law, Plaintiff also tries to silence the import of the Anti-Electioneering law's legislative history. Opposition at 7. Strapped with the inconvenience of New York's historic interest in preserving the integrity of the polling place and voting process, Plaintiff attempts to dismiss the history as "irrelevant" and "unnecessary". Opposition at 7.

First, Plaintiff erroneously argues that the legislative history relates solely "to the secret ballot, not passive communication by voters". Id. This claim is simply not true. The cited legislative history specifically contemplates voter intimidation via electioneering not just in the context of secret ballots. Underlying Motion, Dague Decl. Ex. 1 [Pub. Papers Gov. Hill] at 8, 16 ("There may properly accompany the enactment of the secret compartment plan suitable provisions forbidding ay electioneering within any political place or within 100 feet…having sincerely for their purpose the facilitating of honest elections").

Next, Plaintiff contends that consideration of the legislative history is unnecessary, as the statute is not ambiguous. For the reasons set forth above, the Anti-Electioneering law is subject to construction and consideration of legislative history is properly part of that analysis. McKinney's Statutes, Constr. & Interpretation §76. Interestingly, both the Minn. Voters and Burson cases relied heavily on historical context of voting rights and suffrage protections in the context of electioneering, when considering facial challenges to the voting laws. Minn. Voters, 138 S. Ct. at *1882-1883, Burson, 504 US at 200-206.

The AG Defendants Underlying Motion sets forth the appropriate interpretation of the Anti-Electioneering law. Plaintiff's attempted alternative construction should be set aside.

C. APPLICATION OF MINN. VOTERS AND BURSON

Plaintiff's Opposition ultimately attempts to apply the lessons of Minn. Voters and Burson to strike down New York's Anti-Electioneering laws. Plaintiff fails to raise any factual or legal argument not previously addressed by AG Defendant's in their Underlying Motion. Underlying Motion at 14-20. Plaintiff's legal argument stands merely as a regurgitation of Minn. Voters – seemingly forgetting that the instant matter concerns a wholly separate statutory regime, with distinct wording, legislative history and official guidance. These distinct elements of the New York law fundamentally differentiate it from the stricken Minnesota law – and command more than just the superficial analysis of Minn. Voters and Burson that Plaintiff offers.

Plaintiff's treatment of Minn. Voters as a one-sized fits all decision and his failure to address the nuances and distinctions inherent within New York's law renders his legal argument meritless. AG Defendants respectfully refer the Court to their prior legal analysis for the proper application of the law and legal standards.

CONCLUSION

For all the foregoing reasons and those set forth within the Underlying Motion, AG Defendants are entitled to summary dismissal of the Complaint in its entirety.

Dated: Albany, New York
February 12, 2019

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JOHN DeROSIER,

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18-CV-0919

GLS/DEP

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Defendants.

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

Pursuant to Rule 7.1(a)(3) of the Local Rules of this Court, AG 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. AG Defendants state that the statement calls for an improper legal conclusion. Subject to the foregoing limitations AG 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 AG 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 AG 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). The statement contains an improper hypothetical, speculaotry future event that evades response by AG Defendants. Subject to the foregoing limitation AG 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 AG Defendants deny the statement.

Dated: Albany, New York
February 12, 2019

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