

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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LEONARD JOSEPH CAMPANELLO, FABRIZIO MILITO,
CHANDLER WILSON, ALEXANDRA K. CLARK,
DAVID MORRISON, Sr., ASHLEY PEACOCK,
STEVEN RICHTER, EMILY BRAUNSTEIN,
CHRISTOPHER BRITTEN, LISA KANBAR, LISA BEATTIE,
MICHELLE OLMO GARCIA, EDGAR MARTY,
REBECCA PEBBLES, et al.; and as Representatives of all
Disenfranchised and Purged voters in the State
of New York,

Plaintiffs,

Case No.: CV-16 1892

-against-

NEW YORK STATE BOARD OF ELECTIONS;
ANDREW J. SPANO and GREGORY P. PETERSON
in their official capacities as Commissioners of the New
York State Board of Elections; DOUGLAS A KELLNER
and PETER S. KOSINSKI in their official capacities as
Co-Chair of the New York State Board of Elections;
TODD D. VALENTINE and ROBERT A. BREHM,
in their official capacities as Co-Executive Directors of the
New York State Board of Elections; NEW YORK CITY
BOARD OF ELECTIONS IN THE CITY OF NEW YORK;
MICHAEL RYAN in his official capacity as executive
Director of the New York City Board of Elections in the
City of New York; KINGS COUNTY BOARD OF ELECTIONS;
JOHN FLATEAU and SIMON SHAMOUN in their official
capacities as Commissioners of the Kings County Board of Elections;
Diane Haslett-Rudiano in her official capacity as Chief Clerk of
KINGS COUNTY BOARD OF ELECTIONS;
Betty Ann Canizio in her official capacity as Deputy Chief
Clerk of KINGS COUNTY BOARD OF ELECTIONS; QUEENS
COUNTY BOARD OF ELECTIONS; NEW YORK CITY BOARD
OF ELECTIONS; BRONX COUNTY BOARD OF ELECTIONS;
NASSAU COUNTY BOARD OF ELECTIONS; and
SUFFOLK COUNTY BOARD OF ELECTIONS,

VERIFIED AMENDED
COMPLAINT

Defendants.
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COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF

Plaintiffs, by and through their undersigned counsel, hereby complain of the Defendants and allege as follows:

NATURE OF THE ACTION

1. This action is brought pursuant to 42 U.S.C. § 1983 to secure equitable relief from Defendants' unlawful deprivation of Plaintiffs' rights, privileges and immunities guaranteed by the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution; Section 2 of the Voting Rights Act, 52 U.S.C. 10301; the laws of the United States and New York Election Law ("N.Y. Elec. Law").

2. "No right is more precious in a free county than that of having a voice in the election of those who make the laws..." *Wesberry v. Sanders*, 376 U.S. 1, 17 (1964). Plaintiffs bring the instant lawsuit to protect that right and to prevent the continued disenfranchisement of hundreds of thousands of New York voters-including specifically New York's Hispanic and African-American voters-whose right to vote has been and will continued to be denied or unreasonably infringed upon due to the lack of oversight of the New York State and Counties Boards of Election.

3. In 1970, due to its long history of discrimination against Hispanics and other minorities, New York became a "covered jurisdiction" under Section 5 of the Voting Rights Act. For the next forty-three (43) years, New York's voters enjoyed some protection from disenfranchisement as well as arbitrary and disparate treatment by the State of New York in its elections practices and procedures as a result of the independent oversight provided by the federal government to all covered jurisdictions. Section 5 prohibited covered jurisdictions from making and changes to their election practices or

procedures until either the U.S. Department of Justice (“DOJ”) or a Federal Court denying or abridging the right to vote on account of race or color or [membership in a language minority group.] 42 U.S.C. § 1973 (c).

4. On June 25, 2013, the United States Supreme Court issued its opinion in *Shelby County v. Holder*, 133 S. Ct. 2612 (2013), in which it invalidated the coverage formula contained in Section 4 of the Voting Rights Act (used to identify covered jurisdictions under Section 5), thereby stripping New York’s voters of the protection that Section 5 had provided. *Id.* at 2631. New York’s elections officials became free to make changes to their election laws and procedures without first demonstrating to the DOJ or a Federal Court that those changes were not meant to, and would result in, denial or abridgement of the right to vote of minority voters.

5. In the less than three years that have passed since the Court decided *Shelby County*, voters in general, and minority voters in particular have not fared well in formally covered states and in New York. These burdens on the right to vote have fallen particularly hard on minority voters.

6. On April 19, 2016, various Boards of Election, including the Kings County Boards of Election, made national headlines, when, due to massive voter purges on or before the presidential primary election (“PPE”), it forced hundreds of thousands of voters off the voter rolls.

7. This action seeks declaratory and injunctive relief to redress the widespread and ongoing removal of eligible voters from the State of New York’s voter-registration roll or assigned incorrect party affiliations in violation of the National Voter Registration Act of 1993 (“NVRA”), 52 U.S.C.A. § 20501 *et seq.*, and the U.S.

Constitution's guarantee of Equal Protection, preserved by Section 1 of the Fourteenth Amendment. As a result, Plaintiffs, who are eligible New York voters, have been deprived of their right to vote, as have the hundreds of thousands of similarly situated voters who have complained to the several Boards of Elections regarding improper voter registration, party switches and purges. Hundreds of thousands of New Yorkers have been disenfranchised in the 2016 PPE held on April 19, 2016 and will continue to be shut out of the democratic process unless and until Defendants reform their registration practices. In Brooklyn alone, 125,000 Democrats have been inexplicably purged from voter rolls.

8. After finding that "discriminatory and unfair registration laws and procedures can have a direct and damaging effect on voter participation," and that state governments have a "duty" to promote voting and voter registration, Congress enacted the NVRA to "establish procedures that will increase the number of eligible citizens who register to vote in elections for Federal office" while "ensuring that accurate and current voter registration rolls are maintained." *Id.* 52 § 20501 (b)(1), (4).

9. Defendants, Kings County Boards of Election and New York City Boards of Election have engaged in a purposeful campaign to disenfranchise thousands of Black and Hispanic voters. Just weeks before the April 19, 2016 the Presidential Primary election, the Kings County Board of Elections mailed a confusing notice to 60,000 newly registered voters in Brooklyn indicating that the correct primary date was wrongly announced and that the primary was in fact in September. Polling locations in Atlantic Terminal in Fort Greene, Public School 232 in Brownsville, and the Cooper Houses in East Williamsburg failed to open polling places at 6 a.m as required under N.Y. Elec.

Law § 8-100(2). Furthermore, the Board of Elections had a policy to train staff to misinform voters of their rights. Upon information and belief, staff in the Boards of Election went as far as to forge a signatures of purged voters. All of these deliberate acts were perpetrated in a borough that was formally covered under the NVRA for its history of discriminatory practices against Black and Hispanic voters. As a result, plaintiffs seek a judgment that Defendants have violated plaintiffs' rights under the Equal Protection Clause of the Fourteenth Amendment.

10. Congress enacted the Help America Vote Act ("HAVA") which was primarily enacted to rectify the millions of ballots that went uncounted in the disastrous Florida presidential election of 2000. HAVA required states to create "failsafe" voting which allowed individuals to vote provisionally through affidavit ballots if that individuals name was not on the official rolls at the poll. *See* Report on Provisional Ballots and American Elections by Professor Daron Shaw University of Texas at Austin and Professor Vincent Hutchings University of Michigan for the Presidential Commission on Election Administration June 21, 2013.

11. New York Elec. Law § 8-303(2)(b) provides for so called "failsafe" provisional voting. However, New York Election Law does not provide for any due process if a voter's affidavit ballot is cast and then wrongfully rejected by a Board of Election. *See* N.Y. Elec. Law § 5-403 which prescribes the actions the Board of Elections is required to take. Under N.Y. Elec. Law § 5-403, the Board only needs to notify the voter that her vote will not be counted by first class mail with a short explanation as to why. Therefore, N.Y. Elec. Law § 8-303(2)(b) "failsafe" provision provides a remedy merely for clerical errors that can only be caught by under trained staff at the Board of

Elections. N.Y. Elec. Law § 8-303(2)(b) does nothing whatsoever to protect the voter in the case of a massive and illegal voter purge like New York experienced on the April 19, 2016 PPE. The bulk of this lawsuit is brought to ensure that the provisional ballots of wrongly purged voters will be counted with an opportunity for the voter to have due process in challenging an arbitrary decision of the Board of Elections.

12. This Court should find that New York arbitrarily and disparately disenfranchised voters at alarming rates through its provisional balloting process, in which the ballots of some voters are rejected because they were purged off the voting roles without proper authority. Effectively, this means the ability of New York citizens to have their vote counted in such circumstances depends entirely on whether they were lawfully purged from the voter rolls in accordance with the NVRA and New York Election Law. These arbitrary differences cause voter confusion, which is compounded by the fact that some of the voters have been deliberately fed misinformation.

13. Together, all of these policies and practices not only result in the arbitrary and differential treatment of New York voters but, moreover, they impose onerous burdens on New York voters, as they have the purpose and effect of burdening, abridging, and/or denying the right to vote of New York citizens, in violation of the Equal Protection Clause of the Fourteenth Amendment, Section 2 of the Voting Rights Act and the laws of the United States and New York State Election Law.

14. Since Courts are loath to second-guess election results, New York Election Law makes it virtually impossible to redress any constitutional violations that occurred during an election. *Bush v. Gore*, 531 U.S. 98 (2000). As such, Plaintiffs and hundreds of thousands of other voters similarly situated seek an Order that the Board of

Elections be permanently restrained from rejecting any provisional ballot under N.Y.

Elec. Law § 5-403. Plaintiff further request that this Court strike down as

unconstitutional N.Y. Elec. Law § 5-403 which deprives voters of their constitutional right to vote without benefit of due process.

15. Plaintiffs further seek a declaratory judgment, Pursuant to 28 U.S. Code § 2201, from this Court allowing plaintiffs to vote as regular eligible voters in the upcoming New York Federal and State primaries, which would safeguard the hundreds of thousands of New Yorkers' right to vote who have been inexplicably purged, and will provide much needed clarification to N.Y. Elec. Law § 8-303 (2) (b), one of the nation's most opaque and feckless laws.

16. While the current venue in the Eastern District remains proper under 28 U.S.C Code § 1391, and Plaintiffs are from Suffolk, Nassau, Queens, and New York City, Plaintiffs request that this matter be heard in the Court House located in Brooklyn since the majority of newly added plaintiffs were victims of the enormous voter purge in Kings County.

17. This case meets all the requirements of Rule 65 of the Federal Rules of Civil Procedure regarding injunctive relief: 1) Plaintiffs and other voters similarly situated will have been irreparably harmed if their right to have their vote counted is not restored since there will be no way to restore the opportunity to vote after the election results have been certified by New York State Department of State; 2) Plaintiffs are in imminent harm of losing their right to vote in upcoming Federal and State primaries. Nothing can protect their right to vote other than an order from this Court; 3) The injury that will be sustained is immeasurable and no monetary amount can redress the wrong

that awaits plaintiffs. 4) Hundreds of individuals have submitted affidavits in support of the fact that they have been erroneously purged from the voter rolls or the Board of Elections has failed to even enroll them. Furthermore, the Brooklyn Board of Elections has admitted to wrongfully purging 120,000 voters. City officials from the Comptroller's Office and the Mayor have admitted that the Board of Elections botched this election. Even the State of New York Attorney General, who attempts to defend this action, has admitted that this primary was a disaster. Plaintiffs will prevail in vindicating their rights if given their day in Court; 5) The balance of hardships if this relief is not granted falls squarely on the shoulders of the New York electorate and not the Boards of Elections. The Boards of Elections have all the relevant data and evidentiary material needed to definitively state why someone has failed to appear on the voter rolls and why it is rejecting a voter under N.Y. Elec. Law § 5-403. The Board of Elections has a statutory obligation under N.Y. Elec. Law § 6217.1(b) to maintain a master database of voters throughout the state and should be able to easily provide such records at a hearing; 6) A declaration of these plaintiffs' rights will serve to foster a belief in democracy and that in New York, unlike other states, we can perform an election properly.

PROCEDURAL HISTORY

18. This action was commenced by Order to Show Cause on April 18, 2016. Plaintiffs' emergency application was found to not be ripe to the extent that it sought a Declaratory Judgment as to these plaintiffs' right to vote as duly enrolled democrats in the April 19, 2016 Presidential Primary, and there was an adequate remedy at the time of the filing, *viz.*, a court order under N.Y. Elec. Law § 8-302(i). Nevertheless, the causes of action challenging, *inter alia*, Defendants' constitutional and state law violations were

not dismissed, and the New York State Board of Elections were required to Answer by April 29, 2016. Plaintiffs were further ordered to amend their complaint to include individual Boards of Election in counties throughout New York State since New York State Board of Elections denied having any authority over County Boards of Elections. Plaintiffs have now further amended their complaint to incorporate new Plaintiffs and clarified its causes of action. On April 26, 2016, the New York State Board of Elections filed a Motion extending its time to answer.

JURISDICTION AND VENUE

19. This Court's jurisdiction over Plaintiffs' claims is predicated on 28 U.S.C. 1331, 1343(a)(3) and 42 U.S.C. §§ 1983 and 1988. This Court has Jurisdiction to grant declaratory relief pursuant to 28 U.S.C. 2201 and 2202.

20. This Court has personal jurisdiction over Defendants, all of whom are sued in their official capacities and are either government entities, elected, or appointed officials in New York State. All Defendants work or reside in the State of New York.

21. Venue in this District is proper under 28 U.S.C. § 1391 (b) because a substantial part of the events or omissions giving rise to the claim occurred in this judicial district and in this division.

PARTIES

22. Plaintiff Leonard Joseph Campanello is a United States Citizen, DOB 08/16/1991, registered to vote in Suffolk County, New York. He registered to vote for the first time as a Democrat in 2009. On 3/15/2016, he discovered that his party affiliation had been switched to Republican without his knowledge or consent. Through a phone conversation with the Suffolk County Board of Elections, Leonard was notified that a

signed paper form had been filed, in person, to alter his party affiliation. On this call, the Suffolk Board of Elections representative confirmed Leonard's original 2009 registration as Democrat, and electronically forwarded the "change of party affiliation" form, which indeed bore his signature. However, Leonard has provided evidence showing that the signature appearing on that form was an identical, pixel-by-pixel copy of the electronic signature appearing on his driver's license in 2007, which had been electronically transferred to the "change of party affiliation" form. Attached and annexed hereto as "Exhibit A."

23. Plaintiff Fabrizio Milito is a United States Citizen, DOB 2/9/1991, registered to vote in Nassau County, New York. Fabrizio registered to vote for the first time as a Democrat in 2009. On 3/31/2016, he discovered that his party affiliation had been switched to independent (no party affiliation) without his knowledge or consent. Fabrizio has provided evidence confirming that he was indeed registered to vote as a Democrat in 2009. *See* "Exhibit B" in the complaint filed on April 18, 2016.

24. Plaintiff Chandler Wilson is a United States Citizen, DOB 7/5/2014, registered to vote in New York County, New York. Chandler registered to vote for the first time as a Democrat on 5/15/2000. On 4/1/2016, he discovered that his party affiliation had been switched to independent (no party affiliation) without his knowledge or consent. Chandler has provided evidence in the form of his voter ID card. *See* "Exhibit C" in the complaint filed on April 18, 2016.

25. Plaintiff Alexandra K. Clark is a United States Citizen, DOB 3/14/1964, registered to vote in Suffolk County, New York. Alexandra switched her party affiliation to Democrat on 10/09/2015. On 3/15/2016, she discovered that her party affiliation had

not been updated. Alexandra was informed by a supervisor at the Suffolk County Board of Elections that her change of party affiliation request was not received in time.

Alexandra has provided electronic evidence documenting that her party affiliation change was indeed made online on October 9th, 2015. *See* “Exhibit D” in the complaint filed on April 18, 2016.

26. Plaintiff David Morrison, Sr., is a United States Citizen and disabled veteran, DOB 9/12/1956, registered to vote in New York County, New York. David changed his party affiliation to Democrat on 10/8/2015 and received verbal confirmation from a Board of Elections employee on the same date. On 03/27/2016, David discovered that his registration status had either not been updated, or had been switched back to independent (no party affiliation). David has provided evidence documenting his communications with the Board of Elections, his change of party affiliation to Democrat, and his current status as an independent (no party affiliation). *See* “Exhibit E” in the complaint filed on April 18, 2016.

27. Plaintiff Ashley Peacock is a United States Citizen, DOB 5/25/1985, registered to vote in Queens County, New York. Ashley registered to vote for the first time as a Democrat on 3/23/2016. On 4/13/2016 she discovered that her voter registration had been purged or was never processed. She has contacted the NY State Board of Elections Division of Election Law, but has received no update *See* “Exhibit F” in the complaint filed on April 18, 2016.

28. Plaintiff Steven Richter is a United States Citizen, DOB 9/23/1977, registered to vote in Rockland County, New York. On 9/20/2015, Steven changed his party affiliation to Democrat. He has provided evidence documenting his entry to the

Democratic Party that day. On 4/14/2016, Steven discovered that his party affiliation had been changed, without his knowledge or consent, to independent (no party affiliation). *See* “Exhibit G” in the complaint filed on April 18, 2016.

29. Plaintiff Emily Braunstein is a United States Citizen, DOB 7/5/1985, registered to vote in Kings County, New York. Emily changed her party affiliation to Democrat in 2012. On 4/7/2016, she discovered that her party affiliation had been changed, without her knowledge or consent, to independent (no party affiliation). *See* “Exhibit H” in the complaint filed on April 18, 2016.

30. Plaintiff Christopher Britten is a United States Citizen, DOB 11/22/1988, registered to vote in Rensselaer County, New York. On 3/17/2016, Christopher registered to vote for the first time as a Democrat electronically, and received e-mail confirmation of his registration. On 4/14/2016, he discovered that his voter registration had been purged. *See* “Exhibit I” in the complaint filed on April 18, 2016.

31. Plaintiff Lisa Kanbar is a United States Citizen, DOB 9/9/1971, registered to vote in Kings County, New York. On 8/5/2015, Lisa electronically registered to vote for the first time as a Democrat, and received e-mail confirmation. On 4/14/2016, Lisa discovered that her party affiliation had been changed to a different party, without her knowledge or consent. *See* “Exhibit J” in the complaint filed on April 18, 2016.

32. Plaintiff Lisa Beattie is a United States Citizen, DOB 10/30/1967, registered to vote in Onondaga County, New York. Lisa registered to vote for the first time as a Democrat on 9/1/1989. On 4/11/2016, she discovered that her voter registration had been purged. The Onondaga County Board of Elections informed her that this was due to clerical error, but that she would nevertheless be unable to vote normally on

Tuesday, April 19th, 2016. *See* “Exhibit K” in the complaint filed on April 18, 2016.

33. Plaintiff Michelle Olmo Garcia is a United States Citizen, DOB 10/18/1985. Michelle registered to vote for the first time as a Democrat on 4/10/2008. On 4/13/2016 she discovered that her voter registration had been purged. *See* “Exhibit L” in the complaint filed on April 18, 2016.

34. Plaintiff Edgar Marty is a United States Citizen, DOB 1/24/1979, registered to vote in Queens County, New York. Edgar filed paperwork to change his party affiliation to Democrat on October 1st, 2015. On April 14th, 2016, he discovered that his party affiliation had not been changed to Democrat in accordance with the paperwork he filed before the deadline. *See* “Exhibit M” in the complaint filed on April 18, 2016.

35. Plaintiff Rebecca Peebles is a United States Citizen, DOB 2/5/1975, registered to vote in Queens County, New York. Rebecca registered to vote for the first time as a Democrat on 04/14/2003. On 03/24/2016, she discovered that her party affiliation had been changed to independent (no party affiliation) without her knowledge or consent. *See* “Exhibit N” in the complaint filed on April 18, 2016.

36. Election Justice USA is a national organization advancing election integrity, transparency, and the protection of voting rights for all Americans. Although not a named Plaintiff, Election Justice USA has provided unsworn affidavits of over two-hundred (200) disenfranchised/purged voters who will not be able to vote in the upcoming primary:

- a. *See* “Exhibit O” in the complaint filed on April 18, 2016, is a class of voters that Registered as a Democrat for the first time and or registered before the year 2015 and or were not registered.
- b. *See* “Exhibit P” in the complaint filed on April 18, 2016, is a class of voters who Registered as Democrat for the first time and or registered before 2015 and were put in wrong party affiliation or Independent.
- c. *See* “Exhibit Q” in the complaint filed on April 18, 2016, is a class of voters who registered as democrat for the first time and or were a new voter this election cycle and were not registered.
- d. *See* “Exhibit R” in the complaint filed on April 18, 2016, is a class of voters who registered as Democrat for the first time and or were a new voter this election cycle and were put into wrong party affiliation or independent.
- e. *See* “Exhibit S” in the complaint filed on April 18, 2016, is a class of voters who registered as democrat for the first time and or were a new voter this election cycle and were switched into wrong party affiliation or random party.
- f. *See* “Exhibit T” in the complaint filed on April 18, 2016, is a class of voters who tried to change their registration to democrat or tried to change before 2015 and were put into wrong party affiliation or registered independent.

- g. *See* “Exhibit U” in the complaint filed on April 18, 2016, is a class of voters who tried to change their registration to democrat before 2015 and were switched to wrong party affiliation and or random party.
- h. *See* “Exhibit V” in the complaint filed on April 18, 2016, is a class of voters who tried to change to change their registration to democrat before October 19, 2014 or were newly registered and were changed to wrong affiliation or random
- i. *See* “Exhibit W” in the complaint filed on April 18, 2016, is a class of voters who tried to change their registration to democrat before October 19, 2014 and were newly registered and were in not registered.
- j. *See* “Exhibit X” in the complaint filed on April 18, 2016, is a class of voters who tried to change their registration to democrat before 2015 and were switched to wrong party affiliation or independent.
- k. *See* “Exhibit A” of this complaint for the affidavits of the purged voters from Kings County.
- l. *See* “Exhibit B” of this complaint for the affidavits of the purged voters from Queens County.
- m. *See* “Exhibit C” of this complaint for the affidavits of the purged voters from New York County.
- n. *See* “Exhibit D” of this complaint for the affidavits of the purged voters from Nassau County.
- o. *See* “Exhibit E” of this complaint for the affidavits of the purged voters from Suffolk County.

- p. *See* “Exhibit F” of this complaint for the affidavits of individuals from as of non-party Counties.
- q. *See* “Exhibit G” of this complaint which is a Court Order allowing certain individuals to vote.
- r. *See* “Exhibit H” of this complaint for the affidavits of Poll Watchers.
- s. *See* “Exhibit I” of this complaint for the affidavits of members of non-party ElectionJusticeUSA.

Newly added Plaintiffs to this Amended Complaint

37. Plaintiff Chloe Pecorino is a United States Citizen, DOB 2/2/1991, registered to vote in Kings County, New York. Chloe registered to vote for the first time as a Democrat on 3/5/2016. On 3/20/2016 she discovered that she was no longer registered or had never been registered to vote. She made a number of documented follow-up attempts with the Brooklyn Board of Elections, but was ultimately denied a court order to vote on the day of the election. Chloe has provided several points of evidence in support of her story.

38. Plaintiff Angelika Nyzio is a United States Citizen, DOB 2/24/1981, registered to vote in Kings County, New York. Angelika registered to vote for the first time on 2/24/2004. Following reports of voter registration issues in the Arizona primaries, Angelika checked her voter registration online on 4/1/2016 and found that she was correctly registered as a Democrat. She checked again on 4/6/2016 and found that she had been switched to independent (no party preference) without her knowledge or consent. She has provided evidence supporting her claims.

39. Plaintiff John Shaw is a United States Citizen, DOB 9/6/1987, registered to vote in Kings County, New York. On 8/1/2012 John registered to vote in New York for the first time as a Democrat. On or around April 1st, John checked his voter registration status online and found that he was correctly registered as an active Democrat. On 4/19/2016, he was forced to vote using a provisional ballot because he could not be found on the poll books at his polling location. That same day, he checked his registration status online again and found that his party affiliation had been switched to independent (no party affiliation) without his knowledge or consent. John has provided evidence in support of his claims.

40. Plaintiff Jeremy Moss is a United States Citizen, DOB 3/4/1970, registered to vote in Kings County, New York. Jeremy changed his party affiliation to Democrat on 8/1/2015. On 4/18/2016, Jeremy discovered that his party affiliation had been changed to independent (no party affiliation) without his knowledge or consent. Jeremy has provided clear evidence from the New York Board of Elections, dated 3/1/2016, showing that he was indeed registered as an active Democratic voter on that date. Jeremy has also provided additional evidence showing that his registration was changed without his knowledge or consent after 3/1/2016.

41. Plaintiff David Morrison, Sr., is a United States Citizen and disabled veteran, DOB 9/12/1956, registered to vote in New York County, New York. David changed his party affiliation to Democrat on 10/8/2015 and received verbal confirmation from a Board of Elections employee on the same date. On 03/27/2016, David discovered that his registration status had either not been updated, or had been switched back to independent (no party affiliation). David has provided evidence documenting his

communications with the Board of Elections, his change of party affiliation to Democrat, and his current status as an independent (no party affiliation).

42. Plaintiff Dylan LaPorte is a United States Citizen, DOB 1/26/1994, registered to vote in Rensselaer County, New York. On 3/17/2016, Dylan registered to vote in New York for the first time as a Democrat. He received a confirmation email from noreply@dmv.ny.gov with the Confirmation Number: 85B74993. On 4/18/2016, he discovered that he was not registered to vote. He was told by Board of Elections staff that no record of his registration existed. He was then asked to report to his town hall to file additional paperwork, but a schedule conflict prevented him from doing so. He was unable to vote on 4/19/2016.

43. Plaintiff Gianni Baidal is a United States Citizen, DOB 1/19/1987, registered to vote in New York County, New York. Gianni registered to vote for the first time in New York as a Democrat on 1/1/2013. Gianni checked his registration status on 3/25/2016 and found that he was still properly registered as a Democrat. However, on Primary Day, 4/19/2016, Gianni checked again and found that he had been switched to independent (no party affiliation), and was forced to use a provisional ballot.

44. Plaintiff Kevin Decatrel is a United States Citizen, DOB 11/30/1980, registered to vote in New York County, New York, as a Democrat. In 2008, he filed to change his party affiliation to Democrat and successfully voted in the 2008 presidential primaries. On 4/18/2016, he discovered that his party affiliation had been changed to independent (no party affiliation) without his knowledge or consent. Kevin has provided evidence of his Democratic registration and voter activity, indicating that he has not missed a federal election since changing his party affiliation.

45. Plaintiff Aaron Jacobs is a United States Citizen, DOB 4/30/1984, registered to vote in Westchester County, New York. Aaron changed his party affiliation to Democrat on 08/23/2015. When he attempted to vote in the presidential primary, he was not found in the poll books at his polling location. He was forced to vote using a provisional ballot. He has provided evidence of his change of party affiliation to Democrat.

46. Plaintiff Rita DeRose is a United States Citizen, DOB 3/13/1949, registered to vote in Nassau County, New York. On 9/9/2015, Rita filed to change her party affiliation to Democrat. On 4/19/2016, despite being registered as an active Democrat, Rita's name was not found on the poll books at her polling location. She was forced to vote using a provisional ballot. Rita has provided evidence of her active Democratic voter registration, dated 3/20/2016.

47. Plaintiff Fabrizio Milito is a United States Citizen, DOB 2/9/1991, registered to vote in Nassau County, New York. Fabrizio registered to vote for the first time as a Democrat in 2009. On 3/31/2016, he discovered that his party affiliation had been switched to independent (no party affiliation) without his knowledge or consent. Fabrizio has provided evidence confirming that he was indeed registered to vote as a Democrat in 2009.

48. Plaintiff Ashley Peacock is a United States Citizen, DOB 5/25/1985, registered to vote in Queens County, New York. Ashley registered to vote for the first time as a Democrat on 3/23/2016. On 4/13/2016 she discovered that her voter registration had been purged or was never processed. She has contacted the NY State Board of Elections Division of Election Law, but has received no update.

49. Plaintiff Steven Richter is a United States Citizen, DOB 9/23/1977, registered to vote in Rockland County, New York. On 9/20/2015, Steven changed his party affiliation to Democrat. He has provided evidence documenting his entry to the Democratic Party that day. On 4/14/2016, Steven discovered that his party affiliation had been changed, without his knowledge or consent, to independent (no party affiliation).

50. Plaintiff Chandler Wilson is a United States Citizen, DOB 7/5/2014, registered to vote in New York County, New York. Chandler registered to vote for the first time as a Democrat on 5/15/2000. On 4/1/2016, he discovered that his party affiliation had been switched to independent (no party affiliation) without his knowledge or consent. Chandler has provided evidence in the form of his voter ID card.

51. Plaintiff Lauren Griska is a United States Citizen, DOB 1/24/1987, registered to vote in Queens County, New York. Lauren changed her party affiliation to Democrat online on 9/25/2015. On 3/25/2016, she discovered that she had been switched to independent (no party affiliation) without her knowledge or consent, or was never changed as requested. She has provided evidence in the form of an e-mail from the BoE confirming her change of party affiliation before the 2015 deadline.

52. Plaintiff Christopher Britten is a United States Citizen, DOB 11/22/1988, registered to vote in Rensselaer County, New York. On 3/17/2016, Christopher registered to vote for the first time as a Democrat electronically, and received e-mail confirmation of his registration. On 4/14/2016, he discovered that his voter registration had been purged.

53. Plaintiff Alexandra K. Clark is a United States Citizen, DOB 3/14/1964, registered to vote in Suffolk County, New York. Alexandra switched her party affiliation

to Democrat on 10/09/2015. On 3/15/2016, she discovered that her party affiliation had not been updated. Alexandra was informed by a supervisor at the Suffolk County Board of Elections that her change of party affiliation request was not received in time.

Alexandra has provided electronic evidence documenting that her party affiliation change was indeed made online on October 9th, 2015.

54. Plaintiff John Asbury is a United States Citizen, DOB 9/24/1966, registered to vote in Kings County, New York. On 7/17/2001, John registered to vote for the first time in New York as a Democrat. On 4/18/2016, he discovered that his party affiliation had been changed to independent (no party affiliation) without his knowledge or consent, and without notification. John has provided evidence that he was previously registered as an active Democrat.

55. Plaintiff Emily Braunstein is a United States Citizen, DOB 7/5/1985, registered to vote in Kings County, New York. Emily changed her party affiliation to Democrat in 2012. On 4/7/2016, she discovered that her party affiliation had been changed, without her knowledge or consent, to independent (no party affiliation).

56. Plaintiff Lisa Kanbar is a United States Citizen, DOB 9/9/1971, registered to vote in Kings County, New York. On 8/5/2015, Lisa electronically registered to vote for the first time as a Democrat, and received e-mail confirmation. On 4/14/2016, Lisa discovered that her party affiliation had been changed to a different party, without her knowledge or consent.

57. Plaintiff Lisa Beattie is a United States Citizen, DOB 10/30/1967, registered to vote in Onondaga County, New York. Lisa registered to vote for the first time as a Democrat on 9/1/1989. On 4/11/2016, she discovered that her voter registration

had been purged. The Onondaga County Board of Elections informed her that this was due to clerical error, but that she would nevertheless be unable to vote normally on Tuesday, April 19th, 2016.

58. Plaintiff Edgar Marty is a United States Citizen, DOB 1/24/1979, registered to vote in Queens County, New York. Edgar filed paperwork to change his party affiliation to Democrat on October 1st, 2015. On April 14th, 2016, he discovered that his party affiliation had not been changed to Democrat in accordance with the paperwork he filed before the deadline.

59. Plaintiff Rebecca Peebles is a United States Citizen, DOB 2/5/1975, registered to vote in Queens County, New York. Rebecca registered to vote for the first time as a Democrat on 04/14/2003. On 03/24/2016, she discovered that her party affiliation had been changed to independent (no party affiliation) without her knowledge or consent.

60. Plaintiff Daniel Cocozzelli is a United States Citizen, DOB 9/15/1986, registered to vote in Monroe County, New York. Daniel registered to vote as a Democrat on 08/1/2014. On 3/1/2016, he discovered that his party affiliation had been changed to independent (no party affiliation) without his knowledge or consent.

61. Plaintiff Jasmine Smith is a United States Citizen, DOB 5/11/1986, registered to vote in New York County, New York. Jasmine registered to vote as a Democrat in 2008. On 3/23/2016, she discovered that her party affiliation had been switched to another party, without her knowledge or consent.

62. Plaintiff Julia Campeau is a United States Citizen, DOB 4/28/1992, registered to vote in Suffolk County, New York. Julia registered to vote as a Democrat on

11/02/2010. On 04/19/2016, she discovered that she had been switched to independent (no party affiliation) without her knowledge or consent.

63. Plaintiff Yin Jun Zhong is a United States Citizen, DOB 8/4/1946, registered to vote in New York County, New York. On 3/21/2016, she registered to vote, as a Democrat, for the first time. On 4/19/2016 she discovered that she had been switched to independent (no party preference) without her knowledge or consent.

64. Plaintiff Stevie Knight is a United States Citizen, DOB 11/22/1989, registered to vote in Jefferson County, New York. On 11/1/2016, Stevie registered to vote for the first time as a Democrat. Within months of the primary election, Stevie checked his/her voter registration and confirmed that it was in order. On the date of the presidential primary, 4/19/2016, Stevie discovered that he/she had been switched to independent (no party affiliation) without his/her knowledge or consent.

65. Plaintiff Judith Campise is a United States Citizen, DOB 3/30/1952, registered to vote in Nassau County, New York. Judith registered as a Democrat in 1972 and has never missed an election. On 4/19/2016, she was not found on the poll books at her usual polling location. She was not allowed to vote, and no record of her registration was found. She was forced to vote using a provisional ballot. Elections Coordinator Isabelle Vitucci later informed Plaintiff Campise that this was due to clerical error.

66. Plaintiff Antonella Coscarelli is a United States Citizen, DOB 6/30/1993, registered to vote in Nassau County, New York. Antonella registered as a Democrat during the 2012 campaign cycle. On 4/19/2016, Antonella found that her party affiliation had been changed to independent (no party affiliation) without her knowledge or consent. Antonella was turned away by poll workers and was not allowed to vote.

67. Plaintiff Elias Frank is a United States Citizen, DOB 8/10/1993, registered to vote in Dutchess County, New York. Elias registered to vote in New York as a Democrat on 3/10/2016. On 4/19/2016, Elias discovered that his voter registration had been moved to another county without his knowledge or consent. He was not allowed to vote on 4/19/2016.

68. Plaintiff Zachary Kolodin is a United States Citizen, DOB 10/4/1984, registered to vote in Kings County, New York. Zachary verified his New York voter registration, party affiliation Democrat, on 2/27/2016. On 4/19/2016, he was nonetheless forced to use a provisional ballot in order to vote.

69. Plaintiff Jason Zhu is a United States Citizen, DOB 9/27/1986, registered to vote in Kings County, New York. Jason registered to vote for the first time in New York as a Democrat in 2008. On 4/18/16, he discovered that his party affiliation had been changed to independent (no party affiliation) without his knowledge or consent. He was turned away by poll workers on 4/19/16 and wasn't allowed to vote.

70. Plaintiff Merav Elbaz Belschner is a United States Citizen, DOB 6/10/1977, registered to vote in Kings County, New York. Merav registered to vote for the first time in New York as a Democrat on 3/1/2012. On 3/23/2016 she discovered that that her party affiliation had been switched to a different party without her knowledge or consent. She pursued the matter with the Board of Elections and was told that she could vote as a Democrat in the primary. However, on 4/19/2016 she was not found in the poll books at her polling location and was forced to use a provisional ballot.

71. Plaintiff Julia Latham is a United States Citizen, DOB 5/12/1995, registered to vote in Suffolk County, New York. Julia registered to vote in New York for

the first time as a Democrat on 10/20/2015. She received a letter confirming her registration, and voted in a local election in November 2015. When she requested an absentee ballot before the relevant deadline, her request was denied and she was told that she was a “deleted voter.” She called the Yaphank Board of Elections office for Suffolk County twice, and was told if she submitted an absentee ballot application with a voter registration application, both could be processed and accepted. However, this second absentee ballot application was denied, and the letter was not sent to the correct address (provided on the application).

72. Plaintiff Rebeckah Slatko is a United States Citizen, DOB 2/2/1983, registered to vote in Queens County, New York. Rebeckah registered to vote for the first time in New York as a Democrat on 4/20/2001. She moved and updated her voter registration in February of 2015. Her registration status is now listed as “inactive,” and she was forced to vote using a provisional ballot at the polls on 4/19/16.

73. Plaintiff Raymond A. Barclay, Jr., is a United States Citizen, DOB 8/7/1967, registered to vote in Erie County, New York, as a Democrat. On 8/7/2012, Raymond filed a change of address form with the DMV. On 4/19/2016 he was not found in the poll books at his polling location, and was forced to vote using a provisional ballot. The same day, he discovered that he was no longer registered to vote. He has voted at the same polling location in the past with no problems.

DISENFRANCHISED HISPANIC VOTERS

74. Plaintiff Arleen Ayala is a United States Citizen, DOB 9/21/1964, registered to vote in Kings County, New York. Arleen registered to vote for the first time in New York as a Democrat in 1999. She filed an updated voter registration form in

November of 2013. On 4/14/2016, she discovered that her party affiliation had been switched to independent (no party affiliation) without her knowledge or consent. On 4/19/2016 she was forced to vote using a provisional ballot.

75. Plaintiff Jiana Menendez is a United States Citizen, DOB 5/24/1988, registered to vote in New York County, New York. On 9/20/2015, she changed her party affiliation to Democrat. On 4/19/16 she did not appear in the poll books at her polling location. She then discovered, checking online, that her party affiliation had been switched to independent (no party affiliation) without her knowledge or consent. She was forced to vote using a provisional ballot.

76. Plaintiff Michelle Olmo Garcia is a United States Citizen, DOB 10/18/1985, registered to vote in Bronx County, New York. Michelle registered to vote for the first time as a Democrat on 4/10/2008. On 4/13/2016 she discovered that her voter registration had been completely purged.

WITNESSES

77. Witness Alba Guerrero is United States Citizen, DOB 2/11/1982, registered to vote in Queens County, New York. On 11/8/2008, she registered to vote for the first time in New York as a Democrat. On 4/19/2016, she discovered that her registration had been switched to Republican. A BoE official showed her the paper form submitted to change her party affiliation: it included an inaccurate, forged signature and had been back-dated to 2004, four years prior to her initial voter registration. She was able to secure a court order allowing her to vote in the as a Democrat. She has provided hard evidence of the registration tampering and signature forgery.

78. Witness Yair Zameret is a United States Citizen, registered to vote in Suffolk County, New York. In September of 2015, Yair filed to change her party affiliation to Democrat. In October of 2015, she received a voter registration card confirming her Democratic party affiliation. On 4/7/2016, Yair discovered that her party affiliation had been changed to independent (no party affiliation) without her knowledge or consent. She later received a letter from Suffolk County Board of Elections stating that she had missed the registration deadline. Yair has provided evidence of her registration as a Democrat. After pleading with pollworkers and providing her voting card, she was allowed to vote normally.

79. Witness Karen Vitale is a United States Citizen, DOB 10/24/1969, registered to vote in Monroe County, New York. On 8/14/2015, Karen changed her party affiliation to Democrat and received a confirmation e-mail from the DMV. However, her party affiliation was changed to the Working Families Party instead. On 9/4/2015 she then attempted to file a second change of affiliation request. Later, she received notice that she had changed her party affiliation on or around 11/10/2015, after the deadline to do so. On 4/19/2016 she managed to vote successfully.

80. Witness Kyle Wilson is a United States Citizen, DOB 12/10/1980, registered to vote in Kings County, New York. On 10/8/2012, Kyle registered to vote in New York for the first time as a Democrat. On 4/19/2016, Kyle was initially unable to vote due to being marked as "inactive" without his knowledge. Kyle then obtained a court order which allowed him to vote normally. Kyle has provided evidence of having registered as a Democrat in 2012.

81. Witness Diana Qureshi, is a registered Democrat voting in the County of Suffolk, New York. She registered at 11:14 PM on October 9, 2015 at the DMV website of the State of New York (Confirmation # 97D1FF28). On April 7, 2016, however, she was notified by letter from Suffolk County BOE that she missed the affiliation switch deadline by 4 days so she would not be able to vote in the Primary elections. When Diana went to the polls on voting day and found that her name was not on the books, she was encouraged to file an affidavit ballot. Because she wanted to assert her right to vote as a Democrat, her husband drove them to the Central Islip Court House and Diana who's pregnant, waited uncomfortably and hungry, for three and a half hours to see a judge. She finally received a court order (Reg # 10282490) after showing her DMV confirmation email and voted after half a day, before having to return to work.

WITNESSES: POLL WORKERS

82. Witness Francesca Rheannon, who is an election official in East Hampton, NY, is registered to vote as a Democrat in Suffolk County, NY. She was a poll worker for Election District 17 at Springs Firehouse on Fort Pond Road, which also housed other ED polling stations (#9, #15, and another) on April 19, 2016. This was her second election and her conclusion that the events of the day were not business as usual was shared by the poll workers of three other ED's. Workers from all ED's reported seeing an unusually high number of—disproportionately Democratic—voters whose names were dropped from the voting rolls. In Francesca's ED17, 42 voters were forced to file affidavit ballots compared to 166 who voted normally, totaling 25% of the District. Of the affidavits, 39 were Democrats (2 were spoiled) and 3 were Republicans (1 was spoiled). In the prior election Francesca worked, only 1 voter had been forced to vote by affidavit. ED17's

Republican poll worker reported that he'd never had to force voters to affidavit ballots in previous elections. Numerous long-term Democrats shared this fate, including couples split with one whose name was on the voting rolls, and the other's not. Francesca spoke with workers of all four ED's that shared the firehouse and all of them reported seeing nothing remotely comparable in their years of election working. For voters for whom the only remaining option was seeking a court order to vote, the process was difficult if only because the nearest judge was more than an hour of travel distant. But Francesca's job of informing voters of the court order option was also strongly discouraged and then disputed by her polling place coordinator who angrily declaimed the validity of official documentation on contacting a judge Francesca found in ED17's election supplies box. The coordinator at first denied she'd been given the document in her own supplies until a second very experienced worker from a different ED also showed their receipt of the identical document. The coordinator escalated the dispute in a call to the East Hampton BOE who, accompanied by a police officer, informed Francesca that her job was not to give voters the extra information she offered each verbally – that voters could file an affidavit ballot or get a judge's court order to vote – but simply to leave the document on the poll worker table. In response, she maintained that it was her legal duty to refer voters to the paper and inform them of their choice and of the Riverhead location of the nearest judge. The East Hampton BOE official called the Suffolk BOE before telling her that she could only refer voters to a more distant judge, in Yaphank. Francesca subsequently called Suffolk BOE, herself, and was told that she should refer voters to the official document and inform them to choose either an affidavit or a judge's order.

83. Witness Frances Marilyn Perez, who was a poll worker on April 19, 2016, is registered to vote as a Democrat in the County of New York. She worked at Administrative District 66, Election District 63, Public School 41, on West 11th Street in New York. She completed 50 paper affidavit ballots for voters, only 2 of whom were Republicans. The majority were registered voters whose names were not found in the voter rolls, and many voters found they were unable to vote where their families also voted, despite having participated in the previous elections. Frances was informed by several disgruntled voters that redistricting had recently been done in the election districts associated with Washington Place and these voters were turned away from what was their polling site because they'd not been made aware of the change. She believes these facts and anecdotes underscore the need for injunction and that the affidavits must be audited.

84. Witness Jonathan B. Reichel, who was a poll worker on April 19, 2016, is registered to vote as a Democrat in the County of New York. In poll worker training on April 4, 2016, he was informed that each polling site required a worker representing each of the major parties (Democratic and Republican) and, if no Republican worker was available, to have a Democrat stand in place. Jonathan was concerned that he was improperly instructed to be the Democratic stand-in for the Republican worker position on Primary Election Day. Jonathan's concern extended to the fact that despite ballot instructions for voters to "choose any six delegates," voters received any one of three different interpretations by poll workers: 1) Select exactly one delegate, 2) Choose exactly six delegates, and 3) his advice on a call to the BOE was voters should select "up to six" delegates. The confusion is obvious but not confined to choosing delegates. Several voters believing they were active registered Democrats or Republicans found

their names absent from the pollbook of the expected assembly or election district location. In such cases, poll workers were generally highly confident in the affidavit ballot and instructed voters to use affidavits with the assurance that they'd be counted as normal scanned ballots. Jonathan advised voters to first check their registration status online via smartphone but the registration database worked only intermittently. However, when functioning, voters reported a variety of observations including they were: not enrolled in a party; inactive Democrats; not found in system; registered in wrong party; registered in a different district (and polling location); and correctly registered as active Democrat voting at the correct polling site but absent from all books at the polling site. In one case, a couple found that one partner was listed in the book, the other was not. In other cases, voters found that they were at the wrong polling site and, despite poll worker's general confidence in affidavits, Jonathan's policy led to an altercation because he instructed the voter to leave and go to their polling place down the street. The opposing poll working was adamant that the voter, instead, should use an affidavit and not lose their chance to vote. Jonathan was repeatedly called to defend advising voters to this option that was instructed during poll worker training and found in the poll worker manual. Confusion was rampant even when consulting BOE for answers as he discovered when inquiring about what "inactive" meant. The BOE employee responded with a question, instead, asking him whether voting by affidavit would restore "Active" status. The same employee couldn't assure Jonathan that all affidavit ballots would be counted, advising him to tell the voter to submit an affidavit and then a new registration form, just in case. Whether he could inform voters about the right to vote by court order was also unclear but by poll closing, only one woman had chosen that option. She'd registered

when her boyfriend did, but only he was properly found in the book. She left to seek a court order on 125th Street but was denied admittance to the judge after being told she'd wasted her time and she should have voted by affidavit in the first place at Jonathan's polling site. Finally, despite all of the living voters who'd been removed from the voting rolls, Jonathan told of the elderly woman who identified the name of her husband on the book who had died on September 19, 2013. He's very concerned by the common confusion and substantial number of voters who were forced to vote by affidavit ballot rather than scanned ballot and whose vote may not be counted despite the directions of official election workers.

85. Witness Wendy Bridges was a poll watcher on April 19, 2016 and is registered as a Democrat who votes in Clinton County, New York. Wendy watched polls at Saint Alexander Parish in Morrisonville, New York. She witnessed several self-affirmed registered voters state that they were dropped off of the voting rolls. Many voters found it difficult to obtain affidavit ballots while the polling supervisor provided inconsistent information about affidavits to different voters. Some were told that New York does not have affidavit ballots, while others were told there was nothing they could do and were given voter registration cards.

86. Defendant, New York State Board of Elections has "jurisdiction of, and [is] responsible for, the execution and enforcement of...statutes governing campaigns, elections and related procedures." N.Y. Elec. Law 3-104(1). The New York State Board of Elections acts pursuant to and under color of state law to ensure that local board of elections across the state comply with and implement the election laws of the State of New York in accordance with the NVRA.

87. Defendant Anthony J. Spano is a Commissioner of the State Board of Elections, which has “jurisdiction of, and [is] responsible for, the execution and enforcement of....statutes governing campaigns, elections and related procedures.” Defendant Gregory P. Peterson is a Commissioner of the State Board of Elections, which has “jurisdiction of, and [is] responsible for, the execution and enforcement of....statutes governing campaigns, elections and related procedures.”

88. Defendant Douglas A. Kellner is a Co-Chair of the State Board of Elections, which has “jurisdiction of, and [is] responsible for, the execution and enforcement of....statutes governing campaigns, elections and related procedures.”

89. Defendant Peter S. Kosinski is a Co-Chair of the State Board of Elections, which has “jurisdiction of, and [is] responsible for, the execution and enforcement of....statutes governing campaigns, elections and related procedures.” Defendant Todd D. Valentine is a Co-Executive Director of the State Board of Elections, which has “jurisdiction of, and [is] responsible for, the execution and enforcement of....statutes governing campaigns, elections and related procedures.”

90. Defendant Robert A. Brehm is a Co-Executive Director of the State Board of Elections, which has “jurisdiction of, and [is] responsible for, the execution and enforcement of....statutes governing campaigns, elections and related procedures.”

91. Defendants, Commissioners of the New York State Board of Elections are being sued in their official capacities as defendants in their own right, and as representative parties on behalf of all commissioners of county board of elections in New York State. The class of commissioners of county Board of Elections are so numerous that joinder of all members is impracticable, there are questions of law and fact common

to the class, the defenses of the counties Board of Elections are typical of the defenses of the class, and the New York State Board of Elections will fairly and adequately protect the interests of the class.

92. Defendant Board of Elections in the City of New York is responsible for overseeing the Boards of Election in New York City's five boroughs. N.Y. Elec. Law 3-200(1).

93. Defendant Michael Ryan is the Executive Director of Defendant Board of Elections in the City of New York.

94. Defendant Kings County Board of Elections is a governmental agency charged with maintaining the voter rolls in the County of Kings.

95. Defendant John Flateau is the Democratic Commissioner of the Kings County Board of Elections.

96. Defendant Simon Shamoun is the Republican Commissioner of the Kings County Board of Elections.

97. Defendant Diane Haslett- Rudiano is the Chief Clerk of the Kings County Board of Elections.

98. Defendant Betty Ann Canizio is the Deputy Chief Clerk of the Kings County Board of Elections.

99. Defendant, Queens Board of Elections has "jurisdiction of, and [is] responsible for, the execution and enforcement of...statutes governing campaigns, elections and related procedures." N.Y. Elec. Law 3-104(1).

100. Defendant, New York City Board of Elections has “jurisdiction of, and [is] responsible for, the execution and enforcement of...statutes governing campaigns, elections and related procedures.” N.Y. Elec. Law 3-104(1).

101. Defendant, Bronx County Board of Elections has “jurisdiction of, and [is] responsible for, the execution and enforcement of...statutes governing campaigns, elections and related procedures.” N.Y. Elec. Law 3-104(1).

102. Defendant, Nassau Board of Elections has “jurisdiction of, and [is] responsible for, the execution and enforcement of...statutes governing campaigns, elections and related procedures.” N.Y. Elec. Law 3-104(1).

103. Defendant, Suffolk Board of Elections has “jurisdiction of, and [is] responsible for, the execution and enforcement of...statutes governing campaigns, elections and related procedures.” N.Y. Elec. Law 3-104(1).

GENERAL ALLEGATIONS

104. The 2016 PPE has produced record breaking turnout and a general excitement that has motivated many people to vote who are voting for the first time or who have not voted in years. Unfortunately, States throughout the nation have found themselves to be ill-equipped to deal with the unprecedented voter turnout, and the elections were botched causing dubious results which foster a growing sense of mistrust in the American Democratic process. See

http://www.nytimes.com/2016/04/17/opinion/sunday/why-americans-cant-vote.html?_r=0

105. In 1970, Congress amended the Voting Rights Act to enact a nationwide ban on literacy tests after finding that they were used to discriminate against voters on

accounts of their race or ethnicity. *Oregon v. Mitchell* 400 U.S. 112, 118 (1970). In reaching that finding, Congress specifically cited evidence which showed “that voter registration in areas with large Spanish-American populations were consistently below the state and national averages.” *Id.* at 132.

106. New York’s history of limitations on bilingual education and systemic underfunding of education for non-English speaking students not only contribute to educational disparities amongst New York’s Hispanic populations but, when combined with New York’s literacy test, they had the effect of denying Hispanics the right to vote.

107. New York’s Hispanic and African-American citizens have suffered from, and continue to suffer from, the effects of discrimination in a number of areas, including: education, health, housing, employment, income, transportation and the criminal justice system.

108. Arizona, North Carolina, and New York, were states formerly covered under the NVRA for discriminatory practices. Arizona’s, North Carolina’s, and New York’s, incompetency in handling their primary election has resulted in the disenfranchisement of hundreds of thousands of voters; a primary election result that is irreparably erroneous; and numerous contentious lawsuits with little chance of redressing the substantial constitutional violations. *See Feldman v. Arizona Secretary of State* 2:16-cv-01065-DLR and *North Carolina Conference of the NAACP v. North Carolina*, 1:13CV658.

109. Such systemic incompetence demoralizes the electorate and fundamentally damages our democratic system. This lawsuit was brought to cutoff impending

constitutional violations; foster a confidence in the electoral process in New York; and to ensure that citizens' fundamental right to elect their chosen representatives is preserved.

110. Purging of legitimate voters is one of the major obstacles to voting that has led to voters being turned away in droves in other states and is due to errors on the part of various Boards of Election in purging many eligible voters from their voter rolls, or incorrectly assigning other party affiliations or no party affiliations to registered voters, thereby depriving those voters of the right to vote in the primary of the party of their affiliation. Currently in Brooklyn alone over 100,000 democratic voters have been inexplicably purged from the voter rolls.

111. New York now stands infamously among the other states in this PPE that failed to provide adequate access to the electoral process since New York State has purged, failed to enroll, incorrectly recorded, altered the voter registrations of hundreds of thousands of eligible voters, failed to open polling locations on time, sent out confusing notices of when the PPE was to be held all in contradiction to the requirements of the NVRA and HAVA and all with the direct result of driving down voter turnout. Only 19.7% of eligible New York voters cast a ballot in the 2016 PPE, the second lowest voter turnout among primary states after Louisiana. There were over nine hundred (900) calls from frustrated voters to the Election Protection Coalition, more than in any other primary state.

112. This lawsuit unites hundreds of voters who affirm that they were in fact eligible to vote in the Democratic Primary on April 19, 2016, yet they were purged from the voter rolls and stand at the precipice of being permanently deprived of their

constitutional rights unless this Court can allow their provisional ballots to be counted in a fair and transparent manner.

113. N.Y. Elec. Law § 5-403, New York's procedure for dealing with voters who fail to appear on the rolls in the polling place, is byzantine in its complexity; onerous on the burden it places on the voter; and utterly ineffective in preserving voters' rights.

114. If a voter is not on the rolls, or whose party affiliation is recorded incorrectly, or who has been recorded as having no party affiliation her or his polling location, she or he must vote on a "provisional ballot" which will likely go uncounted. *See* N.Y. Elec. Law § 8-303 (2) (b). This is because N.Y. Elec. Law § 8-303 (2) (b) allows the voter to cast a provisional ballot but will not count said ballot if the voter has been purged or improperly registered. Considering that hundreds of thousands of voters have been inexplicably purged or improperly registered, Elec. Law § 8-303 (2) (b) provides no remedy to these disenfranchised voters.

115. As an alternative to a provisional ballot, a voter can go through the onerous process of seeking an order permitting her to vote on a regular ballot. While a court order is effective if the voter has gone through painstaking efforts to gather evidence, the process of securing a court order is simply impracticable for thousands of working New Yorkers. *See* the affidavit of Chloe Pecorino attached and annexed hereto as part of "Exhibit A" which is an individual who went with over ten (10) pages of evidence why she should be an eligible registered democrat but was denied a court order.

116. The New York legislature has failed to declare election days a holiday. As a result, many voters are unable to vote since they are unable to withstand the financial burden of missing time from work.

117. Many voters are only able to carve out some time to cast a vote, yet are unable to take the hours that it would require to get a court order permitting them to vote if they are not on the voter rolls. Others are simply too intimidated to seek a court order and decide to turn away from the polls, dejected and skeptical about the democratic process. The sad fact is we will never know how many hundreds of thousands of New Yorker's were wrongfully turned away at the polls during this PPE from being misinformed or intimidated.

118. Black and Hispanic voters were disproportionately affected by lack of information concerning the voting process and were disproportionately affected by purges, late poll openings, and onerous procedures in obtaining court orders to vote, all in violation of 42 U.S.C. §§ 1983 and 1985.

119. This suit has the modest aim of restoring these Plaintiffs' rights and asks this Court to permanently restrain the various Boards of Election from rejecting ballots under N.Y. Elec. Law 8-303 since it unconstitutionally deprives voters of their right to have their ballots counted. Plaintiffs further request that this court issue an Order to the Boards of Election to reinstate the wrongfully purged voters.

120. This suit also asks this Court to find that N.Y. Elec. Law § 8-303 (2) (b) is unconstitutional and would disenfranchise the voters, who found themselves illegally stricken from voter rolls on April 19, 2016 and who will be irrevocably deprived of their rights to vote if their provisional ballots are not counted.

121. However it should be Ordered that votes pursuant to N.Y. Elec. Law 8-303 (2) (b) be counted with all of the other duly cast votes subject to later challenge for cause by the Board of Elections at a hearing date to be determined by this Court. This

remedy would allow for transparency in the electoral process of provisional ballot counts of purged voters-rather than allow the Boards of Election in a closed room, without benefit of due process to the voter which is the current practice and in violation of voters constitutional rights.

122. This common sense solution permits those erroneously stricken from the record to have their vote counted and puts the onus on the Board of Election to prove at a hearing as determined by this Court which voters were not erroneously purged.

123. This reversal of the burden of proof in the voting process results in a fairer result since courts are loath to overrule an election. *Bush v. Gore*, 531 U.S. 98 (2000). Furthermore, this reversal puts the burden on The Board of Elections, which has direct access to the voting registration records under N.Y. Elec. Law § 6217.1(b), while the voter only has access under the Freedom of Information Act. If the burden of proof remains on the voter, who has no access to the evidence that would establish his or her right to vote in the primary and currently has no chance to even present evidence, the voter whose rights are violated is effectively deprived of redress.

124. This reversal of the burden of proof puts the burden on the several Boards of Election who wish to deprive the citizen of her vote and who admittedly have colossally and illegally botched this election, rather than depriving the citizen of her rights without benefit of any due process.

NEW YORK'S VOTER REGISTRATION PROCESS

125. Two state agencies in New York, the New York Department of Motor Vehicles ("DMV") and the Board of Elections ("BOE") are responsible for the registration of new voters and party affiliation switches of registered voters.

A New York resident can register to vote online at <https://dmv.ny.gov/more-info/electronic-voter-registration-application> and the DMV will forward all voter registration applications to the proper county Board of Elections. A person can also register to vote In Person or By Mail by sending a completed New York Voter Registration Form to their local County Board of Elections at least 25 days before the election they would like to participate in. See N.Y. Elec. Law § 5-304.

126. Through its Motor Voter provisions, the NVRA imposes voter registration obligations upon state motor vehicle bureaus. Specifically, every time an eligible voter obtains, renews or updates his or her driver's license with the New York Department of Motor Vehicles (DMV) the State must simultaneously offer to register that person to vote or to update the voter's registration record.

127. The Motor Voter provisions require the DMV to simultaneously treat: (a) "each . . . driver's license application (including any renewal application)" as an "application for voter registration," 52 U.S.C. § 20504(a)(1); and (d) "any change of address form" as a "notification of change of address for voter registration," 52 U.S.C. § 20504. Defendants have a legal duty to ensure that every eligible voter who submits a driver's license application or renewal, or updates his or her address with the DMV, is duly registered to vote. 52 U.S.C. § 20507(a)(1)(A).

128. The Motor Voter provisions apply to "each" renewal application and "any" change-of-address form submitted to the DMV, unless the voter "fails to sign the voter registration application" or "states on the form that the change of address is not for voter registration purposes." 52 U.S.C. § 20504. Accordingly, outside of those two narrow exceptions, all driver's license transactions are covered by the Motor Voter law,

regardless of the method by which a voter applies, renews or updates his or her driver's license — the NVRA does not discriminate against voters who choose one transaction method over another. Online renewals and change-of- address transactions are thus expressly covered by the NVRA's plain text.

129. At issue, huge voter registration problems are plaguing states with closed primaries for voters who were previously registered to a party and who suddenly found their registrations inactive or their party affiliations dropped.

130. Additionally, a representative class of new voters who registered before the applicable new voter registration date of March 25, 2016 as required by N.Y. Elec. Law § 5-210 (3) were not in fact registered or were registered to a party they did not designate or to no party at all.

131. Upon information and belief, the purged Plaintiffs registered as required by N.Y. Elec. Law § 5-310 (2) on or before March 25, 2016, where "...the postmark shall be sufficient proof of the date of mailing."

132. Upon information and belief, New York State is not in compliance with the NVRA and HAVA.

133. Purges of voter registration lists should be conducted in a transparent and uniform manner. Any rules or procedures developed with respect to purges or party affiliation changes should establish accountability at all stages of a purge or affiliation change.

134. The NVRA Sec. 8 requires the "State to keep and make available for public inspection for at least two (2) years, all records concerning the implementation of

programs and activities conducted for ensuring the accuracy and currency of official lists of eligible voters.”

135. Additionally, New York Election Laws have procedures in place that would make the purged voters list readily accessible for the Board of Election to verify the disenfranchised voters who vote on provisional ballots on election night, who have identified themselves as registered democratic voters who have been purged, or whose party affiliation was switched without their consent:

136. Under N.Y. Elec. Law § 5-402 each Board of Election shall at least once a month, transmit to the appropriate board of elections a list of names and addresses of every voter whose registration was cancelled pursuant to N.Y. Elec. Law § 5-400.

137. Under N.Y. Elec. Law 5-213 (2) the registration poll records of all such voters shall be removed from the poll ledgers and maintained at the offices of the board of elections in a file arranged alphabetically by election district, or on a computer.

FIRST COUNT
Unlawful Removal of Voters in violation of
Section 8 of the National Voter Registration Act of 1993 and
New York Election Law
(As Against All Defendants)

138. Under the NVRA, any state purge practice must be “uniform, non-discriminatory, and in compliance with the Voting Rights Act of 1965.” Additionally, under N.Y. Elec. Law Section 5-210 (5) New York State “shall conform to the requirements of the NVRA and HAVA.”

139. NVRA Sec. 8 and N.Y. Elec Law 5-400 (1) requires New York to make reasonable efforts to remove the names of ineligible voters from the official lists of eligible voters by reason of death, change of address, felony conviction, has been

adjudicated incompetent, refused to take a challenge oath or personally requested his or her name to be removed.

140. Upon information and belief, Defendants have purged voters in direct violation of NVRA Sec. 8 and N.Y. Elec Law 5-400 (1) by removing parties from the rolls without justification.

141. The Board of Elections has to follow strict statutory procedures in order to consider a voter “Inactive” as provided by N.Y. Elec. Law § 513.

According to N.Y. Elec. Law§ 5-213 (2):

a person can be removed from the voter registration rolls only after the voter is given confirmation notice by first class mail of their inactive status with a chance to respond within (14) days. A voter must receive together with such notice of cancellation, a postage paid return card in a form approved by the Board of Elections. Such card shall provide a place for the set forth the reasons for their continued eligibility to vote in such county or city and to indicate his current address in the county or city and a statement that failure to return the card will result in cancellation of registration.

Only after this step may the Board of Election consider the voter “Inactive.” See N.Y. Elec. Law § 5-213.

142. NVRA Sec. 8 does not allow a voter to be purged from the rolls by reason of a change of address or “if he or she has not voted or appeared to vote in an election beginning on the date ending on the day after the date of the second Federal General Election after the date of the confirmation.”

143. Upon information and belief, Defendants are in violation of NVRA Sec. 8 by removing voters off the rolls who have changed address. *See Attached Plaintiffs Affidavits A-G.*

144. According to NVRA Section 8, any change to the voter registration rolls must be completed ninety (90) days prior to a primary or general election. This year's primary date was April 19, 2016, so all "systematic" list maintenance activities must have been completed on or before January 20, 2016.

145. Upon information and belief, Defendants are in violation of NVRA Sec. 8 when they removed hundreds of thousands of voters in the ninety (90) day window in violation of the NVRA. *See Attached Plaintiffs Affidavits A-G.*

146. A representative class of Plaintiffs and unknown voters have been purged during the ninety (90) day period in violation of the NVRA and NY Elec. Law. *See Attached Plaintiffs Affidavits A-G.*

147. A representative class of Plaintiffs and unknown voters have been purged from the voter rolls at an unknown date, without their consent in violation of the NVRA and NY Elec. Law. *See Attached Plaintiffs Affidavits A-G.*

148. A representative class of Plaintiffs and unknown voters have had their party affiliations changed without their consent in violation of the NVRA and NY Elec. Law. *See Attached Plaintiffs Affidavits A-G.*

149. A representative class of Plaintiffs and unknown voters have not been registered to vote, even though they met the applicable new voter registration date of March 25, 2016 in violation of NY Elec. Law. *See Attached Plaintiffs Affidavits A-G.*

150. A representative class of Plaintiffs and unknown voters have registered to vote by the applicable new voter registration date of March 25, 2016, but were not put in their designated party choice in violation of the NVRA and NY Elec. Law. *See Attached Plaintiffs Affidavits A-G.*

COUNT II
Violations of Section 2 of the Voting Rights Act
(As Against All Defendants)

151. Plaintiffs reallege and incorporate by reference all prior paragraphs of this Complaint and the paragraphs in the counts below as though fully set forth herein.

152. Section 2 of the Voting Rights Act provides in part that “[n]o voting qualification or prerequisite to voting or standard, practice or procedure shall be imposed or applied by any State...in a manner which results in a denial or abridgment of the right of any citizen of the United States to vote on account of race or color.” 52 U.S.C. 10301(a).

153. If this Court does not institute the remedy that Plaintiffs request, there will be a disparate impact on Hispanic and African-American citizens of New York which will have their right to vote stripped from them in both the 2016 PPE, the upcoming Primaries and the General election.

154. As evidenced by the 2016 PPE, now that the Counties are purging voters without federal oversight under NVRA and HAVA, it does not take into account how the voter purges affect Hispanic and African-American voters. Thus, these voters are highly likely to face substantial burdens when voting, which are more likely to result in their disparate disenfranchisement and a reduction in their participation in future elections.

155. Hispanics and African Americans in New York have suffered from, and continue to suffer from, discrimination on the basis of race. The ongoing effects of this discrimination include significant and continuing socioeconomic disparities between Hispanic and African Americans and Whites in the State.

156. The interaction of the various County Boards of Elections purged voters with the effects of discrimination against Hispanics and African Americans in New York has caused and will continue to cause an inequality in the opportunity of members of these minority communities to vote in New York. Under the totality of the circumstances, Hispanics and African Americans in New York have had and will continue to have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice. Hispanics and African Americans in New York therefore have had and will continue to have their right to vote abridged and denied on account of race due to the County Boards of Elections discriminatory purging of voters.

157. New York's policy of not counting provisional ballots of illegally purged voters has had, and if not declared illegal and enjoined, will continue to have an adverse and disparate impact on Hispanic and African-American citizens of New York.

158. Minority voters are more likely than White voters to not have access to a court to get a court order and, as a result, are more likely to have their vote rejected. Thus, minority voters are highly likely to face substantial burdens when voting, which is more likely to result in their disparate disenfranchisement and a reduction in their participation in future elections.

159. Hispanics and African Americans in New York have suffered from, and continue to suffer from, discrimination on the basis of race. The ongoing effects of this discrimination include significant and continuing socioeconomic disparities between Hispanics and African Americans from Whites in the State.

160. The interaction of New York's policy of not counting purged voters provisional ballots with the effects of discrimination against Hispanics and African Americans in New York has caused and will continue to cause an inequality in the opportunity of members of these minority communities to vote in New York. Under the totality of the circumstances, Hispanics and African Americans in New York have had and will continue to have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice as a result of New York's policy of not counting purged voters provisional ballots. Hispanics and African Americans in New York therefore have had and will continue to have their right to vote abridged or denied on account of race due to New York's policy of not counting purged provisional ballots.

161. Under the totality of the circumstances, the voting laws, practices and provisions challenged under Section 2 have resulted and will result in less opportunity for Hispanics and African Americans than for other members of the population in New York to participate in the political process and to elect candidates of their choice, in violation of Section 2 of the Voting Rights Act.

COUNT III

*Denial of Equal Protection Under the Fourteenth Amendment of the United States Constitution and Violation of U.S.C. 1983 by Unjustifiably Burdening Voters
(As Against All Defendants)*

162. Plaintiffs reallege and incorporate by reference all prior paragraphs of this Complaint and the paragraphs in the counts below as though fully set forth herein.

163. Under the Equal Protection Clause, any state election regulation that imposes non-discriminatory restriction on the right to vote must be justified by an important state regulatory interest. *Burdock v. Takushi*, 504 U.S. 428, 434 (1992). Where the restrictions are severe, however, “the regulation must be narrowly drawn to advance a state interest of compelling importance.” *Id.* (quoting *Norman v. Reed*, 502 U.S. 279, 289 (1992)). In determining severity of the restrictions, the court:

must weigh “the character and magnitude of the asserted injury to the rights protected by the First and Fourteenth Amendments that the plaintiff seeks to vindicate” against “the precise interests put forward by the State as Justifications for the burden imposed by its rule,” taking into consideration “the extent to which those interest make it necessary to burden the plaintiff’s rights.” *Id.* (quoting *Anderson v. Celebrezze*, 460 U.S. 780, 789 (1983)).

164. Unless Plaintiffs are granted the relief requested, there is a strong likelihood that their right to vote, their constituencies’ and members’ right to vote, and the right to vote of hundreds of thousands of other New York residents will be severely burdened in the 2016 Federal and State elections. As evidenced by the 2016 PPE, the Counties Boards of Elections make decisions without federal oversight, it not only makes these decisions in a vacuum, where, even, facially unreasonable reductions in the voters on the voter rolls are apparently rubber stamped by the New York State Board of Elections, who is supposed to have oversight over the Counties Boards of Elections. The various Boards of Elections have failed entirely to take into account how these decision are likely to impact Hispanic and African-American communities in particular. Thus, voters residing in such communities in New York are highly likely to face substantial burdens, just as they didn’t the 2016 PPE, including having to travel further distances to reach their polling locations and courthouses for a court order for a purged minority voter

to be allowed to cast a paper ballot. The State has no interest of sufficient importance that outweighs any of these burdens on otherwise eligible members of New York's electorate.

165. Plaintiffs' right to vote, and the right to vote of hundreds of thousands of other New York voters generally, are also independently severely burdened by the potential of arbitrary and unjustified rejection of their provisional ballots. Voters who have their provisional ballots rejected are completely disenfranchised, often due to no fault of their own, but rather due to ineffective administration of elections and poll worker error.

166. Minority voters face even greater risks of disenfranchisement and, therefore, greater burdens, as they are less likely to appear to vote due to the confusion surrounding the 2016 PPE. These voters, who are otherwise fully qualified to vote, should have their votes counted. The State has no sufficient interest that outweighs any of these burdens on otherwise eligible members of New York's electorate.

167. Based on the foregoing, Defendants, acting under color of state law, have deprived and will continue to deprive Plaintiffs of Equal Protection under the laws secured to them by the Fourteenth Amendment to the United States Constitution and protected by 42 U.S.C. § 1983.

COUNT IV

*Denial of Equal Protection Under the Fourteenth Amendment of the United States
Constitution and Violation of 52 U.S.C. 1983 Through Disparate Treatment
(As Against All Defendants)*

168. Plaintiffs reallege and incorporate by reference all prior paragraphs of this Complaint and the paragraphs in the counts below as though fully set forth herein.

169. The Equal Protection Clause of the Fourteenth Amendment of the U.S. Constitution guarantees qualified voters a substantive right to participate equally with other qualified voters in the electoral process. Further, the equal right to vote that is protected by the Equal Protection Clause is protected in more than the trivial allocation of the franchise; equal protection applies to the manner of its exercise as well. See *Hunter v. Hamilton Cnty. Bd. of Elections*, 635 F.3d 219, 234 (6th Cir. 2011) (quoting *Bush v. Gore* 531 U.S. 98, 104 (2000)). A state may not arbitrarily impose disparate treatment on similarly situated voters.

170. By refusing to count provisional ballots of purged voters in some New York counties, but allowing other counties to employ their own procedures to determine whether a provisional ballot is accepted, has a direct effect on the way voters are treated differently in various counties. As a result, New York's policy creates two groups of otherwise similarly situated voters in New York-(1) fully eligible voters in New York who cannot have their provisional ballot counted because they were purged, and (2) fully eligible voters who can have their paper ballot counted. This disparate treatment of New York voters based solely upon the county in which they live is arbitrary, and there is no rational justification for such differentiation.

171. Based on the foregoing, Defendants acting under color of state law, have deprived and will continue to deprive Plaintiffs of equal protection under the law secured to them by the Fourteenth Amendment to the United States Constitution and protected by 42 § U.S.C. 1983.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for judgment in their favor and against Defendants are as follows:

1. An Order Declaring that the Plaintiffs have been unlawfully purged and their names returned to the list of duly registered voters;
2. A finding that NY Election Law Elec. Law § 8-303 (2) (b) is unconstitutional;
3. An Order Requiring the Board of Elections to count the provisional ballots along with the duly cast votes and only allowing the Board of Elections to challenge said ballots at an evidentiary hearing to be determined on date determined by this Court;
4. An Order Declaring that New York's prohibition on counting purged voters' provisional ballots burdens New York voters generally and, specifically Hispanic, African-American and Native American voters without a sufficient state justification for doing so, in violation of the Equal Protection Clause of the Fourteenth Amendment;
5. An Order Requiring the Defendants to take such steps as are necessary to assure that voters who have been purged or disenfranchised are eligible to participate in New York State's upcoming primary elections;
7. An Order awarding Plaintiffs their costs, disbursements and reasonable attorneys' fees incurred in bringing this action pursuant to 42 U.S.C. §§ 1988, 1973 (e); and

Such other or further relief as the Court deems just and proper.

Dated: Farmingdale, NY
April 22, 2016

**LAW OFFICES OF CLARKE
& FELLOWS P.C.**


By: Blaire Fellows, Esq.
Attorneys for Plaintiffs
140 Gazza Boulevard
Farmingdale, NY 11735
Tel: 631-532-0221
Fax: 631-777-7310