

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

SAM PARTY OF NEW YORK
and MICHAEL J. VOLPE,

Plaintiffs,

vs.

ANDREW CUOMO, as the Governor of the State of New York; ANDREA STEWART-COUSINS, as the Temporary President and Majority Leader of the New York State Senate; JOHN J. FLANAGAN, as the Minority Leader of the New York State Senate; CARL E. HEASTIE, as the Speaker of the New York State Assembly; BRIAN KOLB, as the Minority Leader of the New York State Assembly; PETER S. KOSINSKI, as the Co-Chair of the New York State Board of Elections; DOUGLAS A. KELLNER, as the Co-Chair of the New York State Board of Elections; ANDREW J. SPANO, as a Commissioner of the New York State Board of Elections; TODD D. VALENTINE, as Co-Executive Director of the New York State Board of Elections; and ROBERT A. BREHM, as Co-Executive Director of the New York State Board of Elections,

Defendants.

Civil Action No. 20 CIV-00323

**ANSWER AND
AFFIRMATIVE DEFENSES
OF DEFENDANT
GOVERNOR ANDREW
CUOMO TO THE
COMPLAINT**

Defendant Governor Andrew Cuomo (“Governor Cuomo”), by and through his undersigned counsel, Proskauer Rose LLP, hereby responds to the complaint (“Complaint”) of Plaintiffs SAM Party of New York and Michael J. Volpe (collectively, “Plaintiffs”) as follows:

INTRODUCTION

1. Denies the allegations set forth in Paragraph 1 of the Complaint.
2. Denies the allegations set forth in Paragraph 2 of the Complaint as Governor Cuomo lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth therein.
3. Denies the allegations set forth in Paragraph 3 of the Complaint as Governor Cuomo lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth therein, except admits that this action seeks to declare New York’s presidential-vote requirement unconstitutional as applied to the SAM Party of New York and to enjoin the enforcement of that requirement against the SAM Party of New York.

THE PARTIES

4. Denies the allegations set forth in Paragraph 4 of the Complaint as Governor Cuomo lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth therein.
5. Denies the allegations set forth in Paragraph 5 of the Complaint as Governor Cuomo lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth therein.
6. Admits the allegations of Paragraph 6 of the Complaint.
7. Admits the allegations of Paragraph 7 of the Complaint.
8. Admits the allegations of Paragraph 8 of the Complaint.

9. Admits the allegations of Paragraph 9 of the Complaint.

10. Denies the allegations set forth in Paragraph 10 of the Complaint as Governor Cuomo lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth therein, except admits that Defendant Brian Kolb was, until he announced his resignation, the Minority Leader of the New York State Assembly.

11. Denies the allegations set forth in Paragraph 11 of the Complaint as Governor Cuomo lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth therein, except admits that Peter S. Kosinski is a co-Chair of the New York State Board of Elections, which is an agency within the Executive Department of the State.

12. Admits the allegations of Paragraph 12 of the Complaint.

13. Admits the allegations of Paragraph 13 of the Complaint.

14. Denies the allegations set forth in Paragraph 14 of the Complaint as Governor Cuomo lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth therein, except admits that the position of one Commissioner of the New York State Board of Elections is currently vacant.

15. Admits the allegations of Paragraph 15 of the Complaint.

16. Admits the allegations of Paragraph 16 of the Complaint.

JURISDICTION AND VENUE

17. Denies the allegations contained in Paragraph 17 of the Complaint to the extent they set forth a legal conclusion to which no response by Governor Cuomo is required, except admits that Plaintiffs purport to invoke the jurisdiction of this Court pursuant to 28 U.S.C. §§ 1331 and 1343, and that Plaintiffs purport to seek declaratory and injunctive relief pursuant to 28 U.S.C. §§ 2201 and 2202. Denies that there exists any basis in law or fact for Plaintiffs' claims.

18. Denies the factual allegations set forth in Paragraph 18 of the Complaint as Governor Cuomo lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth therein, except admits that Governor Cuomo resides in the State of New York. Denies the remaining allegations contained in Paragraph 18 of the Complaint to the extent they set forth a legal conclusion to which no response by Governor Cuomo is required, except admits that Plaintiffs attempt to invoke the personal jurisdiction of this Court. Denies that there exists any basis in law or fact for Plaintiffs' claims.

19. Denies the allegations contained in Paragraph 19 of the Complaint to the extent they set forth a legal conclusion to which no response by Governor Cuomo is required, except admits that Governor Cuomo maintains an office at 633 Third Avenue in Manhattan, and admits that Plaintiffs purport to invoke that venue in this district is proper pursuant to 28 U.S.C. § 1391(b)(1). Denies that there exists any basis in law or fact for Plaintiffs' claims.

20. Denies the allegations contained in Paragraph 20 of the Complaint to the extent they set forth a legal conclusion to which no response by Governor Cuomo is required, except admits that Plaintiffs attempt to invoke the personal jurisdiction of this Court. Denies that there exists any basis in law or fact for Plaintiffs' claims. Denies the remaining allegations set forth in Paragraph 20 of the Complaint as Governor Cuomo lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth therein.

STATEMENT OF FACTS

21. Denies the allegations set forth in Paragraph 21 of the Complaint as Governor Cuomo lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth therein.

22. Denies the allegations set forth in Paragraph 22 of the Complaint as Governor Cuomo lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth therein.

23. Denies the allegations set forth in Paragraph 23 of the Complaint as Governor Cuomo lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth therein.

24. Denies the allegations set forth in Paragraph 24 of the Complaint as Governor Cuomo lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth therein.

25. Denies the allegations set forth in Paragraph 25 of the Complaint as Governor Cuomo lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth therein.

26. Denies the allegations set forth in Paragraph 26 of the Complaint as Governor Cuomo lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth therein.

27. Denies the allegations set forth in Paragraph 27 of the Complaint as Governor Cuomo lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth therein.

28. Denies the allegations set forth in Paragraph 28 of the Complaint as Governor Cuomo lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth therein.

29. Denies the allegations set forth in Paragraph 29 of the Complaint as Governor Cuomo lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth therein.

30. Denies the allegations set forth in Paragraph 30 of the Complaint as Governor Cuomo lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth therein.

31. Denies the allegations set forth in Paragraph 31 of the Complaint as Governor Cuomo lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth therein.

32. Denies the allegations set forth in Paragraph 32 of the Complaint as Governor Cuomo lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth therein and to the extent they set forth a legal conclusion to which no response by Governor Cuomo is required.

33. Denies the allegations set forth in Paragraph 33 of the Complaint to the extent they set forth a legal conclusion to which no response by Governor Cuomo is required, except admits that New York permits “fusion” voting, by which the same person may run as the candidate nominated by more than one political party, and admits that, in the general election in 2018, Governor Cuomo ran as a candidate on several party lines, including the Democratic Party and the Working Families Party.

34. Denies the allegations set forth in Paragraph 34 of the Complaint to the extent they set forth legal conclusions to which no response by Governor Cuomo is required, and, to the extent those allegations set forth factual allegations, denies those allegations as Governor

Cuomo lacks knowledge or information sufficient to form a belief as to the truth of the factual allegations set forth therein.

35. Denies the allegations set forth in Paragraph 35 of the Complaint as Governor Cuomo lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth therein.

36. Denies the allegations set forth in Paragraph 36 of the Complaint as Governor Cuomo lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth therein.

37. Denies the allegations set forth in Paragraph 37 of the Complaint as Governor Cuomo lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth therein.

38. Denies the allegations set forth in Paragraph 38 of the Complaint except admits that Cynthia Nixon challenged Governor Cuomo for the nominations of both the Democratic and Working Families Parties in 2018, that Governor Cuomo did not seek the Working Families Party's endorsement at the State Convention, and that Governor Cuomo captured 65.53% of the vote in the Democratic primary to Ms. Nixon's 34.47%.

39. Admits the allegations of Paragraph 39 of the Complaint.

40. Denies the allegations set forth in Paragraph 40 of the Complaint.

41. Denies the allegations set forth in Paragraph 41 of the Complaint except admits that the New York State Campaign Finance Review Commission ("the Commission") was created as part of a budget and appropriations bill submitted by Governor Cuomo and was approved by the Legislature in 2019.

42. Denies the allegations contained in Paragraph 42 of the Complaint as they quote from statutory law and assert legal conclusions, as to which no response is required.

43. Denies the allegations set forth in Paragraph 43 of the Complaint.

44. Denies the allegations contained in Paragraph 44 of the Complaint as they assert legal conclusions and describe provisions of a statute, to which no response by Governor Cuomo is required.

45. Denies the allegations set forth in Paragraph 45 of the Complaint, except admits that the Legislature was not in session between the date the Commission's recommendations were published and the date they would become binding law.

46. Denies the allegations set forth in Paragraph 46 of the Complaint.

47. Denies the allegations set forth in Paragraph 47 of the Complaint as they purport to recite the Commission's Report, to which no response by Governor Cuomo is required.

48. Denies the allegations set forth in Paragraph 48 of the Complaint as they purport to recite the Commission's Report, to which no response by Governor Cuomo is required.

49. Denies the allegations set forth in Paragraph 49 of the Complaint as they purport to recite the Commission's Report, to which no response by Governor Cuomo is required.

50. Denies the allegations set forth in Paragraph 50 of the Complaint.

51. Denies the allegations contained in Paragraph 51 of the Complaint, except to the extent they quote from the Commission's Report, to which no response by Governor Cuomo is required.

52. Denies the allegations set forth in Paragraph 52 of the Complaint as Governor Cuomo lacks knowledge or information sufficient to form a belief as to the truth of the

allegations set forth therein, except admits that the Complaint does not seek to invalidate the monetary limits and public-funding recommendations of the Commission.

53. Denies the allegations set forth in Paragraph 53 of the Complaint as Governor Cuomo lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth therein, except admits that the Complaint only seeks to enjoin enforcement of the requirement that the SAM Party obtain 130,000 or 2% of the votes cast in presidential elections.

54. Denies the allegations set forth in Paragraph 54 of the Complaint.

55. Denies the allegations set forth in Paragraph 55 of the Complaint.

56. Denies the allegations set forth in Paragraph 56 of the Complaint as Governor Cuomo lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth therein except admits that the Commission's recommendations became law on December 23, 2019.

57. Denies the allegations set forth in Paragraph 57 of the Complaint.

58. Denies the allegations set forth in Paragraph 58 of the Complaint.

59. Denies the allegations set forth in Paragraph 59 of the Complaint.

60. Denies the allegations set forth in Paragraph 60 of the Complaint as Governor Cuomo lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth therein.

61. Denies the allegations set forth in Paragraph 61 of the Complaint.

62. Denies the allegations contained in Paragraph 62 of the Complaint, except to the extent they allege a legal conclusion, as to which no response by Governor Cuomo is required.

63. Denies the allegations contained in Paragraph 63 of the Complaint except to the extent they allege a legal conclusion, as to which no response by Governor Cuomo is required.

64. Denies the allegations contained in Paragraph 64 of the Complaint, except to the extent they allege a legal conclusion, as to which no response by Governor Cuomo is required.

65. Denies the allegations set forth in Paragraph 65 of the Complaint as Governor Cuomo lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth therein except to the extent those allegations set forth legal conclusions, as to which no response by Governor Cuomo is required.

66. Denies the allegations set forth in Paragraph 66 of the Complaint as Governor Cuomo lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth therein.

COUNT I

Violation of the First and Fourteenth Amendments and 28 U.S.C. § 1983 – Freedom of Association

67. Repeats and re-alleges Governor Cuomo's responses to the allegations in Paragraphs 1 through 66 of the Complaint.

68. Denies the allegations set forth in Paragraph 68 of the Complaint to the extent they quote from case law and assert legal conclusions, to which no response by Governor Cuomo is required and denies the remaining allegations.

69. Denies the allegations set forth in Paragraph 69 of the Complaint.

70. Denies the allegations set forth in the first sentence of Paragraph 70 of the Complaint as Governor Cuomo lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth therein, and otherwise denies the remaining allegations.

71. Admits that one purpose for the presidential-election requirement is to ensure that public finance dollars do not go to marginal candidates and thus drive up the cost of the public finance system, and otherwise denies the remaining allegations of Paragraph 71 of the Complaint.

72. Admits that the public campaign finance program does not provide funding to candidates for federal office, including president, and otherwise denies the allegations set forth in Paragraph 72 of the Complaint.

73. Admits that the public funding of candidates does not commence until after the 2022 election cycle, and otherwise denies the allegations set forth in Paragraph 73 of the Complaint.

74. Denies the allegations set forth in Paragraph 74 of the Complaint.

75. Denies the allegations set forth in Paragraph 75 of the Complaint.

76. Denies the allegations set forth in Paragraph 76 of the Complaint.

77. Admits the first two sentences of Paragraph 77 of the Complaint and otherwise denies the allegations.

78. Denies the allegations set forth in Paragraph 78 of the Complaint.

79. Denies the allegations set forth in Paragraph 79 of the Complaint.

COUNT II

Violation of the First and Fourteenth Amendments and 28 U.S.C. § 1983 – Compelled Speech

80. Repeats and re-alleges Governor Cuomo's responses to the allegations in Paragraphs 1 through 79 of the Complaint.

81. Denies the allegations set forth in Paragraph 81 of the Complaint as they assert legal conclusions and quote from case law, as to which no response is required.

82. Denies the allegations set forth in Paragraph 82 of the Complaint to the extent they quote from case law, to which no response by Governor Cuomo is required, denies the allegations as to what the SAM Party does or does not want to do as Governor Cuomo lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth therein, and denies the remaining allegations of the Paragraph.

83. Denies the allegations set forth in Paragraph 83 of the Complaint to the extent they quote from case law, to which no response by Governor Cuomo is required, and otherwise denies the allegations.

84. Denies the allegations set forth in Paragraph 84 of the Complaint.

85. Denies the allegations set forth in Paragraph 85 of the Complaint.

86. Denies the allegations set forth in Paragraph 86 of the Complaint.

87. Denies the allegations set forth in Paragraph 87 of the Complaint.

COUNT III

Violation of the First and Fourteenth Amendments and 28 U.S.C. § 1983 – Equal Protection

88. Repeats and re-alleges Governor Cuomo's responses to the allegations in Paragraphs 1 through 87 of the Complaint.

89. Denies the allegations set forth in Paragraph 89 of the Complaint to the extent they quote from case law, to which no response is required, and otherwise denies the remaining allegations.

90. Denies the allegations set forth in Paragraph 90 of the Complaint.

91. Denies the allegations set forth in Paragraph 91 of the Complaint.

92. Denies the allegations set forth in Paragraph 92 of the Complaint.

COUNT IV

Violation of the Fifth and Fourteenth Amendments and 28 U.S.C. § 1983 – Due Process of Law

93. Repeats and re-alleges Governor Cuomo’s responses to the allegations in Paragraphs 1 through 92 of the Complaint.

94. Denies the allegations set forth in Paragraph 94 of the Complaint as Governor Cuomo lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth therein, except admits that the SAM Party would lose “party” status if it did not requalify in the 2022 gubernatorial election, and denies the allegations to the extent they assert legal conclusions as to which no response from Governor Cuomo is required.

95. Denies the allegations set forth in Paragraph 95 of the Complaint.

96. Denies the allegations set forth in Paragraph 96 of the Complaint.

PRAYER FOR RELIEF

Governor Cuomo denies that Plaintiffs are entitled to the requested relief or to any relief whatsoever.

AFFIRMATIVE DEFFENSES

Further answering the Complaint, Governor Cuomo pleads the following affirmative defenses.

First Affirmative Defense **(Failure to State a Claim)**

The Complaint fails to state a claim upon which relief can be granted.

Second Affirmative Defense
(Lack of Irreparable Harm)

Plaintiffs are not entitled to injunctive relief because any alleged injury is not immediate or irreparable.

Third Affirmative Defense
(Abstention)

To the extent Plaintiffs' claims challenge the legality of any law at issue on the basis that such law violates the Constitution of New York State, such claims may not be adjudicated in this court.

WHEREFORE, Governor Cuomo demands judgment against Plaintiffs as follows:

- (a) dismissing the Complaint in its entirety, with prejudice;
- (b) awarding Governor Cuomo his costs in connection with the defense of this action; and
- (c) granting any such other and further relief as the Court deems just and proper.

DATED: March 12, 2020

PROSKAUER ROSE LLP

/s/ Michael A. Cardozo

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