

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. CAROL R. EDMOND PART IAS MOTION 35EFM

Justice

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NEW YORK CITY COUNCIL MEMBER ADRIENNE E. ADAMS, AMERICAN BROTHERHOOD FOR THE RUSSIAN DISABLED, INC., AMERICAN CHINESE EMPOWERMENT ASSOCIATION INC., NEW YORK CITY COUNCIL MEMBER ALICKA AMPRY-SAMUEL, BROOKLYN EMERGE, INC., CHINESE ACTION NETWORK INC., NEW YORK CITY COUNCIL MEMBER ROBERT E. CORNEGY, JR., NEW YORK CITY COUNCIL MEMBER LAURIE A. CUMBO, KHYBER SOCIETY OF AMERICA INC., JASON LOUGHRAN, NEW YORK CITY COUNCIL MEMBER FARAH N. LOUIS, NEW YORK CITY COUNCIL MEMBER I. DANEEK MILLER, PAKISTANI AMERICAN YOUTH SOCIETY, INC., RUSSIAN AMERICAN VOTERS EDUCATIONAL LEAGUE, INC., UA3 INC., UNITED CLERGY COALITION BY BISHOP GERARD SEABROOKS, SUSTAINABLE UNITED NEIGHBORHOODS INC., YOUR NETWORK CARING COMMUNITY ADVOCATE (YNCAA), INC.,

Plaintiff,

- v -

CITY OF NEW YORK, NEW YORK CITY BOARD OF ELECTIONS, NEW YORK CITY CAMPAIGN FINANCE BOARD,

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 5, 6, 7, 8, 9, 10, 11, 13

were read on this motion to/for PREL INJUNCTION/TEMP REST ORDR

In this Election Law Special Proceeding, Plaintiffs,1 pursuant to CPLR § 6313, seek, by Order to Show Cause, a temporary restraining order and preliminary injunction enjoining and restraining Defendants City of New York, New York City Board of Elections (the "City Board")2, and New

1 For a full list of all plaintiffs in this proceeding, see Plaintiffs' Order to Show Cause (NYSCEF doc No. 5).

2 The Board of Elections takes no position on this application.

York City Campaign Finance Board (the “City CFB”) (collectively the “Defendants”) from administering, implementing or conducting the February 2, 2021 Special Election using Rank Choice Voting (“RCV”) pending the hearing of Plaintiffs’ complaint. On December 16, 2020, this Court heard Plaintiffs’ request for interim relief.

The Court is constrained and must deny Plaintiffs’ application for an interim stay. Further, the Court is loath to grant and hereby denies Plaintiffs’ application for an expedited preliminary injunction hearing.

As articulated by counsel for NYC CFB and the City of New York, CPLR § 6313(a) expressly provides that “[n]o temporary restraining order may be granted in an action...against a public officer, board or municipal corporation of the state to restrain the performance of statutory duties.” Here, the Board of Elections is statutorily required by the New York City Charter §1057 (g) to use RCV with respect to “certain primary elections and elections for which nominations were made by independent nominating petitions,” which would include the February 2, 2021 special election. As such, Defendants argue that this Court lacks jurisdiction to grant a stay. The Court notes that Plaintiffs do not concede that this Court lacks jurisdiction to grant an interim stay under CPLR § 6313(a) nor do they agree that this jurisdictional issue is not in dispute. However, as the issue of jurisdiction is yet unresolved, the Court is disinclined to grant an interim stay.

According to counsel for Defendants, the overseas ballots are scheduled to be dispersed in two days on December 18, 2020. The Court finds that it would be improvident to hold an expedited preliminary injunction hearing as it may delay the dispersing of the overseas ballots. *Assuming arguendo* that Defendants are correct, and the overseas ballots must be dispersed on December

18, the determination on the applicable timetable would not be made in time to override a potential nullity of the overseas ballots.

This Court is disinclined to take any action that *may* result in the disenfranchisement of even one voter or take any action that may result in even one voter’s ballot being nullified.

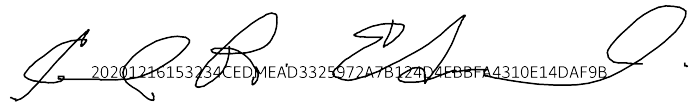
In accordance with the “So-Ordered” Expedited Transcript Dec. 16, 2020 (Karen Perlman, Court Reporter), it is hereby

ORDERED that Plaintiffs’ application for an interim stay is denied; and it is further

ORDERED that Plaintiffs’ application for an expedited preliminary injunction hearing is denied; and it is further

ORDERED that Proposed Intervenor Defendant Moumita Ahmed’s application for permissive intervention is granted; and it is further

ORDERED that Proposed Intervenor Defendant is granted permission to file a general denial.



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12/16/2020
DATE

CAROL R. EDMEAD, J.S.C.

CHECK ONE:

<input type="checkbox"/>	CASE DISPOSED	
<input type="checkbox"/>	GRANTED	<input checked="" type="checkbox"/> DENIED
<input type="checkbox"/>	SETTLE ORDER	
<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	

<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	
<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/> OTHER
<input type="checkbox"/>	SUBMIT ORDER	
<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: