

At a Special Term of the
Supreme Court of the State of
New York held in and for the
County of Erie on the 28th day of
March, 2023, at the Erie County
Courthouse (via Microsoft
Teams), Buffalo, New York

PRESENT: HON. PAUL B. WOJTASZEK, J.S.C.
Justice Presiding

STATE OF NEW YORK
SUPREME COURT : COUNTY OF ERIE

In the Matter of the Application of

SPENCER KOWAL, et al.,
Petitioners,

ORDER and
JUDGEMENT

Index No. 801603/2023

v.

RALPH MOHR, et al.,
Respondents,

The Petitioners, having sought by an Order to Show Cause, granted on or about February 17, 2023, that this matter be “summarily determined” this this Court entering an Order:

1. Ordering, declaring and/or adjudging that Election Law Sections 6-164, 6-166(2), 8-308, and/or 8-308(4) are facially unconstitutional and/or as applied to Petitioners and all similarly situated voters;
2. Directing, ordering, restraining and/or enjoining Respondents from enforcing Election Law Sections 6-164, 6-166(2), 8-308, and/or 8-308(4) and/or directing, ordering, restraining and/or enjoining Respondents from enforcing Election Law Sections 6-164, 6-166(2), 8-308, and/or 8-308(4) against Petitioners and all similarly situated voters;
3. Directing, ordering, restraining and/or enjoining Respondents to count, canvass, and/or tally any and all primary election write in votes regardless of the enrollment of the candidate for whom the voter voted;

4. Awarding Petitioners costs, disbursements and/or attorneys' fees;
5. For such other and further relief as the Court deems just and proper.

And upon reading the Verified Petition of the Petitioners (with Exhibits); the Verified Answer and Memorandum of Law (with Exhibits) of Respondent-Intervenor Attorney General Letitia James; the Petitioners' Reply Affirmation (with Exhibits); the Affidavit of Ralph Lorigo; Respondent Commissioners of the Erie County Board of Elections having taken no position with regard to the relief requested; and after due deliberation and pursuant to the bench decision transcript attached as **EXHIBIT A**, it is hereby

ORDERED, DECLARED and/or ADJUDGED, that the Petitioners have standing in this proceeding and/or to maintain this proceeding; and it is further

ORDERED, DECLARED and/or ADJUDGED, that Chapter 480 of the Laws of 2021 is unconstitutional, null and void, and/or without effect; and it is further

ORDERED, that the Petition is GRANTED because Chapter 480 of the Laws of 2021 violates the right to free speech, the right to free association, the right to vote, the right of suffrage, the right to due process, and the right to equal protection of the laws (New York State Constitution Article I, Sections 1, 6, 8, and 11; New York State Constitution Article II; and New York State Constitution Article II, Sec. 1); and it is further

ORDERED, that a declaration that Chapter 480 of the Laws of 2021 is constitutional and any/all other relief requested by Respondent-Intervenor Attorney General Letitia James is DENIED and/or DISMISSED; and it is further

ORDERED, that Respondents RALPH MOHR and JEREMY ZELLNER, Commissioners of the Erie County Board of Elections, are directed to count, canvass, and/or tally each and every write in vote cast in a primary election regardless of the party affiliation of the candidate for whom the vote was made.

DATED: April 6, 2023
Buffalo, New York


Hon. Paul B. Wojtaszek, J.S.C.

ENTER: