

For Opinion See [2006 WL 2242760](#) , [2004 WL 1335921](#)

United States District Court, S.D. New York.

Joseph HAYDEN, et al., etc., Plaintiffs,

v.

George PATAKI, Governor of the State of New York, and Carol Berman, Chairperson, New York State Board of Elections, Defendants.

No. 00 Civ. 8586 (LMM) (HBP).

April 14, 2003.

Answer to Amended Complaint

[Eliot Spitzer](#), Attorney General of the State of New York, Attorney for Defendant Governor, [Joel Graber](#) (JG-3337), Assistant Attorney General, 120 Broadway - 24th Floor, New York, NY 10271-0332, (212) 416-8645, Fax (212) 416-6075, joel.graber@oag.state.ny.us.

Defendant the Governor of the State of New York, by his attorney, ELIOT SPITZER, Attorney General of the State of New York, as and for his answer to the amended complaint herein:

1. States that the allegations set forth in paragraphs 1, 28 and 29 of the amended complaint consist in plaintiffs' characterizations of the action to which no response is required.
2. Denies knowledge or information sufficient to form a belief in respect to the allegations contained in paragraphs 2, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21,22, 23, 24, 25, 30, 31, 32, 33, 35, 36, 37, 61, 62, 63, 64, 65, 66, 67, 68, 70, 74, 75 and 76 of the amended complaint.
3. Denies the allegations set forth in paragraph 26 of the amended complaint, except admits that George E. Pataki is the Governor of the State of New York, with powers and duties as prescribed by law, and respectfully refers the Court to the constitution and laws of the State of New York for the terms and contents thereof respecting the Governor.
4. Denies the allegations in paragraph 27 of the amended complaint, except admits that Carol Berman is Chairperson of the New York State Board of Elections, with powers and duties as prescribed by law, and respectfully refers the Court to the constitution and laws of the State of New York for the terms and contents thereof respecting the Chairperson.
5. Denies the allegations set forth in paragraphs 34, 38, 39, 41, 42, 44,45, 46, 47, 51, 53, 54, 55, 69, 71, 72, 73, 77, 79, 80, 82, 83, 85, 86, 88, 89, 90, 92, 93, 95, 97, 98, and 99 of the amended complaint.
6. Denies the allegations contained in paragraphs 40,43, 48,49, 50,52, 56, 57 and 60 of the amended complaint, except respectfully refers the Court to the provisions of law referred to in those paragraphs for the terms and contents thereof.

AS AND FOR A FIRST DEFENSE

7. The amended complaint and each of the seven claims alleged therein fail to state a claim upon which relief can be granted.

AS AND FOR A SECOND DEFENSE

8. Each of plaintiffs Akinwole-Bande, Arias, Best-Deveaux, Bristol, Galarza, Lochard, Ramon, L. M. Rivera, N. Rivera, Sanclemente and Scott lack standing to maintain the fifth and seventh claims alleged in the amended complaint, as such claims may only be maintained, if at all, by a member of the public duly registered to vote in the State of New York.

9. By reason of the foregoing, the Court lacks subject matter jurisdiction over the fifth and seventh claims alleged on behalf of each of plaintiffs Akinwole-Bande, Arias, Best-Deveaux, Bristol, Galarza, Lochard, Ramon, L. M. Rivera, N. Rivera, Sanclemente and Scott.

AS AND FOR A THIRD DEFENSE

10. Each of plaintiffs Andino, Holmes, Mangual, Massey, Romero, Satterfield, Hayden Carmona, Gamer and Graham lack standing to maintain any claim under § 2 of the Voting Rights Act of 1965, as amended, [42 U.S.C. § 1973](#), as any claim under § 2 may only be maintained, if at all, by a member of the public duly registered to vote in the State of New York.

11. By reason of the foregoing, the Court lacks subject matter jurisdiction over the third and fourth claims under § 2 alleged on behalf of each of plaintiffs Andino, Holmes, Mangual, Massey, Romero, Satterfield, Hayden, Carmona, Garner and Graham.

AS AND FOR A FOURTH DEFENSE

12. Each of plaintiffs Akinwole-Bande, Arias, Best-Deveaux, Bristol, Galarza, Lochard, Ramon, L. M. Rivera, N. Rivera, Sanclemente and Scott lacks standing to maintain any claim in respect to any district in which he or she does not reside.

13. By reason of the foregoing, the Court lacks subject matter jurisdiction over any such claim or claims on behalf of each of plaintiffs Akinwole-Bande, Arias, Best-Deveaux, Bristol, Galarza, Lochard, Ramon, L. M. Rivera, N. Rivera, Sanclemente and Scott.

AS AND FOR A FIFTH DEFENSE

14. The mere fact that the governor of a state is under a general duty to enforce state law is not sufficient to make a governor a proper party to litigation challenging a state law.

15. Defendant the Governor has no connection with the enforcement of the provisions of law challenged in this action, within the meaning of *Ex Parte Young*, [209 U.S. 123 \(1908\)](#).

6. By reason of the foregoing, this action as against defendant the Governor is barred by the Eleventh Amendment and, accordingly, the Court lacks subject matter jurisdiction over this action as against defendant the Governor.

AS AND FOR A SIXTH DEFENSE

17. The actions and conduct of defendant the Governor and all agents and employees of the State of New York under his direction or control in regard to the matters alleged in the amended complaint, at all relevant times have been fully in compliance with all applicable federal and State constitutional provisions, statutes and regulations.

WHEREFORE, defendant the Governor respectfully requests that judgment be entered:

- (A) dismissing the amended complaint in this action in entirety;
- (B) dismissing the amended complaint in this action in entirety as against defendant the Governor;
- (C) awarding to defendant the Governor, as against plaintiffs and each of them, reasonable attorney's fees and expenses, pursuant to 42 U.S.C. § 1988, for each of those claims against him as are frivolous, unreasonable, or without foundation, and;
- (D) granting such other and further relief as the Court may deem just and proper.

Dated: New York, New York April 14, 2003

ELIOT SPITZER

Attorney General of the

State of New York

Attorney for Defendant Governor

By: <<signature>>

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TO:

CLERK OF THE COURT

ATTORNEYS-OF-RECORD

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