

20-1494-cv
Yang, et al. v. Kosinski, et al.

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

Rulings by summary order do not have precedential effect. Citation to a summary order filed on or after January 1, 2007, is permitted and is governed by Federal Rule of Appellate Procedure 32.1 and this Court's Local Rule 32.1.1. When citing a summary order in a document filed with this Court, a party must cite either the Federal Appendix or an electronic database (with the notation "summary order"). A party citing a summary order must serve a copy of it on any party not represented by counsel.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 19th day of May, two thousand twenty.

PRESENT: AMALYA L. KEARSE,
DENNIS JACOBS,
JOSÉ A. CABRANES,
Circuit Judges.

ANDREW YANG, INDIVIDUALLY AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED; JONATHAN HERZOG, INDIVIDUALLY AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED; HELLEN SUH, INDIVIDUALLY AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED; BRIAN VOGEL, INDIVIDUALLY AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED; SHLOMO SMALL, INDIVIDUALLY AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED; ALISON HWANG, INDIVIDUALLY AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED; KRISTEN MEDEIROS, INDIVIDUALLY AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED; ROGER GREEN, INDIVIDUALLY AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED,

Plaintiffs-Appellees,

20-1494-cv

JAY BELLANCA, TRACI STRICKLAND, EMILY ADAMS, NESTOR MEDINA, SIMRAN NANDA, KATHRYN LEVY, JOSHUA SAUBERMAN, CARI GARDNER, STEPHEN CARPINETA, NANCY DEDELVA, TING BARROW, PENNY MINTZ, GEORGE ALBRO,

Intervenors-Plaintiffs-Appellees,

v.

PETER S. KOSINSKI, CO-CHAIR AND COMMISSIONER,
INDIVIDUALLY AND IN HIS OFFICIAL CAPACITIES AT THE NYS BOE;
TODD D. VALENTINE, CO-EXECUTIVE DIRECTOR, INDIVIDUALLY
AND IN HIS OFFICIAL CAPACITIES AT THE NYS BOE; ROBERT A.
BREHM, CO-EXECUTIVE DIRECTOR, INDIVIDUALLY AND IN HIS
OFFICIAL CAPACITIES AT THE NYS BOE,

Defendants-Appellants,

ANDREW SPANO, COMMISSIONER, INDIVIDUALLY AND IN HIS
OFFICIAL CAPACITIES AT THE NYS BOE,

Intervenor-Defendant-Appellant,

NEW YORK STATE BOARD OF ELECTIONS; DOUGLAS A. KELLNER,
CO-CHAIR AND COMMISSIONER, INDIVIDUALLY AND IN HIS OFFICIAL
CAPACITIES AT THE NYS BOE,

ADR Providers-Intervenors-Defendants-Appellants,

ANDREW CUOMO, AS GOVERNOR OF THE STATE OF NEW YORK,

Defendant.

FOR PLAINTIFFS-APPELLEES:

JEFFREY M. KURZON, Kurzon Kohen
LLP, New York, NY.

FOR INTERVENORS-PLAINTIFFS-APPELLEES:

J. REMY GREEN (Elena L. Cohen,
Jonathan Wallace, *on the brief*) Cohen &
Green P.L.L.C., Ridgewood, NY; ARTHUR
Z. SCHWARTZ, Advocates for Justice, New
York, NY.

FOR DEFENDANTS-APPELLANTS:

JUDITH N. VALE, Senior Assistant
Solicitor General (Barbara D. Underwood,
Solicitor General, Steven C. Wu, Deputy
Solicitor General, Jennifer L. Clark,
Assistant Solicitor General, *on the brief*), *for*
Letitia James, Attorney General, State of
New York, New York, NY.

FOR AMICI CURIAE BERNIE SANDERS AND BERNIE 2020 INC.:

Malcolm Seymour, David R. West, Foster Garvey, P.C., New York, NY.

FOR AMICI CURIAE NEW YORK STATE VOTERS:

Ezra Ishmael Young, Law Office of Ezra Young, Brooklyn, NY.

FOR AMICI CURIAE MEDICAL PROFESSIONALS:

Robert Rickner, Rickner PLLC, New York, NY.

FOR AMICI CURIAE HEATHER KEY, ET AL.: Walter H. Hackett, III, Law Office of Walter Hackett, Walnut, CA.

Appeal from a May 5, 2020 order of the United States District Court for the Southern District of New York (Analisa Torres, *Judge*).

UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the May 5, 2020 order of the District Court granting the application for preliminary injunction be and hereby is **AFFIRMED**. An opinion of the Court explaining its reasoning in further detail will follow.

Defendants-Appellants (“Defendants”) appeal from a May 5, 2020 order of the District Court granting an application of preliminary injunction to require them to reinstate to the Democratic primary ballot those presidential and delegate candidates who were duly qualified as of April 26, 2020, and to hold the primary election on June 23, 2020. Defendants argue that the decision of the New York State Board of Elections (“Board”) to remove from the ballot the candidates who had suspended their campaigns (along with their pledged delegates) is supported by reasonable concerns about harms to the public health and election administration workers in light of the current COVID-19 pandemic. Accordingly, Defendants argue, the Board’s decision did not violate the First Amendment rights of Plaintiffs and Intervenors-Plaintiffs. We assume the parties’ familiarity with the underlying facts, the procedural history of the case, and the issues on appeal.

We review *de novo* the District Court’s legal conclusions in connection with its decision to grant the application for preliminary injunction, *see Am. Express Fin. Advisors Inc. v. Thorley*, 147 F.3d 229, 231 (2d Cir. 1998), but review its ultimate decision to issue the injunction for abuse of discretion, *see Goldman, Sachs & Co. v. Golden Empire Schs. Fin. Auth.*, 764 F.3d 210, 214 (2d Cir. 2014).

After reviewing the record, we affirm the order granting the application for preliminary injunction for substantially the reasons given by the District Court in its thorough May 5, 2020 Opinion and Order. *See Yang v. Kellner*, No. 20-cv-3325 (AT), ---F. Supp. 3d---, 2020 WL 2129597, at *1–14 (S.D.N.Y. May 5, 2020).

CONCLUSION

We have reviewed all of the remaining arguments raised by Defendants on appeal and find them to be without merit. For the foregoing reasons, we **AFFIRM** the May 5, 2020 order of the District Court.

The mandate shall issue forthwith. An opinion of this Court will follow explaining its reasoning in further detail.

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk of Court

 Catherine O'Hagan Wolfe

**United States Court of Appeals for the Second Circuit
Thurgood Marshall U.S. Courthouse
40 Foley Square
New York, NY 10007**

ROBERT A. KATZMANN
CHIEF JUDGE

CATHERINE O'HAGAN WOLFE
CLERK OF COURT

Date: May 19, 2020

DC Docket #: 20-cv-3325

Docket #: 20-1494cv

DC Court: SDNY (NEW YORK CITY)

Short Title: Yang v. New York State Board of Electi DC Judge: Torres

BILL OF COSTS INSTRUCTIONS

The requirements for filing a bill of costs are set forth in FRAP 39. A form for filing a bill of costs is on the Court's website.

The bill of costs must:

- * be filed within 14 days after the entry of judgment;
- * be verified;
- * be served on all adversaries;
- * not include charges for postage, delivery, service, overtime and the filers edits;
- * identify the number of copies which comprise the printer's unit;
- * include the printer's bills, which must state the minimum charge per printer's unit for a page, a cover, foot lines by the line, and an index and table of cases by the page;
- * state only the number of necessary copies inserted in enclosed form;
- * state actual costs at rates not higher than those generally charged for printing services in New York, New York; excessive charges are subject to reduction;
- * be filed via CM/ECF or if counsel is exempted with the original and two copies.

**United States Court of Appeals for the Second Circuit
Thurgood Marshall U.S. Courthouse
40 Foley Square
New York, NY 10007**

ROBERT A. KATZMANN
CHIEF JUDGE

Date: May 19, 2020
Docket #: 20-1494cv
Short Title: Yang v. New York State Board of Electi

CATHERINE O'HAGAN WOLFE
CLERK OF COURT

DC Docket #: 20-cv-3325
DC Court: SDNY (NEW YORK
CITY)
DC Judge: Torres

VERIFIED ITEMIZED BILL OF COSTS

Counsel for

respectfully submits, pursuant to FRAP 39 (c) the within bill of costs and requests the Clerk to prepare an itemized statement of costs taxed against the

and in favor of

for insertion in the mandate.

Docketing Fee _____

Costs of printing appendix (necessary copies _____) _____

Costs of printing brief (necessary copies _____) _____

Costs of printing reply brief (necessary copies _____) _____

(VERIFICATION HERE)

Signature