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Statement of Case

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case

In the Matter of RICH AMEDURE et al., Appellants, v STATE OF
NEW YORK et al., Respondents, and MINORITY LEADER OF
THE SENATE OF THE STATE OF NEW YORK et al., Appellants,
et al., Respondent.

Argued October 15, 2024; decided October 31, 2024

PROCEDURAL SUMMARY

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APPEALS from an order of the Appellate Division of the Supreme Court in the Third Judicial Department, entered August 23, 2024. The Appellate Division, with two Justices dissenting, (1) modified, on the law, a judgment (denominated decision and order) of the Supreme Court, Saratoga County (Rebecca A. Slezak, J.; op 84 Misc 3d 879 [2024]), entered in a combined proceeding pursuant to Election Law article 16 and CPLR article 78 and action for declaratory judgment, which had, among other things, (a) adjudged and declared (I) “that the Legislature, if partial invalidity had been foreseen, would have wished the statute to be enforced with the invalid part excised therefrom, instead of rejecting the legislation altogether”; (ii) “that chapter 763 of the Laws of 2021, and more specifically, Election Law § 9-209 (2) (g), insofar as the same provides that if the central board of canvassers splits as to whether a ballot is valid, it shall prepare such ballot to be cast and canvassed pursuant to this subdivision, violates the Constitution of the State of New York and is unconstitutional and void”; and (iii) “that the remainder of chapter 763 of the Laws of 2021, and more specifically, the remaining portions of Election Law § 9-209, after excision of subdivision (2) (g), is . . . constitutional and valid”; and (b) ordered so much of the petition and motion to declare the statute unconstitutional granted in part and denied in part; (2) dismissed the petition/complaint; and (3) declared that Laws of 2021, chapter 763 is constitutional and valid. The modification consisted of reversing so much of the judgment as had declared Election Law § 9-209 (2) (g) unconstitutional. The Appellate Division affirmed the judgment as modified.

Matter of Amedure v State of New York, 232 AD3d 48, affirmed in part, appeal dismissed in part.

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HEADNOTE

**Elections — Judicial Proceedings — Resolution of Disputes as to
Validity of Ballot — Constitutionality**

Election Law § 9-209 (2) (g), which provides that if the members of a bipartisan local board charged with reviewing ballots are split as to a ballot’s

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validity, the ballot shall be cast and canvassed, does not violate the equal representation mandate of New York Constitution, article II, § 8, or the constitutional principles of judicial review and separation of powers. New York Constitution, article II, § 8 requires “equal representation” of the two major political parties on various election bodies, and Election Law § 9-209’s requirement that the Board be “divided equally between representatives of the two major political parties” secures that equal representation (Election Law § 9-209 [1]). The authority that Election Law § 9-209 vests in a two-member Board is equally distributed to each member: during the Board’s initial review for defects, either member can declare a ballot invalid, and during the Board’s subsequent review, either member can declare a ballot valid. Thus, no single Board member has any more authority than any other member over the canvassing process, and neither party carries more sway over the process than the other. Moreover, the statute comports with the Constitution and contains multiple pathways for judicial review, and the statutory scheme includes numerous safeguards through which the courts can address and prevent electoral fraud as necessary.

RESEARCH REFERENCES

By the Publisher’s Editorial Staff

AM JUR 2d Elections §§ 86, 358, 359.
McKINNEY’S, Election Law § 9–209 (1), (2) (g); NY Const,
art II, § 8.
NY JUR 2d Elections §§ 646, 648, 650, 651.

ANNOTATION REFERENCE

See ALR Index under Ballots; Constitutional Law; Elections and Voting.

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POINTS OF COUNSEL

Fusco Law Office, Albany (Adam Fusco of counsel), and *Perillo Hill, LLP*, Sayville (John Ciampoli of counsel), for Rich Amedure and others, appellants. I. Election Law § 9-209 (2) (g) violates article II, § 8 of the New York State Constitution and the Election Law. (*People v Stuart*, 100 NY2d 412; *Matter of Conlin v Kisiel*, 35 AD2d 423; *Matter of Graziano v County of Albany*, 3 NY3d 475; *People ex rel. Chadbourne v Voorhis*, 236 NY 437; *People ex rel. Stapleton v Bell*, 119 NY 175; *Matter of Kolb v Casella*, 270 AD2d 964; *Matter of Hosley v Valder*, 160 AD2d 1094; *Matter of Kelley v Lynaugh*, 112 AD3d 862; *Matter*

of *Pavlic v Haley*, 20 AD2d 592, 13 NY2d 1111; *Matter of Johnson v Martins*, 79 AD3d 913.) II. Preclusion of judicial review of unilateral actions by the boards of elections violates due process and the separation of powers doctrine. (*Matter of De Guzman v State of N.Y. Civ. Serv. Commn.*, 129 AD3d 1189; *Matter of Pan Am. World Airways v New York State Human Rights Appeal Bd.*, 61 NY2d 542; *Matter of Baer v Nyquist*, 34 NY2d 291; *Matter of New York City Dept. of Envtl. Protection v New York City Civ. Serv. Commn.*, 78 NY2d 318; *Board of Educ., Levittown Union Free School Dist. v Nyquist*, 57 NY2d 27; *Marbury v Madison*, 5 US 137; *Matter of Rosenstock v Scaringe*, 40 NY2d 563.) III. Recent cases exemplify the unconstitutionality of Election Law § 9-209 (2) (g). (*Matter of Hughes v Delaware County Bd. of Elections*, 217 AD3d 1250; *Matter of Delgado v Sunderland*, 97 NY2d 420; *Tenney v Oswego County Bd. of Elections*, 70 Misc 3d 680.) IV. Chapter 763 of the Laws of 2021 enables rampant voter fraud and undermines the integrity of New York's elections. (*Matter of Panio v Sunderland*, 4 NY3d 123; *Tenney v Oswego County Bd. of Elections*, 71 Misc 3d 400.) V. The appellate court should have struck the entirety of chapter 763 of the Laws of 2021 because excision of section 9-209 (2) (g) is impossible. (*Hecker v State of New York*, 20 NY3d 1087; *People ex rel. Alpha Portland Cement Co. v Knapp*, 230 NY 48.)

DerOhannesian & DerOhannesian, Albany (Paul DerOhannesian II of counsel), for Minority Leader of the Senate of the State of New York and another, appellants. I. "So far, so good" until there is a deadlock under Laws of 2021, chapter 763's post-2021 ballot canvassing procedure. II. The deadlock scenario that results under Election Law § 9-209 (2) (g) allowing a single commissioner's qualification of a voter violates the bipartisan mandates of New York's Constitution. (*Matter of Graziano v County of Albany*, 3 NY3d 475; *Matter of Conlin v Kisiel*, 35 AD2d 423, 28 NY2d 700.) III. If the majority opinion is upheld on this appeal, board malfeasance will result in voter's disenfranchisement. (*Storer v Brown*, 415 US 724.) IV. Where there is a deadlock, chapter 763 of the Laws of 2021 precludes judicial review in contravention of the requirements of New York's Constitution and Election Law. (*Marbury v Madison*, 5 US 137; *United States v American Trucking Assns., Inc.*, 310 US 534; *Matter of King v Cuomo*, 81 NY2d 247; *Saxton v Carey*, 44 NY2d 545; *White v Cuomo*, 38 NY3d 209; *Klostermann v Cuomo*, 61 NY2d 525; *Matter of Gross v Albany County Bd. of Elections*, 3 NY3d 251; *Matter of De Guzman v State of*

N.Y. Civ. Serv. Commn., 129 AD3d 1189; *Matter of New York City Dept. of Envtl. Protection v New York City Civ. Serv. Commn.*, 78 NY2d 318; *Mount St. Mary's Hosp. of Niagara Falls v Catherwood*, 26 NY2d 493.)

Letitia James, Attorney General, Buffalo (*Sarah L. Rosenbluth, Barbara D. Underwood and Jeffrey W. Lang* of counsel), for State of New York, respondent. I. Election Law § 9-209 (2) (g) satisfies all constitutional requirements at issue here. (*People ex rel. Chadbourne v Voorhis*, 236 NY 437; *Matter of Finegan v Cohen*, 275 NY 432; *People ex rel. Stapleton v Bell*, 119 NY 175; *Matter of Graziano v County of Albany*, 3 NY3d 475; *Butts v City of New York*, 779 F2d 141; *Matter of Conlin v Kisiel*, 35 AD2d 423, 28 NY2d 700; *New York Pub. Interest Research Group v Steingut*, 40 NY2d 250; *Motor Veh. Mfrs. Assn. of U.S. v State of New York*, 75 NY2d 175; *Matter of Delgado v Sunderland*, 97 NY2d 420; *Matter of New York State Comm. of the Independence Party v New York State Bd. of Elections*, 87 AD3d 806.) II. The severability issue is not properly before this Court. (*Forman v Henkin*, 30 NY3d 656; *People v Viviani*, 36 NY3d 564.) III. The appeal of the Minority Leaders should be dismissed because they are not aggrieved by the Appellate Division's decision. (*Byrnes v Senate of the State of N.Y.*, 41 NY3d 1022.)

Hacker Murphy LLP, Troy (*Benjamin F. Neidl and James Knox* of counsel), for Senate of the State of New York and another, respondents. I. Subdivision (2) (g) of Election Law § 9-209 does not violate the State Constitution or the Election Law. (*Cohen v Cuomo*, 19 NY3d 196; *White v Cuomo*, 38 NY3d 209; *New York State Rifle & Pistol Assn., Inc. v Cuomo*, 804 F3d 242; *People ex rel. Lardner v Carson*, 155 NY 491; *People ex rel. Chadbourne v Voorhis*, 236 NY 437; *Matter of Harris v Hulbert*, 211 App Div 301; *People ex rel. Stapleton v Bell*, 119 NY 175; *Matter of Conlin v Kisiel*, 35 AD2d 423; *Matter of Dutchess County Dept. of Social Servs. v Day*, 96 NY2d 149.) II. The statute does not offend due process or the separation of powers. (*Matter of Delgado v Sunderland*, 97 NY2d 420; *Matter of New York State Comm. of the Independence Party v New York State Bd. of Elections*, 87 AD3d 806, 17 NY3d 706; *Matter of Korman v New York State Bd. of Elections*, 137 AD3d 1474; *Matter of Scaringe v Ackerman*, 119 AD2d 327; *Bloom v Crosson*, 183 AD2d 341, 82 NY2d 768; *Matter of Lisa v Board of Elections of City of N.Y.*, 54 AD2d 746; *Matter of Pan Am. World Airways v New York State Human Rights Appeal Bd.*, 61 NY2d 542; *Matter of Baer v Nyquist*, 34

NY2d 291; *Matter of De Guzman v State of N.Y. Civ. Serv. Commn.*, 129 AD3d 1189; *Matter of New York City Dept. of Envtl. Protection v New York City Civ. Serv. Commn.*, 78 NY2d 318.) III. Plaintiffs/petitioners-respondents' discussion of "recent cases" is unavailing. (*Matter of Hughes v Delaware County Bd. of Elections*, 217 AD3d 1250.) IV. Even if subdivision (2) (g) of Election Law § 9-209 were invalid (which it is not) the trial court was correct to sever it. (*Waste Recovery Enters. v Town of Unadilla*, 294 AD2d 766, 100 NY2d 614; *Matter of Westinghouse Elec. Corp. v Tully*, 63 NY2d 191; *People v Liberta*, 64 NY2d 152.)

Hodgson Russ LLP, Albany (Christopher Massaroni, Henry A. Zomerfeld, Sera Yoon, Julia E. Mikolajczak and Mohammed A. Alam of counsel), for Assembly of the State of New York and others, respondents. I. Subdivision (2) (g) of Election Law § 9-209 is fully consistent with constitutional standards and preserves equal representation of the political parties in election matters. (*White v Cuomo*, 38 NY3d 209; *People ex rel. Lardner v Carson*, 155 NY 491; *People ex rel. Chadbourne v Voorhis*, 236 NY 437; *Clark v Cuomo*, 66 NY2d 185; *Matter of Graziano v County of Albany*, 3 NY3d 475.) II. Election Law § 9-209 (2) (g) does not infringe on the role of the judiciary. (*Matter of Delgado v Sunderland*, 97 NY2d 420; *Matter of Korman v New York State Bd. of Elections*, 137 AD3d 1474; *Tenney v Oswego County Bd. of Elections*, 70 Misc 3d 680; *Matter of McGrath v New Yorkers Together*, 55 Misc 3d 204; *Matter of De Guzman v State of N.Y. Civ. Serv. Commn.*, 129 AD3d 1189; *Matter of New York City Dept. of Envtl. Protection v New York City Civ. Serv. Commn.*, 78 NY2d 318; *Matter of Pan Am. World Airways v New York State Human Rights Appeal Bd.*, 61 NY2d 542; *Matter of Baer v Nyquist*, 34 NY2d 291; *Matter of Lisa v Board of Elections of City of N.Y.*, 54 AD2d 746, 40 NY2d 911.) III. Chapter 763 of the Laws of 2021 does not facilitate fraud in elections. (*People ex rel. Stapleton v Bell*, 119 NY 175; *Matter of Weinberger v Jackson*, 28 AD2d 559, 19 NY2d 995.) IV. Any award of relief should be prospective only. (*Matter of King v Cuomo*, 81 NY2d 247.)

OPINION OF THE COURT

Per Curiam.

In 2021, the Legislature enacted chapter 763 of the Laws of 2021 to streamline the canvassing of certain ballots. One of its provisions, Election Law § 9-209 (2) (g), provides that if the

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members of a bipartisan local board charged with reviewing ballots are split as to a ballot's validity, the ballot shall be cast and canvassed. Petitioners/plaintiffs (hereinafter plaintiffs) claim this section violates the equal representation mandate set forth in article II, § 8 of the New York Constitution and constitutional principles of judicial review and separation of powers. Seeing no merit to these challenges, we affirm the order of the Appellate Division. We also dismiss the appeal taken therefrom by the Minority Leaders of the Senate and the Assembly.

I.

The Election Law sets forth instructions for reviewing and canvassing absentee, mail-in, and certain other ballots (*see* Election Law § 9-209). During the 2020 election, there was an unusually high volume of absentee ballots due to the COVID-19 pandemic, and the statutorily mandated procedures gave rise to significant delays in the state's election reporting (*see* Senate Introductor's Mem in Support, Bill Jacket, L 2021, ch 763 at 8). Following that election, the Legislature enacted chapter 763, which repealed and replaced Election Law § 9-209. The prior statute had provided that a "central board of inspectors" would review absentee and other special ballots "no more than fourteen days after a general or special election and no more than eight days after a primary election" (*see* former Election Law § 9-209 [1] [a] *et seq.* [detailing the previous canvass process]). By enacting chapter 763, the Legislature sought to address the delays by requiring the review of absentee ballots every four days once early voting begins, and once every day on or after the election (*see* Election Law § 9-209 [2]; Governor's Approval Mem, Bill Jacket, L 2021, ch 763 at 6 ["These three election bills . . . speed up the counting of absentee ballots, make them more accessible, and permit New Yorkers who have requested a ballot to track its progress"]; Senate Introductor's Mem in Support, Bill Jacket, L 2021, ch 763 at 7 ["This bill amends the Election Law . . . in order to obtain the results of an election in a more expedited manner and to assure that every valid vote by a qualified voter is counted"]).

As relevant here, before returning one of the covered ballots a voter must place their completed ballot inside a ballot affirmation envelope (ballot envelope) (*see e.g.* Election Law §§ 7-119, 7-122, 7-125, 8-302 [3] [e] [ii]). The voter must then sign the ballot envelope, place it inside a return envelope,

and mail that envelope or return it in person. When the local board of elections receives that envelope, it is reviewed for potential defects, some of which the statute deems incurable and others curable. The local board of elections or a set of poll clerks known as the “central board of canvassers” (the Board) is entrusted with that process (*id.* § 9-209 [1]). The statute requires that each Board “be divided equally between representatives of the two major political parties,” a mandate included in the prior version of the law as well (*id.*; *see* Election Law former § 9-209 [1] [a]). The Board is thus required to have an even number of members and may have as few as two.

Under subdivision (2) (a), the Board first reviews the ballot envelope for any of four incurable defects that would render it presumptively invalid: (1) the name on the ballot envelope does not match the registration records; (2) there is no name on the ballot envelope; (3) the ballot envelope was not timely received or the postmark is not timely; or (4) the ballot envelope is completely unsealed. If the Board concludes that a ballot has any of these defects or splits as to the existence of any defect, then the ballot must be set aside for post-election review pursuant to section 9-209 (8) (*see* Election Law § 9-209 [2] [a]). If none of these defects exist, the Board then reviews the ballot for conditions that may render it defective but curable. Those conditions are set forth in Election Law § 9-209 (3) (b).

The appeal before us primarily concerns the process through which the Board evaluates one of these conditions: whether the voter’s signature on the ballot envelope matches the voter’s signature on file.* Election Law § 9-209 (2) (c) requires that the Board “compare the signature, if any, on each ballot envelope” with the signature on the applicable registration records. A non-matching signature renders a ballot defective, but curable (*id.* § 9-209 [3] [b]). Election Law § 9-209 (2) (g) provides that if the Board splits “as to whether a ballot is valid,” it “shall prepare such ballot to be cast and canvassed pursuant to this subdivision.” Thus, at the time, for example, that a two-person Board reviews a ballot for a signature match, subdivision (2) (g) allows either of the canvassers to approve the ballot for canvassing, and at that point the ballot envelope will be opened

* We need not resolve the parties’ disagreement about the extent to which subdivision (2) (g) applies to certain other defects—including extrinsic marks on the ballot itself and unsealed or torn ballots—to decide this appeal.

and the ballot processed pursuant to subdivision (2) (d). Once a ballot is processed, subdivision (8) (e) prohibits “a court [from] order[ing] a ballot that has been counted to be uncounted” (Election Law § 9-209 [8] [e]).

We turn now to the dispute before us. Plaintiffs filed this proceeding/action against, among others, defendants the State of New York, the New York Senate and Assembly, the Senate and Assembly Majority Leaders, and the Senate and Assembly Minority Leaders, seeking a declaration that chapter 763 is unconstitutional in its entirety. Plaintiffs argued that Election Law § 9-209 (2) (g) violated the equal representation mandate in article II, § 8 of the New York Constitution and principles of judicial review, and that these defects were not severable from the rest of the law. Most of the defendants filed motions to dismiss, except the Minority Leaders, who filed a memorandum of law in support of plaintiffs’ claims but sought no relief of their own.

Supreme Court concluded that subdivision (2) (g) violated article II, § 8 of the New York Constitution and improperly restricted judicial review in violation of the New York Constitution, but found that provision severable and declared the remainder of the statute constitutional (84 Misc 3d 879 [Sup Ct, Saratoga County 2024]). Only certain defendants/respondents appealed (but not the Minority Leaders), and a divided panel of the Appellate Division reversed (232 AD3d 48 [3d Dept 2024]). The Appellate Division reasoned that the plain language of article II, § 8 required “equal representation” of both parties on the Boards, that Election Law § 9-209 (1) satisfied this mandate, and that subdivision (2) (g) did not unconstitutionally constrain the judiciary (232 AD3d at 53-58). Two Justices dissented. Plaintiffs, and separately, the Minority Leaders, appeal as of right.

II.

It is well-settled that “[l]egislative enactments are entitled to a strong presumption of constitutionality” (*Stefanik v Hochul*, 43 NY3d 49 [2024], quoting *White v Cuomo*, 38 NY3d 209, 216 [2022]). Thus, plaintiffs must meet a “heavy burden” to prevail on their challenge to subdivision (2) (g) (*People v Foley*, 94 NY2d 668, 677 [2000]). Ultimately, plaintiffs’ reading is inconsistent with the constitutional framework.

Plaintiffs argue that Election Law § 9-209 (2) (g) violates article II, § 8 of the New York Constitution by allowing a ballot

to be processed as valid where the Board evenly splits as to its validity. Section 8 provides that

“[a]ll laws creating, regulating or affecting boards or officers charged with the duty of qualifying voters, . . . or of receiving, recording or counting votes at elections, shall secure equal representation of the two political parties which, at the general election next preceding that for which such boards or officers are to serve, cast the highest and the next highest number of votes” (NY Const, art II, § 8).

According to plaintiffs, Election Law § 9-209 (2) (g) violates this equal representation mandate because equal representation requires bipartisan agreement. We disagree.

Plaintiffs’ argument fails under the plain text of article II, § 8. The provision requires “equal representation” of the two major political parties on various election bodies, and Election Law § 9-209’s requirement that the Board be “divided equally between representatives of the two major political parties” secures that equal representation (Election Law § 9-209 [1]). Critically, the authority that Election Law § 9-209 vests in a two-member Board is equally distributed to each member: during the Board’s initial review for defects, either member can declare a ballot invalid (*see id.* § 9-209 [2] [a]), and during the Board’s subsequent review, either member can declare a ballot valid (*see id.* § 9-209 [2] [g]). Thus, no single Board member has any more authority than any other member over the canvassing process, and neither party carries more sway over the process than the other.

Although we need go no further, the history of article II, § 8 confirms our reading. Adopted at the 1894 Constitutional Convention, the provision was originally introduced to constitutionalize a statutory equal representation mandate that had been enacted several years earlier (*see* Peter J. Galie & Christopher Bopst, *The New York State Constitution* 109 [2d ed 2012]; 3 Charles Z. Lincoln, *The Constitutional History of New York* 127-129 [1906] [noting that the sponsor of the original draft claimed that “bi-partisan boards of election should be provided for,” and the bipartisanship should be secured “in perpetuity to the people of the state”]; *see also id.* at 114-127 [providing an extended discussion of the historical precedents]).

Discussion of this provision at the convention, though not extensive, reflects an understanding that bipartisan unanimity

was not required for election boards to take action. Its sponsor stated that the amendment was intended to “secure purity” and “absolute impartiality in the conduct of elections” (Galie & Bopst at 109 [quoting statement of Edward Lauterbach]), and that it did so by “engraft[ing] into the Constitution of the State the policy that the casting of the votes and the counting of the ballots shall be under the supervision of the representatives of both parties” (3 Rev Rec, 1894 Constitutional Convention at 251 [comment of Lauterbach]). Subdivision (2) (g) permits the review of absentee ballots to occur under exactly that arrangement.

As the Appellate Division dissent notes, one delegate complained that the equal representation mandate would be “fatal to our system of government, because it leaves no place where the matter can be decided in the event of a discussion, [and] a difference of opinion, as between parties” and would appoint no one to break a tie (3 Rev Rec, 1894 Constitutional Convention at 248 [comment of Dean], 254 [comment from another delegate asking how a validity determination would be made in the event of a tie and proposing that the majority party have power to decide]; *see also* 3 Lincoln at 129; 3 Rev Rec, 1894 Constitutional Convention at 243-271 [general discussion]). In our view, the dissent misreads this isolated comment by a dissenting voice as assuming that bipartisan agreement was required to take action, rather than as expressing concern about the lack of a unanimity requirement. Indeed, in response to questions about what would happen in the event of a tie vote (3 Rev Rec, 1894 Constitutional Convention at 254 [comments of Woodward, Johnson]), another delegate explained that, under the existing legal framework, when an in-person vote was contested by an evenly divided vote of the relevant inspectors, the contested voter “may swear in his vote, and *there is no necessity of an agreement*” (*id.* at 255 [comment of Moore] [emphasis added]). Subdivision (2) (g), we note, requires the same result. Article II, § 8 was again amended in 1938, but the revisions did not concern canvassing boards such as the one discussed here (*see* Galie & Bopst at 109 [“The 1938 additions involved changing ‘distributing ballots at the polls’ to ‘distributing ballots to voters’ ”]; Journal of 1938 NY Constitutional Convention, Appendix 3, Doc No. 16 at 9-10 [Constitution of the State of New York as revised, with amendments passed by the Constitutional Convention and marginal notes indicating the source and changes]).

None of the cases plaintiffs rely on contradict our reading of section 8. In *People ex rel. Chadbourne v Voorhis*, we explained that the provision “is well understood. It is to guarantee equality of representation to the two majority political parties on all such boards *and nothing more*” (236 NY 437, 446 [1923] [emphasis added]). We emphasized that the Legislature has authority to “adopt a reasonable method of ascertaining a qualifying fact” concerning voting (*id.*), and that is what subdivision (2) (g) does here with respect to a signature match. In *People ex rel. Stapleton v Bell*, we held that a statutory equal representation mandate similar to the constitutional provision at issue here did not allow one party’s members of a local board of elections to decline to certify an election based on speculation that certain voters were ineligible (119 NY 175, 179 [1889]). And in *Matter of Graziano v County of Albany*, we considered only whether a single commissioner had standing to challenge county actions that allegedly impaired the equal representation mandate, without addressing the scope of the provision (3 NY3d 475, 480-481 [2004]).

The dissenting Appellate Division Justices pointed to another line of cases as indicating that, under common law and parliamentary law, there can be no authority to act on a divided vote (*see* 232 AD3d at 61 [Egan Jr., J., dissenting], quoting *Matter of Felice v Swezey*, 278 App Div 958, 959 [2d Dept 1951], and citing *People ex rel. Argus Co. v Bresler*, 171 NY 302, 309 [1902]). That may be true. However, in enacting Election Law § 9-209 (2) (g), the Legislature expressly declared what happens in the case of a deadlocked board: the ballot is “prepare[d] . . . to be cast and canvassed” pursuant to subdivision (2) (Election Law § 9-209 [2] [g]). Neither of the cases cited by the dissent presented a similar directive. Just the opposite; there was no underlying legislation in either case prescribing a rule of decision in the event of a tie vote (*see Argus*, 171 NY at 308-309; *Felice*, 278 App Div at 958-959).

Plaintiffs also assert that the interplay between subdivision (2) (g)’s presumption of validity and subdivision (8) (e)’s limitation on a court’s power to declare a ballot uncounted once counted violates constitutional principles of separation of powers and judicial review. The Constitution vests Supreme Court with “general original jurisdiction in law and equity” (NY Const, art VI, § 7 [a]). It simultaneously vests the Legislature with the power “to adopt concerning [the right to vote] any reasonable, uniform and just regulations which are in harmony

with constitutional provisions” (*Matter of Burr v Voorhis*, 229 NY 382, 388 [1920]). Here, the statute comports with the Constitution and contains multiple pathways for judicial review. Election Law § 16-106 (5) allows any candidate to seek a temporary or preliminary injunction to halt a canvass, provided that the candidate prove by clear and convincing evidence that “procedural irregularities or other facts arising during the election” warrant such remedy. Executive Law § 63-b (1) empowers the Attorney General to initiate a quo warranto action to contest a candidate’s title to office. And a wide variety of criminal prohibitions in the Election Law punish malfeasance and fraud (*see e.g.* Election Law §§ 17-102, 17-104, 17-108, 17-130, 17-132). In the face of these many levers of judicial supervision, among others, it is inaccurate—and misleading—to say that Election Law § 9-209 dispenses with the role of the judiciary in ensuring that the people enjoy free and fair elections.

Finally, plaintiffs suggest that subdivision (2) (g) might enable electoral fraud by preventing a sole member of the Board from setting aside a ballot so that its validity may be contested in court. As the Appellate Division recognized, the statutory scheme includes numerous safeguards through which the courts can address and prevent electoral fraud as necessary (*see* 232 AD3d at 51-52, 56-57). In addition to the various avenues for judicial review we have noted, Election Law § 9-209 (5) allows observers to be present for the entirety of the review process, whereby candidates and parties may gather evidence of fraud, in the rare instance that it may occur. To the extent plaintiffs raise concerns about fraudulent voter registrations or ballot applications, the challenged law is largely inapposite: lists of registered voters are regularly made available for public review (*see* Election Law §§ 5-602, 5-604), and Election Law §§ 5-218 and 5-220 allow claims to contest pending registrations or cancel completed registrations.

Because plaintiffs failed to meet their “heavy burden” of proving Election Law § 9-209 (2) (g)’s unconstitutionality (*Foley*, 94 NY2d at 677), we hold that the statute does not violate the constitutional principles of separation of powers or of judicial review.

III.

We dismiss the appeal as to the Minority Leaders of the Senate and Assembly as they are not aggrieved by the Appellate Division’s order. The Minority Leaders filed submissions at

Supreme Court and the Appellate Division setting forth legal arguments consistent with certain of plaintiffs' claims for relief, but neither sought affirmative relief in a pleading nor moved for relief at Supreme Court. In these circumstances, the Appellate Division order did not deny them any relief, nor did it grant any relief adverse to them. They therefore are not aggrieved under CPLR 5511 (*see Byrnes v Senate of the State of N.Y.*, 41 NY3d 1022 [2024]).

Accordingly, on the appeal by plaintiffs Rich Amedure et al., the order of the Appellate Division should be affirmed, without costs. The appeal, insofar as taken by defendants Minority Leader of the Senate et al., should be dismissed, without costs, upon the ground that they are not parties aggrieved (CPLR 5511).

Chief Judge WILSON and Judges RIVERA, GARCIA, SINGAS, CANNATARO, TROUTMAN and HALLIGAN concur.

On appeal by plaintiffs Rich Amedure et al., order affirmed, without costs. Appeal, insofar as taken by defendants Minority Leader of the Senate of the State of New York et al., dismissed, without costs, upon the ground that they are not parties aggrieved (CPLR 5511).
