SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. CAROL R. EDMEAD **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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INDEX NO. 160662/2020

MOTION DATE 01/13/2021

MOTION SEQ. NO. 003

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 003) 36, 37, 38, 39, 40, 41, 42, 43, 52, 55

were read on this motion to/for MISCELLANEOUS.

Upon the foregoing documents, it is

ORDERED that the application of Proposed Intervenors Common Cause, New York Community for Change, The Black Institute, the Northwest Bronx Community and Clergy Coalition, the Citizens Union, and the League of Women Voters of the City of New York, Inc. to intervene as defendants in this proceeding pursuant to CPLR 1012 and 1013 (Motion Seq. 003) is granted; and it is further

ORDERED that the counsel for Proposed Intervenors shall serve a copy of this Order with Notice of Entry within twenty (20) days of entry on counsel for all parties.

MEMORANDUM DECISION

Plaintiffs commenced this proceeding on December 8, 2020 seeking declaratory and injunctive relief to, *inter alia*, enjoin and restrain Defendants City of New York ("City"), New York City Board of Elections ("BOE") and the New York City Campaign Finance Board ("CFB") (collectively, the "City Defendants") from administering, implementing, or conducting any future City elections, including the February 2, 2021 Special Election ("February Special Election"), under the BOE's rollout plan for the use of Ranked Choice Voting ("RCV") (see NYSCEF doc No. 2).

On December 14, 2020, Plaintiffs moved for a temporary restraining order ("TRO') and preliminary injunction prohibiting the use of RCV in the February Special Elections. In an Order dated December 16, 2020 ("December 2020 Order"), this Court denied Plaintiffs' application for an interim stay. In the same order, this Court granted the application of Intervenor-Defendant Moumita Ahmed for permissive intervention.

Proposed Intervenors Common Cause, New York Community for Change, The Black Institute, the Northwest Bronx Community and Clergy Coalition, the Citizens Union, and the League of Women Voters of the City of New York, Inc. are now moving to intervene as defendants in this proceeding pursuant to CPLR 1012 and 1013 (Motion Seq. 003). Plaintiffs oppose.

For the reasons set forth below, the Court grants the application of Proposed Intervenors who are hereby deemed Permissive Intervenors.

Background Facts

The Adoption of Ranked Choice Voting

In a 2019 ballot measure, City voters elected to use RCV. Under the RCV mechanism, "[v]oters can rank up to five candidates in order of preferences, instead of casting a vote for just

one." (https://vote.nyc/page/ranked-choice-voting [last accessed 1/21/2021]). "If a candidate gets a majority of votes (over 50%) they are declared the winner. If no candidate gets a majority of the vote[,] [t]he last place candidate is eliminated, and their votes are parceled out to the voter's second choice. A new tally is conducted to determine whether any candidate has won a majority of the adjusted votes. The process is repeated until a candidate wins an outright majority and is declared the winner." (*Id.*)

Pursuant to the New York City Charter ("City Charter") § 1057-g (j), RCV shall apply to "certain primary elections and elections for which nominations were made by independent nominating petitions" held on or after January 2, 2021.

On November 6, 2020, New York City Mayor De Blasio declared the February Special Election "as the date for the 24th City Council District special election to elect a Council Member to serve until December 31st, 2021." (https://www1.nyc.gov/office-of-the-mayor/news/767-20/mayor-de-blasio-declares-special-election-date-the-24th-council-district-queens [last accessed 1/21/2021]). By virtue of City Charter § 1057-g (j), the February Special Election must be conducted using RCV.

This Proceeding

Plaintiffs commenced this proceeding on December 8, 2020 seeking declaratory and injunctive relief to prohibit the use of RCV in any future City elections, including the February 2, 2021 Special Election, under the current BOE RCV rollout plan. Plaintiffs claim that the BOE and CFB have failed to comply with the requirements mandated by the City Charter to implement RCV as they have not conducted a voter education campaign to familiarize voters with the use of RCV (NYSCEF doc No. 1). Plaintiffs assert that if the plan to use RCV is allowed to procced, it will deprive City voters with limited English-proficiency of their right to vote and elect candidates of

their choice in violation of the Voting Rights Act (52 U.S.C. § 10101 et seq.) and New York State Election Law § 3-412 which requires that voters "with limited or no proficiency in the English language" receive assistance at the polls.

On December 14, 2020, Plaintiffs moved for a temporary restraining order and preliminary injunction which this Court denied in the December 2020 Order. In the same order, the Court granted the application of Intervenor-Defendant Moumita Ahmed for permissive intervention.

Plaintiffs appealed the December 2020 Order; the First Department denied Plaintiffs' application for leave to appeal on January 7, 2021.

The Motion for Intervention (Motion Seq. 003)

On January 13, 2021, Proposed Intervenors moved to intervene as defendants in this proceeding. Proposed Intervenors argue that they meet the criteria for permissive intervention under CPLR 1013. In support, they argue that they made a timely motion for intervention; that they have a "real and substantial" interest in the outcome of the litigation as they have devoted substantial resources supporting the adoption and implementation of the RCV through campaigns, trainings and voter education programs; that they represent the interests of their members who are New York City voters; and that their claims and defenses and the main action have common questions of law or fact (NYSCEF doc No. 42).

Proposed Intervenors further argue that, in the alternative, they are entitled to intervene as of right under CPLR 1012 as the existing defendants in this case do not "fully represent" their interests. Proposed Intervenors contend that the City only has a general interest in the enforcement of its laws and does not share their organizational interests in the resources already spent and

additional resources that they may be required to spend for voter education.[1] Proposed Intervenors further aver that unlike those who represent the interests of particular communities of voters, including voters of color within the City, existing defendants do not represent interests of specific communities.

The Opposition

Plaintiffs oppose the motion for intervention. Without supporting case law, they argue that the expenditure of resources does not constitute a direct and substantial interest in the outcome of the proceedings; that the injunctive relief demanded by Plaintiffs will have no direct or substantial impact on the ability of Proposed Intervenors to continue to advocate for and educate the public about RCV; that Proposed Intervenors cannot establish commonality of law or fact as they admitted lack of knowledge and information of Plaintiffs' complaint; that Proposed Intervenors could never be bound by a judgment in this case; and that Proposed Intervenors' interests are adequately represented by the City Defendants (NYSCEF doc No. 42).

The January 22, 2021 Conference

On January 22, 2021, this Court heard the parties on Proposed Intervenors' application. In an order issued on the same date (NYSCEF doc No. 55), this Court granted the application and this decision provides this Court's rationale therefor.

Discussion

I. Intervention in General

CPLR § 1012 (a) governs intervention as of right. It provides, in relevant part, the following:

> "(a) Intervention as of right. Upon timely motion, any person shall be permitted to intervene in any action:
> xxx

[1] The Court recognizes that a pecuniary interest in the subject of the action is not determinative of whether or not intervention should be allowed (*Central Westchester Humane Soc. v Hilleboe*, 115 N.Y.S.2d 769 [N.Y. Sup. Ct. 1952]).

> 2. when the representation of the person's interest by the parties is or may be inadequate and the person is or may be bound by the judgment;"
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> CPLR § 1013, on the other hand, governs intervention by permission and states that: "Upon timely motion, any person may be permitted to intervene in any action when ...the person's claim or defense and the main action have a common question of law or fact. In exercising its discretion, the court shall consider whether the intervention will unduly delay the determination of the action or prejudice the substantial rights of any party."

CPLR 1012 and 1013 were derived from the old Civil Practice Act ("CPA") § 193-b (1)[2] and (2)[3], substantially unchanged (Advisory Committee Notes). CPA § 193-b, in turn, superseded the old statute on the subject of intervention which "had been criticized as too limited" (*Central Westchester Humane Soc. v Hilleboe*, 115 N.Y.S.2d 769 [N.Y. Sup. Ct. 1952], *citing* Twelfth Annual Report of N. Y. Judicial Council, 1946, pp. 218-232).

In interpreting the language of CPA § 193-b, the First Department explained that CPA § 193-b "was modelled after rule 24 of the Federal Rules of Civil Procedure in an attempt to further broaden its scope and liberalize its application." (*Mann v Compania Petrolera Transcuba*, 17 Ad 2d 193 [1st Det 1962], *citing* the Twelfth Annual Report of N. Y. Judicial Council, 1946, pp. 218-232). This change was impelled by the history of intervention" which shows a trend "in the direction of its extension rather than its restriction." (*Rubin v Irving Trust Co.,* 105 N.Y.S.2d 140 [NY Sup Ct 1951], *citing* the 1946 Report of Judicial Council, supra, pp. 221, 223).

Thus, under CPA § 193-b, New York courts have held that a proposed intervenor need not have a direct personal or pecuniary interest in the subject of the action; if he would be indirectly affected by the litigation in a substantial manner, and his claim or defense with respect to the

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[2] CPA 193-b (1) provides in part that: "Upon timely application any person shall be permitted to intervene in an action, including, but not limited to, an action for a sum of money only: xxx (b) when the representation of the applicant's interest by existing parties is or may be inadequate and the applicant is or may be bound by a judgment in the action…"

[3] CPA 193-b (2) reads: "Upon timely application any person may be permitted to intervene in an action xxx (b) when an applicant's claim or defense and the main action have a question of law or fact in common. In exercising its discretion, the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties…"

subject matter of the litigation has a question of law or fact in common therewith, he may be permitted to intervene (*see Central Westchester Humane Soc. v Hilleboe*, 115 N.Y.S.2d 769, *citing Securities Comm. v U. S. Realty Co.,* 310 U.S. 434 which construed Federal Rule 24; *see also In re Guaranty Trust Co.*, 3 Misc. 2d 790 [NY Sup Ct, 1956]; and *Lipson v County of Nassau*, 35 Misc. 2d 787 [1st District, 1962]).

As CPLR §§ 1012 and 1013 are substantially similar to CPA § 193-b and Federal Rule 24, New York courts have similarly construed these provisions liberally. Thus, in *Yuppie Puppy Pet Prods., Inc. v Street Smart Realty, LLC*, 77 A.D.3d 197 [1st Dept 2010], the First Department held that "[i]ntervention is liberally allowed by courts, permitting persons to intervene in actions where they have a bona fide interest in an issue involved in that action." (*See also Teleprompter Manhattan CATV Corp. v State Bd. of Equalization and Assessment*, 34 A.D.2d 1033 [3d Dept 1970]).

Here, Proposed Intervenors seek to intervene as of right under CPLR § 1012 or by permission under § 1013. The Court acknowledges, however, that over the years the "[d]istinctions between intervention as of right and discretionary intervention are no longer sharply applied" (*Matter of HSBC Bank U.S.A.*, 135 AD3d 534 [1st Dept 2016], quoting *Yuppie Puppy Pet Prods., supra*]). Thus, in *Wells Fargo Bank, N.A. v McLean* (70 AD3d 676 [2d Dept 2010]), the court held that "[w]hether intervention is sought as a matter of right under CPLR 1012 (a), or as a matter of discretion under CPLR 1013, is of little practical significance since a timely motion for leave to intervene should be granted, in either event, where the intervenor has a real and substantial interest in the outcome of the proceedings."

In view of the above Appellate Court pronouncements, this Court now turns to the central issue of whether or not the Proposed Intervenors here have a real and substantial interest in this litigation.[4]

II. Characterization of Real and Substantial Interests of Citizens, Community and Advocacy Groups

The Court finds a dearth of Appellate Court cases defining when a citizens, community or advocacy group can invoke a "real and substantial interest" to justify intervention.

Plaintiffs cite to one case, from the Second Department, *Berkoski v Board of Trustees of Inc. Village of Southampton* (67 AD3d 840 [2d Dept 2009]).[5] In *Berkoski*, a group of homeowners sued a village seeking, *inter alia*, a judgment declaring that the village's plan to use the park adjacent to their homes as an area for the hiring of laborers was illegal. Three groups of intervenors sought to intervene as defendants: (1) the group of laborers; (2) the group of immigrant advocates who alleged that "they are community activists with long-standing interest in the rights of day laborers"; and (3) the Coalition for a Worklink Center, who alleged that it was an organization whose members were similarly interested in ensuring the "reasonable and humane treatment of day laborers." The Second Department allowed the intervention of the group of laborers, but denied the application of the group of advocates and of the Coalition, holding that "[a]lthough the injunctive relief demanded by the plaintiffs may have an impact on laborers who face the possibility of being prohibited from assembling and seeking employment in Aldrich Park, it will

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[4] Plaintiffs did not dispute the timeliness of Proposed Intervenors' motion either in their opposition or during the oral arguments on January 22, 2021. In any event, this Court finds that Proposed Intervenors' application is timely as it was filed just one month after Plaintiffs filed their complaint. Moreover, Proposed Intervenors filed their motion on January 13, 2021, shortly after the Appellate Division, First Department denied Plaintiffs' appeal of the December 2020 Order on January 7, 2021. At that juncture, discovery had not even begun, and this Court had not held any further hearings related to this case.

[5] Plaintiffs also cite to a Supreme Court decision, *Restaurant Action Alliance NYC*, 2015 W.L. 4291491. This Court declines to rely on this case as the Court in that case denied intervention by reason of, among others, the delay it would cause ("As this is a time sensitive issue where the original parties may be prejudiced, denying leave for NRDC to intervene is appropriate here.").

have no direct impact upon the ability of the advocacy appellants and the Coalition to advocate on behalf of the laborers." As explained by the Court below, *Berkoski* is distinguishable from this case and, therefore, Plaintiffs cannot rely on *Berkoski* to oppose Proposed Intervenors' application.

While there are no Appellate Court cases which this Court can rely on to weigh the Proposed Intervenors' interest as Citizens and Community groups, this Court finds a number of Federal Court cases insightful. This Court turns to them as persuasive authority in light of the fact that CPLR 1012 and 1013 were "modelled" after federal rules on intervention.

In *N.M. Off-Highway Vehicle All. v. U.S. Forest Serv.* (540 F. App'x 877, 880 [10th Cir. 2013]), petitioner filed a petition challenging the Forest Service's plan (the "Plan") designating roads and trails in the Santa Fe National Forest allowing motorized vehicles. Two environmental groups moved to intervene, but the district court denied intervention on the ground that the "Forest Service had taken the environmental groups' position and designed a Plan with the intent to curb the use of off-highway vehicles in the Santa Fe National Forest." On appeal, the Court of Appeals for the Tenth Circuit reversed. It held that "[a]pplying Rule 24(a)(2) somewhat liberally, [it] can easily determine that [] the environmental groups have legally protectable interests in environmental concerns" as they have "participated in the administrative process by submitting comments and by appealing the Plan, at all times expressing concern about the harms to wildlife and waterways… [and] the environmental groups' staff, members, and volunteers regularly enjoy the forest for recreational and aesthetic reasons." The Tenth Circuit further held that the existing parties could not adequately represent their interests as the petitioners were seeking an opposite relief while the Forest Service, being a government agency, cannot "protect both the public's interests and the would-be intervenor's private interests."

In another case, *Am. Farm Bureau Fedn v United States EPA* (278 FRD 98 [M.D.Pa 2011]), plaintiffs sought to vacate the Environmental Protection Agency's total maximum daily load for the Chesapeake Bay (the "Bay"). Certain environmental groups moved to intervene in the litigation. As relevant here, one of these groups was the Chesapeake Bay Foundation, Inc. ("CBF"), a non-profit corporation dedicated to restoring and protecting the Bay and its tributaries. Plaintiffs opposed CBF's motion on the ground that CBF's interests are nothing more than "a general interest in environmental regulation." The *Am. Farm* Court disagreed, holding that CBF has "an interest in efforts affecting the Bay, not only because the groups' individual members utilize the Bay and its tributaries for recreational and aesthetic purposes, but also because such efforts go to the core mission of the groups." The Court further reasoned that "[g]iven [CBF's] past legal, educational, and physical efforts geared toward protecting and restoring the Bay, and the personal use and enjoyment of the Bay by the groups' individual members, [CBF] demonstrated a legally protectable interest in the outcome of th[e] case."

In another case, *Herdman v Town of Angelica* (163 F.R.D. 180 [WDNY 1995]), Concerned Citizens of Allegany County ("CCAG") moved to intervene as a defendant in an action brought by Plaintiff companies seeking to restrain defendant-town from enforcing Local Law No. 1 (the "Local Law") restricting the companies' establishment of new solid waste facilities. CCAG is a nonprofit association whose organizational purposes include "promoting and improving the quality of the natural environment of Allegany County, New York through public and community education, direct action, and opposition to the construction and operation of hazardous, solid and nuclear waste facilities within the County." Plaintiffs opposed, arguing that the interests of CCAC were not "direct, substantial and legally cognizable" and that these interests were represented by defendant-town who was "vigorously defending" the Local Law challenged. The Court allowed

the intervention, finding that CCAC "asserted far more than a general, academic, or peripheral interest" as "in addition to its interest in protecting the local environment and preserving property values in the area surrounding the proposed monofil, CCAC had a direct interest in the validity of [the] Local Law [] for which it lobbied actively."

In the more recent case of *Christa McAulife Intermediate Sch. PTO, Inc. v De Blasio*, 2020 US Dist. LEXIS 53346, 2020 WL 1433313 [SDNY 2020]), plaintiffs, which included public interest organizations, brought an action against the New York City Mayor (the "Mayor") and Department of Education Chancellor (the "Chancellor"), claiming that changes to the admissions process for the eight specialized New York City public high schools violate the Equal Protection Clause of the Fourteenth Amendment because they discriminate against Asian-American students. A group of organizations moved to intervene in defense of the Mayor and the Chancellor. This group included "organizations dedicated to increasing diversity and integration in New York City public schools." Despite opposition, the Court allowed the application for intervention, holding that Proposed Intervenors raised two significant interests, *i.e.*, (i) "an interest in increased access to educational opportunity, which is directly impacted by this challenge to the [revised Discovery program];" and (ii) "an interest "in preserving any amount of increased racial diversity and decreased racial isolation that the [revised Discovery program] promises to bring to the Specialized High Schools."" The Court held that these interests are "direct, substantial, and legally protectable."

III. Proposed Intervenors' Interest in this Litigation

Following the liberal view in allowing intervention under CPLR 1012 and 1013, and the Federal Court cases above, this Court grants the application of Proposed Intervenors in this litigation.

First, much like the intervenors in *N.M. Off-Highway Vehicle* and *Herdman,* Proposed Intervenors here lobbied strongly for the law at issue, the implementation of which Plaintiffs seek to challenge. As Proposed Intervenors allege, and as supported by the affidavits they submitted (NYSCEF doc Nos. 38-43), they have advocated for the Charter Revision Commission to endorse RCV and to place it on the November 2019 ballot. After the Charter Revision Commission placed the measure on the ballot, Proposed Intervenors actively supported the RCV ballot question and, upon approval, actively supported RCV's implementation. Moreover, similar to the intervenor in *Am. Farm* who participated in "numerous educational programs" on the subject matter of the litigation, Proposed Intervenors here allege to be involved in voter education about RCV, the implementation of which Plaintiffs seek to restrain.

Second, Proposed Intervenors are more than just advocates. They represent thousands of New York City voters whose ability to vote using the RCV in future NYC elections, including the February Special Election, will be directly impacted if Plaintiffs prevail in this litigation. This distinguishes Proposed Intervenors from the advocacy groups in the case of *Berkoski* (*supra*, at p. 8). In *Berkoski,* the immigrant advocates and the Coalition did not allege that their members were laborers who would be directly impacted by the relief demanded by Plaintiffs. Rather, their members were merely "interested" in advocating the rights of laborers; they were activists and nothing more.

Third, the Court finds that Proposed Intervenors and Plaintiffs stand on the same footing, albeit seeking opposite reliefs. The record shows that both Proposed Intervenors and Plaintiffs are civic and community organizations whose ultimate goal is to make sure that City Charter § 1057 (g) providing for RCV is implemented for the voters they represent.

During the January 22, 2021 Conference, Plaintiffs admitted that the body constituting Plaintiffs is no different from the body constituting Proposed Intervenors:

> "THE COURT: [] How as a body does your group, the group of plaintiffs, differ from the body that constitutes the proposed intervenors?
>
> MS. MARION: As the body just without looking at the case itself, they don't. As a body they don't."
>
> (Transcript, p. 9:18-22).

Plaintiffs further argued that the reason they commenced this proceeding is "to make sure that 1057-g of the City Charter is implemented for us as voters and the voters we represent to make sure that ranked-choice voting is implemented in accordance with 1057-g" (*Id.*, p. 10:6-9). Proposed Intervenors, on the other hand, acknowledged that their goal is "very much like that [of] Plaintiffs'" and that is "to see 1057 implemented, that's the City Charter provision, and [they] have an overarching interest in ensuring that voters are adequately educated." (*Id.*, p. 11-10-12).

The submissions of the parties also lend support to this Court's conclusion that Proposed Intervenors and Plaintiffs represent organizations of generally the same type who broadly share the same organizational interests. For instance, Plaintiffs allege that they represent "minority population of New York City voters…who are persons of color and members of language minority groups," (NYSCEF doc No. 9, p. 13) while Proposed Intervenors assert that they represent "thousands of New York City voters, including voters in District 24 [and] communities of color and low-income voters, in particular." (NYSCEF doc No. 37, p. 15). As to interest, Plaintiffs and Proposed Intervenors both ultimately seek to ensure that the voters they represent are able to exercise their right to vote in accordance with law. Plaintiffs argue that they commenced this proceeding as there is a likelihood that the BOE's roll out plan for the use of RCV "will result in a violation of the Voting Rights Act and [] impair[] voters' ability to cast their vote and elect

representatives of their choice," (NYSCEF doc No. 1, ¶ 86), while Proposed Intervenors aver that they wanted to intervene because they want to ensure that "voters [have] a greater say in the outcome of the elections" through the implementation of RCV (NYSCEF doc No. 37, p. 15).

The Court therefore finds that Plaintiffs and Proposed Intervenors essentially represent two sides of the same litigation coin. Consequently, Plaintiffs cannot establish that they have an interest in the outcome of this litigation greater than that of Proposed Intervenors.

IV. Remaining Criteria for Intervention

While the Court has found that Proposed Intervenors' application has merit in that they have a real and substantial interest in the outcome of litigation, for the sake of completeness, the Court addresses the remaining arguments raised by Plaintiffs in their opposition.

First, contrary to Plaintiffs' assertion, Proposed Intervenors' claim involves questions of fact and law common to those raised by Plaintiffs' complaint. As Plaintiffs allege, their complaint "challenges the failure to properly implement RCV in accordance with the dictates of the City Charter." (NYSCEF doc No. 52, p. 13). In particular, this challenge is based on Plaintiffs' claim that City Defendants failed to conduct voter education campaigns to familiarize City voters with the use of RCV (NYSCEF doc No. 1, ¶ 7). Proposed Intervenors, however, claim that voter education programs were in fact rolled out through community groups like them. Thus, at the January 22, 2021 conference, counsel for Proposed Intervenors explained as follows:

> "Mr. Iyer: Thank you, your Honor. Two points, if I could, the first in direct response to Ms. Marion.
>
> In terms of voter education, she's absolutely right, that the charter says that the Campaign Finance Board shall conduct a campaign, but, of course, in conducting any campaign, the Campaign Finance Board, like any government entity, can decide how it wants to do that, and as the documents that were attached to the complaint, Exhibit 1 to the complaint, this is page two, says, "The Board will conduct outreach and engagement efforts with community-based organizations,

> good government groups, and other relevant stakeholders in order to achieve the educational plan."
>
> We obviously, as the proposed intervenors, are part and parcel of the Board's effort..."
>
> (Transcript, p. 17:12-25).

Proposed Intervenors, therefore, raise the same issue of whether or not the City Defendants complied with the requirement of voter education as part of the implementation of RCV mandated by the City Charter.

Second, Plaintiffs also argue that Proposed Intervenors could never be bound by a judgment in this case. According to Plaintiffs, "one must be in privity with a party to be bound by the *res judicata* effect of a judgment," but Proposed Intervenors in this case allegedly "do not assert claims or allegations [] same as Plaintiffs" and "only share common boilerplate defenses with the City Defendants." (NYSCEF doc No. 52, p. 14) The Court disagrees. As explained, Plaintiffs and Proposed Intervenors stand on the same footing as they are both comprised of organizations representing City voters whose overarching goal is to ensure that their members are able to vote using RCV in accordance with the City Charter. Plaintiffs are also incorrect to posit that Proposed Intervenors just share common boilerplate defenses with the City Defendants.

While Proposed Intervenors, like the City Defendants, are defending the implementation of RCV in all future NYC elections, including the February 2021 Special Elections, Proposed Intervenors' position primarily revolves around the interest of voters they represent – something they do not share with City Defendants. Indeed, Proposed Intervenors have no other avenue to defend the implementation of RCV. If this Court restrains its implementation, Proposed Intervenors would have no recourse to appeal or otherwise contest the decision if they remain non-parties (*see Christa McAulife Intermediate Sch. PTO, Inc. v De Blasio*, 2020 US Dist. LEXIS 53346, 2020 WL 1433313 [SDNY 2020] ["Defendants next suggest that Proposed Intervenors'

ability to protect their interests will not be impaired if they are not allowed to intervene. Specifically, they posit that '[i]f Proposed Intervenors believe DOE has injured them, they may bring a separate suit against DOE. This action will have no res judicata effect upon them, unless they become parties.' But Defendants misconstrue Proposed Intervenors' interests. Their claim is not that DOE has injured them, but rather that, if the revised Discovery program were to end as a result of this litigation, their interests in educational equity and school diversity would be impacted… Indeed, Proposed Intervenors have no other avenue to defend the revised Discovery program. And, if this Court strikes down the revised program, Proposed Intervenors would have no recourse to appeal or otherwise contest the decision if they remain non-parties…"]).

Finally, Plaintiffs contend that any interest Proposed Intervenors may have in this proceeding is represented by the City Defendants. Thus, intervention of Proposed Intervenors is unnecessary and should be denied (NYSCEF doc No. 52, pp. 14-15).

"The burden of showing that existing representation may be inadequate is a minimal one for purposes of intervention." (*see N.M. Off-Highway Vehicle All. v. U.S. Forest Serv.*, 540 F. App'x 877, 880 [10th Cir. 2013]).

While Plaintiffs are correct that both the City Defendants and Proposed Intervenors ultimately seek the dismissal of Plaintiffs' complaint and denial of all the reliefs requested therein, this Court finds that the City Defendants could not fully represent the interests of Proposed Intervenors.

Courts recognize that it is difficult for a government agency to protect both the public's interests and the would-be intervenor's private interests (*N.M. Off-Highway Vehicle All. v. U.S. Forest Serv.,* supra). Indeed, "[w]here a government agency may be placed in the position of defending both public and private interests, the burden of showing inadequacy of representation is

satisfied. This is because the government's representation of the public interest generally cannot be assumed to be identical to the individual parochial interest of a particular member of the public merely because both entities occupy the same posture in the litigation." (*Id.*; *see also Friends of Animals v Kempthrone*, 452 F. Supp. 2d 64 [D.D.C. 2006] ["[A government] agency's obligation 'is to represent the interests of the American people,' while entities dedicated to hunting and conservation -- like proposed intervenors -- represent the interests of their members. For this reason, this Circuit has concluded that 'governmental entities do not adequately represent the interests of aspiring intervenors.'"]).

Here, Proposed Intervenors allege that they are representing, among others, persons of color and members of language minority groups who are entitled to be educated on the use of RCV (NYSCEF doc No. ¶ 80). They further allege that they commenced this proceeding as the implementation of RCV will impair these groups' ability to cast their vote and elect representatives of their choice (*Id.*, ¶ 86). This litigation therefore involves, among others, interests of specific community of voters which the City Defendants cannot represent, but Proposed Intervenors can as representatives of "particular communities of voters, including voters of color, within New York City" (NYSCEF doc No. 37, p. 18). The Court also highlights that City Defendants here have not taken any position on Proposed Intervenors' motion and the Court construes this silence in Proposed Intervenors' favor (*see N.M. Off-Highway Vehicle All. v. U.S. Forest Serv.*, 540 F. App'x 877, 880 [10th Cir. 2013] ["Finally, the Forest Service has taken no position on the motion to intervene in this case. Its silence on any intent to defend the [environmental groups'] special interests is deafening."]). Accordingly, the Court concludes that Proposed Intervenors have met their minimal burden of showing that the City Defendants may not adequately represent their interests.

V. Final Note

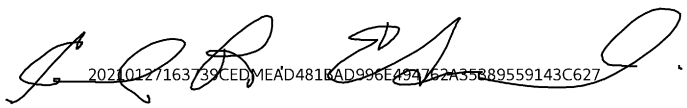
The Court clarifies that it does not make any finding or conclusion as to whether or not the interests of Proposed Intervenors which are broadly shared by Plaintiffs are sufficient to give them standing in this case. As Defendants here assert that Plaintiffs lack standing to seek the relief they seek, the holding above is made without any prejudice to the disposition of the undecided issue on standing.

Conclusion

Based on the foregoing, it is hereby

ORDERED that the application of Proposed Intervenors Common Cause, New York Community for Change, The Black Institute, the Northwest Bronx Community and Clergy Coalition, the Citizens Union, and the League of Women Voters of the City of New York, Inc. to intervene as defendants in this proceeding pursuant to CPLR 1012 and 1013 (Motion Seq. 003) is granted; and it is further

ORDERED that the counsel for Proposed Intervenors shall serve a copy of this Order with Notice of Entry within twenty (20) days of entry on counsel for all parties.



1/27/2021
DATE

CAROL R. EDMEAD, J.S.C.

CHECK ONE:		CASE DISPOSED		X	NON-FINAL DISPOSITION		
	X	GRANTED	☐ DENIED		GRANTED IN PART	☐	OTHER
APPLICATION:		SETTLE ORDER			SUBMIT ORDER		
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN			FIDUCIARY APPOINTMENT	☐	REFERENCE