

Summons and Complaint

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF LIVINGSTON**

**MARJORIE BYRNES, individually and as a member
of the New York State Assembly, TAWN FEENEY and
SUSAN LUNDGREN,**

VERIFIED COMPLAINT

Index No.:

Plaintiffs,

- against -

**THE SENATE OF THE STATE OF NEW YORK,
ANDREA STEWART-COUSINS, as the President Pro
Tempore and Majority Leader of the Senate, ROBERT
ORTT, as Minority Leader of the Senate, THE
ASSEMBLY OF THE STATE OF NEW YORK, CARL
HEASTIE, as Speaker of the Assembly, WILLIAM
BARCLAY, as Minority Leader of the Assembly, and
the NEW YORK STATE BOARD OF ELECTIONS,**

Defendants.

Plaintiffs, **MARJORIE BYRNES, TAWN FEENEY and SUSAN LUNDGREN**, by their attorneys **MCLAUGHLIN & STERN, LLP and COX LAWYERS, PLLC**, hereby allege as follows:

1. Plaintiff Marjorie Byrnes is a member of the New York State Assembly, duly elected to represent the 133rd Assembly District, and a resident of Livingston County.
2. Plaintiffs Tawn Feeney and Susan Lundgren are married individuals with a principal residence in the Town of Conesus, County of Livingston.
3. Defendant Senate of the State of New York (“the Senate”) is one of the two houses of the Legislature established pursuant to Article III of the New York Constitution (“the Constitution”).
4. Defendant Andrea Stewart-Cousins is a duly elected member of the Senate and serves as the President Pro Tempore and Majority Leader of the Senate.

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5. Defendant Robert Ortt is a duly elected member of the Senate and serves as the Minority Leader of the Senate.

6. Defendant Assembly of the State of New York (“the Assembly”) is one of the two houses of the Legislature established pursuant to Article III of the Constitution. The Senate and Assembly are referred to herein collectively as “the Legislature.”

7. Defendant Carl Heastie is a duly elected member of the Assembly and serves as the Speaker of the Assembly.

8. Defendant William Barclay is a duly elected member of the Assembly and serves as the Minority Leader of the Assembly.

9. Defendant New York State Board of Elections (“BOE”) is the agency of the state charged with the preparation of statewide ballot proposals for the consideration of voters at a general election pursuant to Article 7 of the Election Law.

10. By this action, Plaintiffs seek a judgment pursuant to CPLR §3001 declaring that the Legislature’s adoption of a resolution on July 1, 2022 related to the proposed amendment of §11 of Article I of the Constitution is invalid and *ultra vires*, and directing the BOE to remove such proposed amendment to the Constitution from the ballot proposals that will appear for the consideration of the voters at the November 5, 2024 general election.

THE PROCESS FOR THE AMENDMENT OF THE CONSTITUTION

11. The process governing the amendment of the Constitution is set forth at §1 of Article XIX of the Constitution. The amendment process requires several steps and has remained largely unchanged through various iterations of the Constitution since 1824.

12. An amendment to the Constitution may originate in either house of the Legislature. Upon the introduction of a resolution proposing an amendment to the Constitution, the proposed

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amendment “shall be referred to the attorney-general whose duty it shall be within twenty days thereafter to render an opinion in writing to the senate and assembly as to the effect of such amendment or amendments upon other provisions of the constitution.” *See* Article XIX, §1 of the Constitution.

13. The Legislature is authorized to vote upon a proposed amendment after it refers the amendment to the Attorney General and receives his/her opinion on such amendment’s effect on other provisions of the Constitution. “*Upon receiving such opinion*, if the amendment or amendments as proposed or as amended shall be agreed to by a majority of the members elected to each of the two houses, such proposed amendment or amendments shall be entered on their journals, and the ayes and noes taken thereon, and referred to the next regular legislative session convening after the succeeding general election of members of the assembly” for further proceedings. *See Id.* (emphasis added).

14. If, at the next regular session of the Legislature, both houses adopt a resolution in favor of the proposed amendment a second time, “then it shall be the duty of the legislature to submit each proposed amendment or amendments to the people for approval in such manner and at such times as the legislature shall prescribe” and, if approved by the voters, the amendment then becomes effective. *See Id.*

15. While the overall structure of the amendment process has remained the same since 1824, the requirement that the Legislature refer any proposed amendment to the Attorney General for an opinion after its introduction and receive such opinion prior to voting on a proposed amendment was added to the process by the Constitutional Convention of 1938 that produced the present version of the Constitution.

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THE PROPOSED AMENDMENT TO §11 OF ARTICLE I OF THE CONSTITUTION

16. On July 1, 2022, both houses of the Legislature introduced and, on the same day, adopted concurrent resolutions seeking to amend §11 of Article I of the Constitution, the article that sets forth the Constitution's "Bill of Rights."

17. The resolution was introduced in the Senate as Senate Bill S. 51002 and in the Assembly as Assembly Bill A. 41002 ("the Concurrent Resolution"). A copy of the Concurrent Resolution is annexed hereto as **Exhibit "A"**.

18. Immediately following the introduction of the Concurrent Resolution, it was referred to the Attorney General for her opinion pursuant to §1 of Article XIX of the Constitution.

19. Both the Senate and Assembly voted to adopt the Concurrent Resolution on July 1, 2022, the same day upon which it was introduced, and prior to the receipt of the opinion of the Attorney General.

20. Following adoption, the Concurrent Resolution was delivered to the Secretary of State on July 5, 2022.

21. The Attorney General issued her opinion on July 6, 2022. A copy of the opinion is annexed hereto as **Exhibit "B"**.

22. The Legislature received the opinion on July 13, 2022. A timeline of the relevant events, as detailed by the official website of the Senate, is annexed hereto as **Exhibit "C"**.

23. The Legislature referred the proposed amendment adopted via Concurrent Resolution to the next session of the Legislature in January 2023. On January 24, 2023, both houses of the Legislature adopted a second current resolution in favor of the proposed amendment (S.108-A/A.1283). As result, the proposed amendment is scheduled to appear on the ballot for a vote of the electorate at the general election of November 5, 2024.

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FIRST CAUSE OF ACTION

24. Plaintiffs repeat and re-allege each and every allegation set forth above as if set forth herein.

25. Pursuant to §1 of Article XIX of the Constitution, the Legislature is required to refer any proposed amendments to the Constitution to the Attorney General for his/her opinion on such amendments. The Attorney General is required to issue such opinion within 20 days of the referral.

26. Section 1 of Article XIX of the Constitution authorizes the Legislature to take action on a proposed amendment only “upon receiving such opinion”, not before it receives the Attorney General’s opinion.

27. The unambiguous language of the Constitution prohibits the Legislature from introducing and voting upon a proposed amendment prior to “receiving” the opinion of the Attorney General. “When language of a constitutional provision is plain and unambiguous, full effect should be given to the intention of the framers as indicated by the language employed and approved by the People. In a related governance contest, this Court found no justification for departing from the literal language of the constitutional provision.” *King v. Cuomo*, 81 N.Y. 2d 247, 253 (1993).

28. Article XIX of the Constitution erects a deliberative process designed to ensure that the Legislature takes due care before the adoption of an amendment to the Constitution and the Legislature must adhere to such process strictly. “There is little room for misapprehension as to the ends to be achieved by the safeguards surrounding the process of amendment. The integrity of the basic law is to be preserved against hasty or ill-considered changes, the fruit of ignorance or passion.” *Browne v. City of New York*, 241 N.Y. 96, 109 (1925)

29. The Legislature introduced, referred to the Attorney General and adopted the Concurrent Resolution in a single-day extraordinary session on July 1, 2022.

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30. The Legislature adopted the Concurrent Resolution prior to the receipt of the opinion of the Attorney General. The Attorney General issued her opinion on July 6, 2022, and the Legislature officially received such opinion on July 13, 2022.

31. As such, the Legislature's adoption of the Concurrent Resolution was illegal and *ultra vires* because, in adopting the Concurrent Resolution prior to the receipt of the Attorney General's opinion, the Legislature violated the amendment process set forth at §1 of Article XIX of the Constitution.

32. Since the adoption of the Concurrent Resolution is invalid and illegal, the Legislature has not duly adopted the proposed amendment to §11 of Article I of the Constitution in two successive sessions as is required for the submission of a proposed amendment to the voters of the State. Therefore, the proposed amendment of such provision of the Constitution may not appear on the ballot for consideration at the general election of November 5, 2024.

33. Plaintiff Byrnes is a duly elected member of the Assembly who voted against the adoption of the Concurrent Resolution on July 1, 2022.

34. Plaintiffs Feeney and Lundgren are citizens and taxpayers of the State of New York who object to the Legislature's failure to adhere to the mandates of §1 of Article XIX of the Constitution in its adoption of the Concurrent Resolution and, therefore, enjoy standing in the instant action. *Boryszewski v. Brydges*, 37 N.Y.2d 361, 364-65 (1975)

35. Upon information and belief, Defendants maintain that the Legislature properly adopted the Concurrent Resolution and that the ballot proposal seeking amendment of §11 of Article I of the Constitution may appear for consideration at the general election of November 5, 2024.

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36. A justiciable controversy exists regarding the validity of the Legislature's adoption of the Concurrent Resolution on July 1, 2022.

37. Based upon the foregoing, Plaintiffs are entitled to a judgment pursuant to CPLR §3001 declaring that, by adopting the Concurrent Resolution prior to the receipt of the opinion of the Attorney General, the Legislature violated the procedure for the amendment of the Constitution set forth at §1 of Article XIX of the Constitution; declaring the adoption of the Concurrent Resolution null and void; and directing the BOE to remove the proposed amendment to §11 of Article I of the Constitution from the ballot for the general election of November 5, 2024.

38. Plaintiffs have no adequate remedy at law.

WHEREFORE, Plaintiffs demand judgment as follows:

(A) On the First Cause of Action, pursuant to CPLR §3001, declaring that the Legislature violated §1 of Article XIX of the Constitution in adopting the Concurrent Resolution, declaring the Concurrent Resolution null and void accordingly and directing the BOE to remove the proposed amendment to §11 of Article I of the Constitution from the ballot for the general election of November 5, 2024; and

(B) Awarding Plaintiffs such other and further relief as the Court deems just and proper.

Dated: Garden City, New York
October 30, 2023


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(914) 779-7762

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VERIFICATION

STATE OF NEW YORK)
) ss.
COUNTY OF Livingston

MARJORIE BYRNES, being duly sworn, deposes and says:

1. I am a Plaintiff in the above-referenced proceeding.
2. I have read the foregoing Complaint and know the contents thereof to be true except as to those matters said to be based upon information and belief which matters I believe to be true; said knowledge is based on my personal experience, and the records compiled by Plaintiff.


MARJORIE BYRNES

Sworn to before me this
30 day of October, 2023



Notary Public

DIANA FARRELL
NOTARY PUBLIC STATE OF NEW YORK
NO. 01FA6296178
QUALIFIED IN LIVINGSTON COUNTY
COMMISSION EXPIRES JANUARY 27, 2026

{N0655860.1}

EXHIBIT A

STATE OF NEW YORK

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Extraordinary Session

IN SENATE

July 1, 2022

Introduced by Sen. STEWART-COUSINS -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

CONCURRENT RESOLUTION OF THE SENATE AND ASSEMBLY

proposing an amendment to section 11 of article 1 of the constitution, in relation to equal protection

1 Section 1. Resolved (if the Assembly concur), That section 11 of arti-
2 cle 1 of the constitution be amended to read as follows:
3 § 11. a. No person shall be denied the equal protection of the laws of
4 this state or any subdivision thereof. No person shall, because of race,
5 color, ethnicity, national origin, age, disability, creed [ex], reli-
6 gion, or sex, including sexual orientation, gender identity, gender
7 expression, pregnancy, pregnancy outcomes, and reproductive healthcare
8 and autonomy, be subjected to any discrimination in [his or her] their
9 civil rights by any other person or by any firm, corporation, or insti-
10 tution, or by the state or any agency or subdivision of the state,
11 pursuant to law.
12 b. Nothing in this section shall invalidate or prevent the adoption of
13 any law, regulation, program, or practice that is designed to prevent or
14 dismantle discrimination on the basis of a characteristic listed in this
15 section, nor shall any characteristic listed in this section be inter-
16 preted to interfere with, limit, or deny the civil rights of any person
17 based upon any other characteristic identified in this section.
18 § 2. Resolved (if the Assembly concur), That the foregoing amendment
19 be referred to the first regular legislative session convening after the
20 next succeeding general election of members of the assembly, and, in
21 conformity with section 1 of article 19 of the constitution, be
22 published for 3 months previous to the time of such election.

EXPLANATION--Matter in italics (underscored) is new; matter in brackets [-] is old law to be omitted.

LBD89193-04-2

EXHIBIT B



STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL
THE CAPITOL
ALBANY, NY 12224

LETITIA JAMES
ATTORNEY GENERAL

(518) 776-2000

July 6, 2022

Mary-Anne E. Dandles
Clerk of the Assembly
New York State Assembly
Albany, NY 12248

Alejandra N. Paulino
Secretary of the Senate
New York State Senate
Albany, New York 12247

Re: Senate No. 51002

Dear Ms. Paulino and Ms. Dandles:

In accordance with Article 19, section 1 of the Constitution, the Senate has requested my opinion as to the legal effect of the amendment proposed by the above-designated concurrent resolution upon the other provisions of the Constitution. Members of my staff have reviewed the relevant provisions.

This concurrent resolution proposes to amend section 11 of Article 1 of the Constitution, in relation to equal protection.

In my opinion, if adopted, the proposed amendment will have no effect upon other provisions of the Constitution.

Sincerely,

Letitia James
LETITIA JAMES

EXHIBIT C

Jul 05, 2022

DELIVERED TO SECRETARY OF STATE

Jul 01, 2022

Returned To Senate
Passed Assembly
Message Of Necessity - 3 Day Message
Ordered To Third Reading Rules Cal.2
Substituted For A41002
Referred To Judiciary
DELIVERED TO ASSEMBLY
PASSED SENATE
ORDERED TO THIRD READING CAL.2
TO ATTORNEY-GENERAL FOR OPINION
REFERRED TO RULES

Jul 13, 2022

OPINION REFERRED TO JUDICIARY