

# State of New York Court of Appeals

Summaries of cases before the Court of Appeals are prepared by the Public Information Office for background purposes only. The summaries are based on briefs filed with the Court. For further information contact Gary Spencer at 518-455-7711 or [gspencer@nycourts.gov](mailto:gspencer@nycourts.gov).

## NEW YORK STATE COURT OF APPEALS

### Background Summaries and Attorney Contacts

July 30, 2024

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To be argued Tuesday, July 30, 2024

## No. 86 Stefanik v Hochul

After New York voters rejected a proposed constitutional amendment that would have authorized universal absentee voting by mail in 2021, state lawmakers enacted the New York Early Mail Voter Act, which took effect on Jan. 1, 2024, to allow the same thing: universal no-excuse, mail-in voting ahead of elections. Republican opponents led by Rep. Elise Stefanik brought this action to challenge the new law, contending that it violates election provisions of the New York State Constitution. The plaintiffs – which include other Republican elected officials, voters, the Republican State and National Committees, and the National Republican Congressional Committee – argue the Early Mail Voter Act violates article II, section 2 of the State Constitution, which authorizes the Legislature to enact special voting procedures for “qualified voters who ... may be absent from the county of their residence” or who “may be unable to appear personally at the polling place because of illness or physical disability” on election day. They say the section limits absentee voting to only those specified groups and the Legislature exceeded its authority by extending voting by mail to all qualified voters.

The defendants – Governor Kathy Hochul, the State of New York and its Board of Elections – moved to dismiss the suit for failure to state a cause of action. The Democratic Congressional Campaign Committee (DCCC), along with Democratic members of Congress and voters, joined them in defense of the validity of the Early Mail Voter Act.

Supreme Court declared the Act constitutional and dismissed the suit, saying article II, section 7 of the Constitution “bestows upon the Legislature the specific plenary power to prescribe laws establishing the method of elections for all voters.” The section states, “All elections by the citizens ... shall be by ballot, or by such other method as may be prescribed by law, provided that secrecy in voting be preserved.”

The Appellate Division, Third Department affirmed based largely on the Legislature’s “plenary power” to regulate the conduct of elections under article II, section 7, and a lack of restrictions in other provisions on “the manner in which voting is to occur.” Since 1846, it said, the “Election District Provision” in article II, section 1 had required citizens “to vote ... in the election district of which [they] shall at the time be a resident, and not elsewhere.” But that provision was eliminated by constitutional amendment in 1966, the court said, and “there has been no express provision in the constitution mandating in-person voting since January 1, 1967.” Despite the defeat of the vote-by-mail amendment in 2021, it said, “The fact remains that, in its current form, the NY Constitution contains no requirement – express or implied – mandating that voting occur in-person on election day.... Our decision upholding the Act comports with the NY Constitution’s embrace of broad voting rights for the state electorate, the history and language of article II, and the fundamental right to vote.”

The plaintiffs argue, “The Mail-Voting Law is inconsistent with the text, structure, and history of the New York Constitution. Article II, Section 2 exists for the express purpose of empowering the Legislature to authorize absentee voting for a few, narrowly defined categories of voters. In 2021, the people of New York rejected a proposed amendment that would have empowered the Legislature to authorize absentee voting for *all* voters. The Mail-Voting Law purports to do precisely what the voters rejected. Because the Legislature cannot overwrite the Constitution or its history, the Mail-Voting Law exceeds the Legislature’s limited grant of authority under Section 2.”

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