

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ROCKLAND

-----X
In the Matter of

SMART LEGISLATION,

Petitioner,

-against-

ROCKLAND COUNTY BOARD OF ELECTIONS,

Respondent,

For an Order Pursuant to Article 16-106 of the Election
Law

-----X
Rachel E. Tanguay, J.S.C.

DECISION & ORDER

Index No.: 037390/2024

Motions # 2 and 3

The following papers, NYSCEF documents numbered 102 were considered in connection
with:

- Respondent's Order to Show Cause for an Order (Motion #2), (i) pursuant to CPLR § 3211(a)(7), CPLR § 3211(a)(10), CPLR § 3020(a), CPLR § 7804(f), CPLR § 404(a) and Election Law § 9-208(a), granting a judgment in favor of Respondent dismissing the Petition brought pursuant to Article 16-106 of the Election Law in its entirety; (ii) pursuant to CPLR § 7805, staying further proceedings including but not limited to discovery pending the hearing and determination of the instant motion; and (iii) for such other and further relief as this Court may deem just and proper;
- Respondent's Order to Show Cause for an Order (Motion #3), (i) pursuant to CPLR § 3025(b), granting Respondent leave to amend their answer to include the affirmative defenses of lack of capacity to sue and lack of standing; (ii) pursuant to CPLR § 3211(a)(3), CPLR § 3211(a)(7), CPLR § 3211(a)(10), CPLR § 3020(a), CPLR § 7804(f), CPLR § 404(a) and Election Law § 9-208(a), granting a judgment in favor of Respondent dismissing the Petition brought pursuant to Article 16-106 of the Election Law in its entirety; and (iii) for such other and further relief as this Court may deem just and proper;

Upon the foregoing papers, the Court now rules as follows:

This action was commenced by Petitioners, Diane Sare, Mark Murphy, Adam Mocio and

Smart Legislation, on December 5, 2024 with the filing of a Petition through the NYSCEF system.

NYSCEF Doc. 1. Issue was joined as to Respondent with the filing of an Answer through the NYSCEF system on December 30, 2024. NYSCEF Doc. 17. Pursuant to the Amended Petition, Petitioners' application is for an Order

- (i) directing Respondent to conduct Respondent to conduct a full public, transparent hand recount of all Presidential and Senate ballots in Rockland County to include all ballots cast, regardless of when or how they were submitted, including ballots from early voting, election day, absentee, military and provisional, as well as any other types of votes not mentioned;
- (ii) invalidate the races for President and U.S. Senator in the November 2024 General Election in Rockland County;
- (iii) schedule a new special election for the races for President and U.S. Senator in Rockland County;
- (iv) assign a court-appointed monitor to oversee the special election for the races for President and U.S. Senator in Rockland County;
- (v) assign a court-appointed monitor to develop, implement and oversee mandatory best practices for the Rockland County Board of Elections by creating a secure process to guarantee the public that all votes are being counted accurately including a reconciliation of the number of voters who sign in with the number of ballots cast at every polling place for every election; better chain of custody of voting equipment and ballots; ensuring that the seal used on ballot boxes, bags and election equipment is a seal recommended by experts in tamper-evident seal security; creation of log forms for those seals; development and implementation of an audit process that counts every vote accurately, as the voter intended; full access for the public to monitor all of these developments in real time and via Freedom of Information requests;
- (vi) granting such other and further relief as this Court deems just and proper;
- (vii) award Petitioner the costs and expenses of this action and reasonable pro se fees for Petitioner's time as well as a reasonable attorney's fee. NYSCEF Doc. 5.

On March 3, 2025, the Court issued a Decision and Order dismissing the branches of the Petition for invalidation of races, scheduling a new special election or assigning a court-appointed monitor on the basis that this Court does not have authority with respect to such. NYSCEF Doc.

19. Regarding the branch of the petition seeking a recount of the Presidential and Senate ballots in Rockland County, the Court scheduled a preliminary conference to set a discovery schedule.¹ *Id.*

On March 25, 2025, Petitioners filed a Stipulation of Discontinuance with respect to Diane Sare, Mark Murphy and Adam Mocio; leaving SMART Legislation as the only remaining Petitioner. NYSCEF Doc. 24. The preliminary conference scheduled for March 27, 2025 was adjourned to May 22, 2025 at the request of Petitioner. NYSCEF Doc. 25. On March 31, 2025, Respondent filed an Amended Answer. NYSCEF Doc. 28. A Preliminary Conference Order was issued on May 22, 2025 after the preliminary conference was held during which the Court set a discovery schedule. NYSCEF Doc. 20, 39, 40.

On June 25, 2025, Respondent moved by Order to Show Cause (Motion #2) for an Order (Motion #2), (i) pursuant to CPLR § 3211(a)(7), CPLR § 3211(a)(10), CPLR § 3020(a), CPLR § 7804(f), CPLR § 404(a) and Election Law § 9-208(a), granting a judgment in favor of Respondent dismissing the Petition brought pursuant to Article 16-106 of the Election Law in its entirety; (ii) pursuant to CPLR § 7805, staying further proceedings including but not limited to discovery pending the hearing and determination of the instant motion; and (iii) for such other and further relief as this Court may deem just and proper. NYSCEF Doc. 41. Respondent argues that the Petition is invalid and must be dismissed on the basis that it lacks the specific verification requirements under Election Law § 16-116 and CPLR § 3020. Further, Respondent contends that the request for a full recount of all Presidential and Senate ballot in Rockland County is unwarranted since the margin of victory far exceeds the 20-vote maximum needed to order a manual recount under Election Law § 9-208, and the factors involved do not qualify as material discrepancies or flagrant irregularities, as needed to relax the standard set forth by the statute.

¹ At this point, the prayer for relief for a recount of the Senate and Presidential ballots in Rockland County was the only surviving branch of the Petition. NYSCEF Doc. 19.

On July 11, 2025, the Court held a conference with respect to the Order to Show Cause (Motion #2). The Court denied the request for a stay, directed discovery to continue and granted permission for Respondent to file an Amended Order to Show Cause.²

On July 18, 2025, Respondent moved by Order to Show Cause (Motion #3) for an Order (Motion #3), (i) pursuant to CPLR § 3025(b), granting Respondent leave to amend their answer to include the affirmative defenses of lack of capacity to sue and lack of standing; (ii) pursuant to CPLR § 3211(a)(3), CPLR § 3211(a)(7), CPLR § 3211(a)(10), CPLR § 3020(a), CPLR § 7804(f), CPLR § 404(a) and Election Law § 9-208(a), granting a judgment in favor of Respondent dismissing the Petition brought pursuant to Article 16-106 of the Election Law in its entirety; and (iii) for such other and further relief as this Court may deem just and proper. NYSCEF Doc. 65. In support of this motion, Respondent argues that leave to amend their Answer to add the affirmative defense of lack of standing and lack of capacity to sue should be granted based on information that has recently come to light which resulted in only one Petitioner remaining in this action. Respondent contends that the surviving Petitioner, Smart Legislation, lacks standing to bring this action.³ Respondent avers that this proposed amendment is meritorious and will not result in prejudice to Petitioner, as this motion is being made early in the litigation and before significant discovery has been completed. With respect to standing, Petitioner contends that standing can only be conferred, under Election Law § 16-106, by four categories of Petitioner, a voter, a candidate, a party chairperson, or the attorney general. Petitioner does not fall under any of these categories and, as such, has no standing to bring this action.

In addition, Respondent contends that the Petition should be dismissed on the basis that the

² The Court notes that the Order to Show Cause filed on July 18, 2025 (Motion #3) is the amended version of Motion #2.

³ The proposed amended answer is submitted as a part of Motion #3. NYSCEF Doc. 77. The proposed amended answer includes lack of capacity to sue and lack of standing as affirmative defenses.

New York State Board of Elections in a necessary party but was not made a party to the instant action. Under Election Law § 9-216, the New York State Board of Elections is allegedly required to receive and canvass the returns of general elections from the county board of elections and then certify the results of all statewide (and multi-county) contests. Respondent argues that failure to timely join a necessary party in a special proceeding under the Election Law related to the canvass deprives the Court of subject matter jurisdiction and is a noncurable defect.⁴ With respect to Respondent's argument that the requirements for a manual recount under Election Law §9-208 have not been met, they contend that only two of the three narrow instances where the board of elections or a bipartisan committee appointed by the board of elections shall conduct a full manual recount of ballots are relevant. The two relevant instances are (i) where the margin of victory is twenty (20) votes or less or (ii) where the margin of victory is 0.5% or less.⁵ Respondent alleges that in the absence of one or more of the three criteria, the record must demonstrate the existence of a material discrepancy likely to have an impact on the election to render a recount permissible, of which there is none.⁶ They aver that the remaining allegations of voter issues, including voter drop-off, are vague and do not under any statute or law, trigger a recount.

In opposition to both Motions #2 and 3, Petitioner argues that Respondent should have considered all statutes and case law, not just the portions of the Election Law that are beneficial to them. Petitioner contends that where there is either "the existence of a material discrepancy likely to impact upon the result of the election or flagrant irregularities in the election process," a manual recount pursuant to Election Law § 16-113 is justified. Matter of Johnson v. Martins, 15 N.Y.3d

⁴ Petitioner notes that as of the date of filing of this motion, the State Board has not been sued in any action with respect to the certification of the 2024 United States Senate contest.

⁵ The third instance, where one million or more ballots have been cast and the margin of victory is less than five-thousand (5,000) votes, is not relevant to the instant matter.

⁶ Respondent avers that former Petitioner, Diane Sare, could have received every single vote in Rockland County and would have still lost to Senator Kirsten Gillibrand by a margin of more than four (4) million votes.

584, 588, 942 N.E.2d 1043 (2010). Petitioner avers that they have demonstrated the existence of flagrant irregularities including incorrect vote counts and unusual drop-off rates.⁷ They claim that since discovery is still in its infancy, Respondent cannot avoid reaching the merits by merely asserting that there were no discrepancies and without providing Petitioner access to all related audit documents and relevant deposition testimony.

With respect to Respondent's argument that the Petition is without merit based on the lack of verification, Petitioner contends that this argument is untimely and incorrect as Respondent failed to act with due diligence in raising this issue. Further, even if this was a timely proffered argument, Petitioner avers that a notarized petition and accompanying affidavits are sufficient to render a petition properly verified. Matter of Francois v. Rockland County Board of Elections, 205 A.D.3d 847, 166 N.Y.S.3d 542 (2d Dept. 2022). In addition, Petitioner contends that Respondent's lack of standing argument fails as Respondent has allegedly already waived this contention and such is untimely. Respondent purports that failure to raise standing in either of its first two answers constitutes a waiver pursuant to the CPLR § 3211(e). They further argue that, under Election Law § 16-602(2), an action must be instituted by an individual voter, but there is no requirement that the voter continue to prosecute the entire litigation. Petitioner also claims that by virtue of their membership and affiliation with SMART Legislation, four other registered voters are parties to this proceeding. In support of this argument, Petitioner submits the affidavits of four New York State residents, three of whom live in Rockland County, who were either instrumental in the commencement of this proceeding and/or have attended one or more court appearances in this

⁷ Petitioner alleges that Respondent misrepresents that record with respect to discrepancies in the votes for Diane Sare in Rockland County. They have purportedly established at least six discrepancies in two small districts which they claim would result in substantial and significant irregularities if such were extrapolated to all of Rockland County.

matter.⁸

Further, Petitioner argues that the Court should not grant Respondent leave to file a second amended answer, since Respondent failed to take the immediate action required in an election law matter, which is considered an expedited proceeding, to assert these defenses. They claim that permitting such an amendment would result in substantial prejudice as they have already expended substantial resources in this matter and are already in discovery.⁹ With respect to the claim that the New York State Board of Elections is a necessary party, Petitioner disagrees. They contend that they are not seeking a statewide recount and are only seeking a manual, public hand recount in Rockland County given the alleged irregularities they claim to have uncovered. Petitioner claim they are not seeking to invoke the portion of Election Law § 16-106(2) that refers to the state board of canvassers and are only seeking to invoke the portion that permits the canvas of returns by state, county, city or village board to be contested.

In reply, Respondent argues that the case cited by Petitioner regarding the verification of the Petition has no bearing on the instant matter. The Second Department in the Matter of Francois found that the Petition was sufficiently validated based on the use of appropriate language that Respondent argues is not present in the instant Petition. Matter of Francois, 205 A.D.3d at 849. In Francois, the language used in the petition had the same effect as a verification and therefore, the petition was deemed verified within the meaning of Election Law § 16-116. Id. at 849. Respondent avers that no such language exists in the instant Petition. With respect to the requested amendment, Respondent cites to two cases wherein a party was permitted to amend an answer to include the defense of lack of standing. See DLJ Mtge. Capital, Inc. v. David, 147 A.D.3d 1024, 48 N.Y.S.3d

⁸ Petitioner claims that each of these Rockland County voters considers themselves a party to this action.

⁹ The Court notes that with respect to Petitioner's argument that dismissing this matter on its merits is premature, Petitioner contends that they have just begun discovery.

234 (2d Dept. 2022); see also BAC Home Loans Servicing, L.P. v. Jackson, 159 A.D.3d 861, 74 N.Y.S.3d 59 (2d Dept. 2018). While mere lateness is not a barrier to amendment, Respondent notes that the cases cited by Petitioner, wherein a party was denied leave to amend on an election law matter, are distinguished from the instant matter since they involved a time-sensitive ballot related issue that had to be adjudicated before an upcoming election.

Further, regarding Petitioner's argument that Smart Legislation can continue the litigation so long as a voter or candidate commenced such, Respondent contends that an election law action cannot be maintained by a non-voter if the initiating voter withdraws, since the statute limits the right to challenge to the specific four categories. Petitioner claims that the fact that there are additional Rockland County voters who are members of SMART Legislation and consider themselves parties to the proceeding is completely irrelevant to SMART Legislation's lack of standing to maintain the instant action.

Legal Analysis

As an initial matter, the Court notes that the only surviving branch of the Petition is for an order directing a recount of the Presidential and Senate ballots in Rockland County. The Court denies the Order to Show Cause (Motion #2) filed on June 25, 2025, as moot. The branch of relief seeking to stay further proceedings including but not limited to discovery pending the hearing and determination of the instant motion, pursuant to CPLR § 7805, was denied by this Court at the July 11, 2025 conference. With respect to the portion of the motion for an Order, pursuant to CPLR § 3211(a)(7), CPLR § 3211(a)(10), CPLR § 3020(a), CPLR § 7804(f), CPLR § 404(a) and Election Law § 9-208(a), granting a judgment in favor of Respondent dismissing the Petition brought pursuant to Article 16-106 of the Election Law in its entirety, this is identical to the relief sought in Motion #3, which was filed, in part, as an amended motion to Motion #2. As such, this is deemed

moot as the same relief will be decided in Motion #3.

The Court now turns to the Order to Show Cause (Motion #3) filed on July 18, 2025. Pursuant to CPLR § 3025(b), “[a] party may amend his or her pleading, or supplement it by setting forth additional or subsequent transactions or occurrences, at any time by leave of court or by stipulation of all parties. Leave shall be freely given upon such terms as may be just including the granting of costs and continuances. Any motion to amend or supplement pleadings shall be accompanied by the proposed amended or supplemental pleading clearly showing the changes or additions to be made to the pleading.” CPLR § 3025(b). “While it is firmly established that leave to amend a pleading shall be freely granted (see, CPLR 3025[b]), a motion to amend is committed to the broad discretion of the trial court, and the resulting determination will not lightly be set aside.” Scott v. General Motors Corp., 202 A.D.2d 570, 609 N.Y.S.2d 252 (2d Dept. 1994); see, US Bank National Association v. Murillo, 171 A.D.3d 894, 894, 98 N.Y.S.3d 115 (2d Dept 2019).

While the decision to grant leave to amend a pleading is within the discretion of the trial court, “[l]eave to amend the pleadings shall be freely given absent prejudice or surprise resulting directly from the delay.” McCaskey, Davies and Assocs., Inc. v. New York City Health & Hosps. Corp., 59 N.Y.2d 755, 757, 463 N.Y.S.2d 434 (1983) (brackets added); see, Cullen v. Torsiello, 156 A.D.3d 680, 680, 67 N.Y.S.3d 282 (2d Dept. 2017). “[T]he resulting determination will not lightly be set aside.” Scott v. General Motors Corp., 202 A.D.2d 570, 609 N.Y.S.2d 252 (2d Dept. 1994) (brackets added); see, US Bank National Association v. Murillo, 171 A.D.3d 894, 894, 98 N.Y.S.3d 115 (2d Dept 2019). “Mere lateness is not a barrier to the amendment.” Sudit v. Labin, 148 A.D.3d 1073, 1076, 50 N.Y.S.3d 430 (2d Dept. 2017) (internal citations omitted). “It must be lateness coupled with significant prejudice to the other side.” Id. at 1076 (internal citations omitted). “The burden of establishing prejudice is on the party opposing the amendment.” Id. at

1076.

Respondent seeks leave to amend their answer, pursuant to CPLR § 3025(b), to include the affirmative defenses of lack of standing and lack of capacity to sue; and, upon amendment, to dismiss the complaint under CPLR § 3211(a). While an argument that a plaintiff lacks standing, if not asserted in an answer or pre-answer motion to dismiss the complaint, is waived, pursuant to CPLR § 3211(e), “[d]efenses waived under CPLR 3211(e) can nevertheless be interposed in an answer amended by leave of court, pursuant to CPLR § 3025(b), as long as the amendment does not cause the other party prejudice or surprise resulting from the delay, and is not palpably insufficient or patently devoid of merit.” U.S. Bank Trust, N.A. v. Carter, 164 A.D.3d 529, 83 N.Y.S.3d 1 (2d Dept. 2018) (internal citations and quotations omitted) (brackets added).

Petitioner argues that this request to amend the answer for a second time is late, especially given that this is an election law proceeding. They further contend that they are in the discovery phase and have already expended substantial resources in this matter. The Court, however, notes that Petitioner also states that the discovery is still in its infancy. While the Court is aware that typically election law matters are special proceedings to be expedited, the Court notes that the cases cited by Petitioner in support of his argument that they will be prejudiced if the Court were to permit the amendment are matters wherein there was an upcoming, yet to be held, election. See Matter of Master v. Pohanka, 44 A.D.3d 1050, 845 N.Y.S.2d 376 (2d Dept. 2007) (Petitioner sought to enjoin the Board of Elections from placing a candidate’s name on the ballot for the upcoming election.); see also, Matter of Mazza v. Board of Elections of County of Albany, 196 A.D.2d 679, 601 N.Y.S.2d 508 (3d Dept. 1993) (Petitioner sought to declare invalid a petition naming Respondent as a candidate in an upcoming election.)

In the instant matter, the election at issue took place more than a year ago and there is no

indication that had the alleged discrepancies been immediately addressed, the result would have changed in the slightest. Further, with respect to how long this matter has been pending, while mere lateness is not a barrier to amendment, the Court notes that the preliminary conference was only held on May 22, 2025, during which Respondent indicated they planned to file the instant motion.¹⁰ The Court finds that Petitioner failed to demonstrate the existence of prejudice or surprise that would result from the amendment, or that the proposed affirmative defense[s] is palpably insufficient or patently devoid of merit. Carter, 164 A.D.3d at 541. As such, the Court grants the motion, pursuant to CPLR § 3025(b), for leave to amend the answer to include the affirmative defenses of lack of standing and lack of capacity to sue.

Upon amendment, the Court turns to the motion to dismiss. Respondent seeks the dismissal of the Petition on the grounds of lack of legal capacity to sue, the pleading fails to state a cause of action, or the absence of a person who should be a party, pursuant to CPLR § 3211(a)(3), CPLR § 3211(a)(7), CPLR § 3211(a)(10) respectfully. “While CPLR 3211(a)(3) speaks to the plaintiff’s lack of capacity as a basis for dismissing complaints, decisional authorities have addressed a party’s lack of standing as within the scope of the same statutory subdivision.” Agudas Chasidei Chabad of United States v. Simpson, 239 A.D.3d 796, 799, 237 N.Y.S.3d 231 (2d Dept. 2025) (internal citations and quotations omitted). However, even if the Court were to determine that movant did not cite CPLR § 3211(a)(5) as the proper ground for dismissal for lack of standing, the Court has the authority to decide the motion on this ground.¹¹ Therefore, the Court will address the instant motion to dismiss on the ground of a lack of standing, pursuant to CPLR § 3211(a)(3).

¹⁰ The Court notes that the original preliminary conference scheduled for March 27, 2025 was adjourned almost two months at the request of Plaintiff.

¹¹ “[W]here the wrong ground is designated but other CPLR 3211(a) grounds do apply, the [C]ourt may treat the motion as having specified the right ground and grant relief, absent prejudice, which has not been demonstrated.” O’Hara v. Magee, 212 A.D.3d 833, 833, 182 N.Y.S.3d 202 (2d Dept. 2023) (internal citations and quotations omitted) (brackets added); see also Miller v. Brunner, 164 A.D.3d 1228, 1231, 84 N.Y.S.3d 264 (2d Dept. 2018).

“Where a defendant seeks dismissal pursuant to CPLR 3211(a)(3) based on standing, the burden is on the moving defendant to establish, prima facie, the plaintiff’s lack of standing.” Fossella v. Adams, 225 A.D.3d 98, 108, 206 N.Y.S.3d 611 (2d Dept. 2024) (internal citations and quotations omitted). Further, to defeat a defendant’s motion, the plaintiff has no burden of establishing its standing as a matter of law; rather, the motion will be defeated if the plaintiff’s submissions raise a question of fact as to its standing.” Id. at 108 (internal citations and quotations omitted).

At the time the instant matter was commenced on December 9, 2024, there were four Petitioners, three of whom withdrew from this action on March 25, 2025 by Stipulation of Discontinuance. NYSCEF Doc. 24. “[I]n an action involving multiple plaintiffs, a court may address the merits of a particular cause of action provided at least one of the plaintiffs has standing to pursue it.” Id. at 109 (internal citations and quotations omitted) (brackets added). While this was the case when the action was first commenced, as of March 25, 2025, SMART Legislation is the only Petitioner remaining in this matter. As such, the Court must determine whether SMART Legislation has standing to continue this action.

In general, “[t]he standing inquiry focuses on whether the [petitioner] is the proper party to bring this suit, although that inquiry often turns on the nature and source of the claim asserted.” Common Cause New York v. Kosinski, 241 A.D.3d 1036, 1037, 241 N.Y.S.3d 812 (3d Dept. 2025) (internal citations and quotations omitted) (brackets added). “The question of standing may be answered by the statute at issue, which may identify the class of persons entitled to review.” Mental Hygiene Legal Service v. Daniels, 33 N.Y.3d 44, 61, 122 N.E.3d 21 (2019). What this means is “a [petitioner’s] burden to establish standing is substantially diminished where a statute identifies them as a beneficiary of the government’s duty or obligation giving rise to the

[petitioner's] claim. Id. at 61.

Election Law § 16-106 states in relevant part:

1. The post-election refusal to cast: (a) challenged ballots, blank ballots, or void ballots; (b) early mail, absentee, military, special, or federal write-in ballots; (c) emergency ballots; and (d) ballots voted in affidavit envelopes may be contested in a proceeding instituted in the supreme or county court, by any candidate or the chairman of any party committee, and by any voter with respect to the refusal to cast such voter's ballot, against the board of canvassers of the returns from such district, if any, and otherwise against the board of inspectors of election of such district. If the court determines that the person who cast such ballot was entitled to vote at such election, it shall order such ballot to be cast and canvassed, including if the court finds that ministerial error by the board of elections or any of its employees caused such ballot envelope not to be valid on its face.
2. The canvass of returns by the state, or county, city, town or village board of canvassers may be contested, in a proceeding instituted in the supreme court by any voter, except a proceeding on account of the failure of the state board of canvassers to act upon new returns of a board of canvassers of any county made pursuant to the order of a court or justice, which may be instituted only by a candidate aggrieved or a voter in the county.
3. The attorney general, on behalf of the state, and the chairman of the state committee of a party, may institute any proceeding allowed herein relating to the returns of canvass by inspectors upon the vote of any ballot proposal submitted to the people of the state. (Emphasis added.)

Under Election Law § 16-106, the only classes of persons who may seek standing are a candidate, a voter, a party chairperson, or the attorney general.

The instant Petition alleges that SMART Legislation is a government organization advocating for the rights of all U.S. voters, and especially the voters of New York, individually, in their representative capacity and on behalf of others similarly situated. NYSCEF Doc. 1. However, there is nothing to indicate, and the Court has no evidence demonstrating that SMART Legislation is a government organization. Rather, SMART Legislation appears to be an independent

organization of some sort.¹² Petitioner is undisputedly an organization, which is not one of the four classes of persons who can seek standing under Election Law § 16-106. However, Petitioner argues that they are suing on behalf of their individual members, despite the fact that they are not named petitioners.

With respect to standing, “[a]n organization may establish organizational standing on behalf of its members, provided that at least one of its members would have standing to sue, that it is representative of the organizational purposes it asserts and that the case would **not** require the participation of individual members.” Common Cause New York, 241 A.D.3d at 1037 (internal citations and quotations omitted) (brackets and emphasis added). While the allegations appear to be adequately representative of SMART Legislation’s organizational purpose, the Court finds that individual members would be required to participate in this action, as multiple individual members have already participated in the instant action by virtue of submitting sworn Affidavits with respect to the allegations in the Petition. NYSCEF Docs. 90-93. Petitioner fails to establish that this action would not require the participation of individual members.

Additionally, Petitioner has not established that at least one of its members would have standing to sue. See Brennan Center for Justice at NYU School of Law v. New York State Board of Elections, 159 A.D.3d 1301, 1305, 73 N.Y.S.3d 656 (3d Dept. 2018). In order to have standing to sue, a petitioner challenging government agency action, pursuant to an article 78 petition, must demonstrate “an injury-in-fact and that the alleged injury falls within the zone of interests or concerns sought to be promoted or protected by the statutory provision under which the government has acted in order to have standing to challenge that action.” Id at 1037 (internal citations, quotations and brackets omitted). “The injury-in-fact requirement necessitates a showing

¹² No further information regarding this organization has been submitted to the Court.

that the party has an actual legal stake in the matter being adjudicated and has suffered a cognizable harm that is not tenuous, ephemeral, or conjectural but is sufficiently concrete and particularized to warrant judicial intervention.” Id. at 1037 (internal citations and quotations omitted); see also Matter of Borrello v. Hochul, 221 A.D.3d 1484, 1485, 200 N.Y.S.3d 826 (4d Dept. 2023). Further, the Petitioner must establish that the concrete harm is “distinct from that of the general public.” Id. at 1306 (internal citations and quotations omitted).

The only remaining branch of the Petition seeks a full public, transparent hand recount of all Presidential and Senate ballots in Rockland County to include all ballots, regardless of when or how they were submitted. NYSCEF Doc. 1. The Petition alleges with respect to candidate Diane Sare, that votes were incorrectly counted in Rockland County and bases this determination on the fact that (i) in Election District 39 she received only five votes but should have received at least six and (ii) in Election District 62 she received only two votes but should have received only three. The Petition contends that the submission of affidavits from Rockland County voters and the SMART Legislation analysis is sufficient evidence of these violations.¹³

Not only are the allegations of voter irregularity, if proven, so *de minimus* that they cannot be used as evidence to make a determination that a larger voter issue exists in Rockland County; it is undisputed that a recount of the 2024 Presidential or Senate races in Rockland County based on these allegations would have no direct impact on the results. The purported harm alleged by Petitioner is tenuous and speculative and, therefore, insufficient to prove a cognizable harm distinct from that of the general public, as required to demonstrate an injury-in-fact. See Common Cause New York, 241 A.D.3d at 1037; see also Brennan Center for Justice, 159 A.D.3d at 1307. The

¹³ SMART Legislation purports to have conducted an analysis of the results and determined that there has been an increase in the “drop-off” rate, which is an indication that a vote was made for a candidate at the top of the ballot but that the ballot did not include a selection in the lower-level races.

Court finds that Petitioner fails to meet the criteria for an injury-in-fact and fails to establish organizational standing. See Common Cause New York, 241 A.D.3d at 1037; see also Brennan Center for Justice, 159 A.D.3d at 1307. As such, the Court finds that Respondent has established Petitioner's, *prima facie*, lack of standing. Petitioner, however, has not established any questions of fact as to its standing that would require the denial of this motion to dismiss. The Court finds Petitioner's arguments with respect to standing unavailing including, *inter alia*, (i) the contention that while an action must be instituted by an individual voter, there is no requirement that the voter remain a petitioner for the action to be maintained,¹⁴ and (ii) that the Court should consider the voters who submitted sworn affidavits parties to the action since they "consider themselves a party to this action." NYSCEF Doc. 89. The Court has considered the parties' remaining contentions and deems them to be moot or to lack merit in light of the foregoing.

Based on the foregoing, the Court finds that Petitioner has no standing, and the proceeding must be dismissed for lack of standing.

Accordingly, it is hereby

ORDERED that Respondent's Order to show Cause (Motion #2) is **DENIED** as moot; and it is further

ORDERED that Respondent's Order to show Cause (Motion #3) is **GRANTED**; and it is further

ORDERED that Plaintiff's Complaint is dismissed.

¹⁴ Petitioner cites no case law in support of this argument.

The foregoing constitutes the Decision and Order of this Court on Motions #2 and 3.

Dated: New City, New York
November 21, 2025

A handwritten signature in black ink, consisting of a large, stylized loop followed by a horizontal line.

HON. RACHEL E. TANGUAY
Justice of the Supreme Court

TO: (all parties via NYSCEF)