

Law Office of Aaron S. Foldenauer

October 23, 2025

VIA NYSCEF

Hon. Rachel E. Tanguay
Supreme Court of the State of New York, County of Rockland
1 South Main Street
New City, NY 10956

**Re: *Sare, et al. v. Rockland County Board of Elections* (037390/2024)
Request for Court Intervention re Respondent's Deficient Document Productions
and the Board of Elections' Incomplete Answers to Interrogatories**

Dear Judge Tanguay:

I write on behalf of the Petitioner SMART Legislation ("Petitioner") in connection with the above-referenced action.

Pursuant to the Court's direction at the July 11, 2025 status conference, Petitioner seeks a discovery conference and court intervention concerning Respondent Rockland County Board of Elections' (the "Board" or "BOE" or "Respondent") deficient document productions and incomplete interrogatory responses. Counsel to both sides already held a lengthy meet-and-confer session. Even after Respondent's amendment to its responses and its supplemental production, the documents and information that Respondent provided remain seriously deficient.¹

Respondent propounded blanket objections, and refused to produce any documents, with respect to many of Petitioner's Requests for Production (each referred to as an "RFP" or "Request" and collectively, "RFPs" or the "Requests"). In addition, even when Respondent did produce documents in connection with a given Request, the documents Respondent provided were sparse, incomplete, and often inaccurate—and, notably, Respondent produced *few, if any, e-mail communications*.

Of particular concern is that the documents provided show that Respondent may not have performed critically important security tests called "hash checks" on many of the voting machines that it used in the 2024 General Election (either that or Respondent has simply failed to comply with its discovery obligations in this action). These hash checks are, of course, legally required to ensure the accurate tabulation of ballots by voting machines. In addition, documents for another important pre-election procedure (sometimes referred to as "test decks") are missing pages and Respondent produced only unsigned versions. Thus, even after reviewing the very

¹ To the extent that certain document requests sought materials relating to both the 2020 General Election and the 2024 General Election, Petitioner agreed during the parties' meet-and-confer session to limit those portions of the document requests to only the 2024 General Election.

few documents that were provided by Respondent, both Petitioner and the voting public should be increasingly concerned about Respondent's security procedures, and the accuracy of the election results being reported by Respondent.

As also described below, several of Respondent's interrogatory responses are incomplete and/or inaccurate.

A. Respondent's Refusal to Produce Relevant Documents

On June 23, 2025, Petitioner propounded and served its First Set of Document Requests (the "Document Requests") and First Set of Interrogatories (the "Interrogatories"), attached hereto as **Exhibit A** and **Exhibit B**, respectively.

To date, Respondent has produced only limited documents in request to the Document Requests. Specifically, Respondent produced an initial small set of documents along with responses and objections in late-July 2025. Subsequently, counsel for the parties held a lengthy meet-and-confer session on August 4, 2025. Respondent supplemented its discovery responses and produced additional documents on August 14, 2025. Respondent's Amended Responses to Petitioner's Document Requests are attached hereto as **Exhibit C**, and Respondent's Amended Interrogatory Responses are attached hereto as **Exhibit D**.

A review of the documents produced by Respondent thus far indicates that there are serious deficiencies in Respondent's production of documents that need to be remedied forthwith. Specifically, Respondent has produced documents in response to only a handful of Petitioner's RFPs. With respect to those documents that Respondent has provided, they are minimal and sparse, and Respondent refuses to provide *any* documents in connection with many of the Requests. Some of the documents Respondent provided are inaccurate, incomplete, and/or mislabeled.

1. RFP Nos. 1, 2, and 3: These requests for production seek cast vote records for the 2024 General Election and digital ballot images. The only document that Respondent provided in response to these requests contains election results by election district. This does not satisfy these requests.

A Cast Vote Record ("CVR") is a digital replication in data form as to how the voting machine read and interpreted each mark on each ballot. The Cast Vote Records and ballot images are relevant in a variety of ways, including so that, in this litigation, each CVR can be compared to each ballot to determine that the voting machine correctly interpreted each such ballot. CVRs can be and are routinely provided as a matter of course. In fact, the New York City Board of Elections has posted on its public website all Cast Vote Records for the June 24, 2025 Primary Election. <https://vote.nyc/page/election-results-summary> (last visited Oct. 1, 2025).

Respondent relies on *Matter of Kosmider v Whitney*, 34 N.Y.3d 48 (2019) for its refusal to provide these documents, but *Matter of Kosmider* is inapposite. First and foremost, *Matter of Kosmider* deals with only potential restrictions on digital ballot images and *not* Cast Vote Records. Furthermore, *Matter of Kosmider* was a decision rendered upon a FOIL request, and thus is inapplicable for that additional reason. Furthermore, the Court specifically acknowledges

that a party may inspect ballot images pursuant to a “court order,” which Respondent asks the Court to issue if such an order is deemed to be required.

These records are particularly important given the discrepancies that petitioner has already found in the 2024 General Election, even prior to discovery. As demonstrated in the Complaint—and as petitioner further explained in its August 29, 2025 memorandum in opposition to Respondent’s motion to dismiss (NYSCEF No. 89) there are at least six irregularities associated with the 2024 General Election in Rockland County that petitioner uncovered immediately after the election and even prior to discovery. Extrapolating these irregularities across the entirety of Rockland County would result in significant and concerning discrepancies in the vote tallies, which will be further explored during discovery as this action proceeds.

Respondent is also currently analyzing the 2024 General Election results reported by the New York State Board of Elections, on one hand, and Respondent Rockland County Board of Elections, on the other hand, which appear to be inconsistent. For example, Respondent reports 150,825 votes in Rockland County in the 2024 General Election for President whereas the New York State Board of Elections reports 150,072 votes for President in Rockland County—a discrepancy of 753 votes.

In addition, Petitioner has also demonstrated that there were unusual voter “drop-off rates” in comparing the Presidential results with the U.S. Senate results in Rockland County. *See* NYSCEF No. 1, Verified Petition ¶¶ 13-17. A “drop-off rate” describes the scenario where a voter votes for a candidate at the top of the ballot (here, President of the United States) but does not select a candidate for a lower-level office (here, U.S. Senate) who is a member of the same party. *Id.* ¶ 13.

As Petitioners establish, in Rockland County, 23% of voters who voted for Republican Presidential candidate Donald Trump did not vote for the Republican Senatorial candidate, Michael Sapraicone. *Id.* ¶ 13. In contrast, on a Statewide level, only 9% of Trump’s vote was above the Republican Senatorial candidate, Michael Sapraicone. *Id.* These tremendous differences in the voter drop-off rate between Rockland County and the entirety of New York State, together with the irregularities associated with Diane Sare—along with the potential discrepancies in the Presidential race between the State’s reporting and Respondent’s reporting—demonstrate that there are flagrant irregularities in connection with the Rockland County vote tallies in the 2024 Presidential and U.S. Senate races, which is precisely why Petitioners commenced this action—and require discovery to uncover the source of the many deficiencies in this election.

With respect to RFP No. 3, Respondent produces one document that contains some high-level procedures and documents related to a purported audit of the 2024 General Election, but again fails to produce the “digital ballot images” associated with any such audit. The digital ballot images are necessary to re-create the audit purportedly conducted by the Board of Elections to ensure the audit was meaningful and accurate.

2. RFP Nos. 4 and 5: These requests for production seek, inter alia, documents related to the creation, processing, tabulation, storage, and security of digital ballot images (RFP No. 4)

and mail-in ballots and affidavit ballots (RFP No. 5). These documents are important to evaluate Respondents' chain-of-custody procedures and other protocols, which is critical in assessing whether votes were ultimately counted correctly in the 2024 General Election.

Respondent produced only minimal documents in response to these requests for production, including pick-up signature sheets, and several short procedure-related documents. Further, Respondent produced absolutely nothing remotely close to any documentation concerning the creation, processing, tabulation, storage, and security of digital ballot images. The one and only document that Respondent produced in connection with Request No. 4 is simply an equipment delivery list, and many of the required signatures are missing.

The BOE interposes objections based on *Matter of Kosmider*, yet these objections are completely inapplicable, since these requests call for related procedures, not for the underlying ballots themselves. Respondent should have in its possession, custody or control, detailed procedural documents concerning the requested categories of documents and who is (and which systems) are involved in each step of handling the digital ballot images.

And with respect to RFP No. 5, which requests various categories of documents concerning the handling of mail-in and affidavit ballots, the Board of Elections produced *no such documents* related to mail-in and affidavit ballots. Respondent also produced no documents related to how decisions were made to reject mail-in ballots, who was authorized to make those decisions; and when voters who may have had their mail-in ballot declined may have had an opportunity to cure those issues.

3. RFP No. 6: This request for production seeks documents related to adjudicated and re-made ballots for the 2024 General Election. Respondent produced no documents in response to this request. These are important documents to ensure that no one took undue advantage in connection with these procedures.

Not only does the Board refuse to produce the actual ballot images, but also, Respondent has refused to produce any documents *related* to the adjudicated/re-made ballots, which improperly denies Petitioner the ability to assess the Board's procedures, who was involved, and to ensure processes had adequate controls and were not exploited by anyone.

4. RFP No. 7: In connection with this request, Respondent did provide documents with active and inactive voter lists for Rockland County, NY. However, the lists are defective in that none of the 2024 lists identifies the voters who actually voted in the corresponding General Election. This crucial information is required for Petitioner to analyze whether election results were properly tabulated and to reconcile the number of voters reported with the number of ballots.

5. RFP No. 9: This request for production seeks documents related to the creation and maintenance of the voter rolls, including the removal of voters from voter rolls and other security issues. Similar to other requests, Petitioner rightly seeks to assess whether Respondent is following best practices and all applicable statutes, given that incorrect voter rolls can affect election results by, among other things, depriving certain individuals the right to vote, on one

hand, and improperly allowing ineligible individuals to vote, on the other hand. Respondent improperly refused to produce any documents in connection with this request.

6. RFP No. 10: This Request seeks election results from all elections starting with the June 28, 2016 Primary Election (by election district and ward), and that those results should be delineated by timing/method of voting (e.g., early voting, in-person voting).

Respondent provided only 2024 General Election results, and in doing so, produced results in .pdf format which are not conducive to data analysis. Respondent Board of Elections should produce all election results in electronic spreadsheet format.

Critically, Petitioner requests that Respondent to produce all such results data going back to June 28, 2016 (and does *not* agree to limit this request to the 2024 General Election.) This should not be burdensome on Respondent, given that this requests election results that Respondent is charged with tabulating and reporting. These are, of course, results that one would expect Respondent to have archived and be made readily accessible not only in connection with discovery in this action but also to members of the public.

In addition, two of the documents produced by Respondent appear to be mislabeled. One of the documents is titled, “#10_Absentee by Precinct.pdf.” However when opened, the pages say, “Early Voting Precinct Summary.” Another document is labeled, “#10_Full Election by Precinct, but when opened the pages say, “Election Day Precinct Summary”; it also appears that absentee ballot results by precinct and full election results by precinct are also missing.

7. RFP No. 11: This request for production seeks documents related to errors, problems, or materials concerning requests for assistance or any necessary troubleshooting. The only documents that Respondent produced in connection with this request were a handful of “Election Day Logs.” This does not satisfy these requests, given that Respondent fails to produce any e-mail correspondence that almost certainly exists and which relates to “technical assistance or any necessary troubleshooting” in connection with the 2024 General Election. Furthermore, the documents produced have no dates on them, so it is impossible to tell if they are actually from the 2024 General Election and if they represent the difficulties experienced in all categories of voting, such as Early Voting and counting mail-in ballots.

8. RFP No. 12: This request for production seeks a variety of documents related to the statutorily required three-percent audit in connection with the 2024 General Election. With respect to this request, Respondent produced only one .pdf file that contains some procedures and documents related to an audit of the 2024 General Election. This response is insufficient, because it contains only high-level conclusory documents related to this purported audit and does not provide the various detailed categories of documents that this Request seeks.

Furthermore, the documentation provided is inadequate to ensure that the Board followed all applicable requirements and whether and how all applicable ballots were recounted and whether there are hand tally sheets to prove that this occurred. Respondent did provide an “AUDIT TALLY COVER SHEET” but failed to provide the actual underlying tally sheets. In addition, the Board does not provide any e-mail correspondence concerning this audit, does not provide the full list of voting machines that the audited systems were pulled from, does not

provide the type of random process that was used, or the list of systems that was ultimately chosen to be audited.

9. RFP Nos. 13, 14, and 16: These requests for production seek various technical documents and specifications concerning various software and hardware systems used by Respondent, including reports from these systems relating to the 2024 General Election. The requests also seek information about password requirements and creation, whether passwords are unique, embedded or encrypted. Respondent refused to produce *any* documents in connection with requests Nos. 13 and 14, and Respondent produced only minimal documents in connection with Request No. 16 (seeking various materials concerning password security).

In a document entitled, “#25_2024 ELECTION INSPECTOR MANUAL- 1ST DRAFT NEW STUFF 12.19.2023,” Respondent’s password procedures raise questions about whether Rockland County has sufficient security in place in connection with passwords to the voting machines. The passwords for all voting machines are apparently placed on a plastic card, attached to a lanyard and placed in the “red speed bag.” The red speed bag with the password is picked up by election inspectors at their orientation, so presumably they take the plastic card with the passwords home with them, after their orientation.

There is no indication of whether the red speed bag is sealed in any way, and thus, it appears that these passwords could be improperly viewed and shared—and a bad actor with these passwords could have the ability to improperly access, and re-program, the voting machines. In addition, allowing inspectors to take passwords home demonstrates the lack of appropriate security procedures by Respondent, given that seals can be defeated. Petitioner, in fact, understands that other jurisdictions keep all passwords secure and have them delivered to each poll site in the morning by law enforcement personnel.

Respondent’s objection based on “election security” can be easily remedied by this Court with the issuance of a protective order if the Court deems it necessary. In addition, contrary to Respondent’s contention, these materials are highly relevant since the systems used by Respondent are ultimately used to tabulate election results and thus must function properly and be both highly accurate and secure.

10. RFP No 15: This request for production seeks documents related to testing for the 2024 General Election, including manuals and procedures, and all documents and communications concerning any troubleshooting in connection with that testing.

Respondent produced one document related to testing procedures and produced three documents that appear to contain test results. However, Respondent did not produce any other documents or communications concerning such testing and produced no high-level documents (such as a final Logic and Accuracy test report) concerning whether all tests were successful with no issues.

Further, Respondent did not produce the requested documentation concerning the notice Respondent was legally required to provide to all candidates concerning notice about the time and location of testing of voting equipment.

In addition, two of the documents produced by Respondent purport to be test results of different machines are the same document with a different name.² However, the voting machine ID is the same on both documents and testing on both documents began and ended at exactly the same time.

Thus, it appears that Respondent has *not* provided test results of both the Absentee machines and the Election Day machines to Petitioner as part of the discovery process. Rather, it appears that Respondent has submitted the same document twice, even while purporting to be two different documents. Furthermore, documentation of the testing of the Early Voting machines is completely absent from Respondent's productions.

11. RFP No. 17: This request for production seeks all trusted build software used on voting machines and related systems and all items required to make said trusted build software, including the versions of software used on Respondent's voting systems and machines.

The only documents that Respondent provided in connection with this request were "hash check" documents that fail to identify the versions of software used on Respondent's voting systems. Respondent also did not provide the requested list of voting machines that it used in the 2024 General Election, and thus, there is no way to establish that Respondent actually ran a hash check on each and every voting machine, as it is required to do. Respondent should be required to produce all hash check documentation for all voting machines used in the 2024 General Election, along with a list of all such voting machines used in that election, along with the serial number of each machine. Respondent also should produce results of annual hash checks for each such machine (which ensures the software has not been tampered with and matches the official version).

In addition to more complete hash check documents, Respondent should also be required to produce all trusted software, and all items required to make said trusted build software on the voting machines--and other systems used by Respondent and the software version used on each such system. These materials are again relevant to ensure that adequate protections are in place and that votes were correctly tabulated. To the extent that "voting system security" is an issue, these documents can be produced pursuant to a protective order.

12. RFP Nos. 18, 19, 20, 21, 22, and 30: Respondent refused to produce *any* documents or items in connection with these six document requests.

These requests for production seek, inter alia, materials related to hardware and software on Respondent's election systems (RFP No. 18), vendors used by Respondent (RFP No. 19), forensic grade copies of internal and external hard drives of all equipment used in the elections process, including flash drives and other devices (RFP No. 20), system logs (RFP No. 21), software/firmware updates and known vulnerabilities (RFP No. 22), and flash drives, including

² Specifically, files called "No. 15_Test deck Absentee DS950 results GE24" and "No. 15_Test deck Election Day ds300 results GE24" purport to be tests that both ran on *the same voting machine*, namely Machine No. 9523030645.

employees with access to them (RFP No. 30).³ Respondents' "election security" objections can be easily remedied if materials are provided pursuant to a protective order. In addition, the materials requested are highly relevant to ensure that votes are properly tabulated; that the correct software/hardware that has been certified by the State Board of Elections is being used; and to assess the overall vulnerability of the elections system to mistakes, interference or foul play.

13. RFP Nos. 23 and 24: These requests for production seek, inter alia, samples of locks and seals, as well as logs and materials, concerning how the Respondent secures items such as ballot bins and voting machines; what actions are taken when seals are broken; and the identity of personnel who have access to locks and seals.

This information and these materials are highly relevant given that the ballots have purportedly been in storage for almost one year, and the chain-of-custody procedures are critical so as to ensure that the public has confidence that the ballots are actually those that proper voters voted and submitted. In fact, just this year, it was discovered in a New York City election that one or more persons tampered with ballot bin(s) and fraudulent ballots were stuffed into a ballot bin. See New York City Board of Elections Press Release, *available at* <https://x.com/BOENYC/status/1948825829636723017> (July 25, 2025).

Respondent improperly refused to produce any documents in response to these requests.

In fact, another document produced by Respondent shows that relevant documents do exist. For example, On page 69 of the "#25 2024 ELECTION INSPECTOR MANUAL- 1ST DRAFT NEW STUFF 12.19.2023", there are documents entitled, "Statement of Canvass" that show the place where the seal numbers are supposed to be logged. All Statement of Canvass documents from the 2024 General Election should be produced.

The procedures for logging seals in the "Statement of Canvass" is further described on page 71 of that same Election Inspector manual.⁴ These logs should be produced. In addition, on page 64 of that same Election Inspector manual, documents called "Challenge Report[s]" are described.⁵ All Challenge Reports from the 2024 General Election should be produced.

³ Respondent contends that election inspector/manager manuals it provided were responsive to RFP No. 30 but produced no independent documents concerning the various categories of documents related to the processing and handling of USB drives.

⁴ The document states as follows: "Check to make sure the seal number on the appropriate part of the machine corresponds with the number recorded on the Statement of Canvass in the column Opening Seal #. If it is the same, place a check mark in the "YES" box in the Verify Seal Number Column."

⁵ The document states as follows: "Secure all notes written throughout the day concerning Election Day events, situations, breakdowns, etc. Write them on your Challenge Report."

14. RFP Nos. 25 and 26: These requests for production seek documents related to the transport and security of ballots (RFP No. 25) and all databases related to the administration of the elections, including sample ballots (RFP No. 26).

In connection with RFP No. 25, Respondent produced only two election inspector/manager manuals. Respondent improperly failed to produce *any* actual material related to the “transport and security” of ballots/voting systems and did not produce any “logs,” “training,” or “chain-of-custody documentation.” The fraud recently uncovered in New York City (discussed above) highlights the relevance of these materials so that Petitioner can assess in this proceeding whether, in fact, all proper votes were properly secured and counted (and that no improper/fraudulent ballots were cast).

With respect to RFP No. 26, Respondent produced only one voter history file, and it was not the one that was requested. “All databases related to the administration of the . . . 2024 General Election,” is being requested. The voter history file that was produced is a 2025 database, because it includes 2025 primary voters. Undoubtedly, some 2024 voters have been removed as they moved or passed away, and new voters have likely been added since 2024. So the file that was produced is useless in terms of comparing the data to the 2024 election results.

Respondent should produce all available databases, and in particular, the database from the electronic poll books showing who did and did not vote in the 2024 General Election, so that Petitioner will be able to search for items such as malware, inaccurate formulas, incorrect reconciliations, and potential tampering.

15. RFP Nos. 27, 28, 29, 32, 33, and 34: These requests for production seek documents concerning ballot and equipment storage and security (RFP No. 27); the design, maintenance, and security of software/firmware/networks (RFP No. 29); the vetting and training of personnel (RFP No. 28); personnel policies, and any issues with employees that were warned, disciplined, suspended, or fired, as well as individuals or groups that there were internal or external concerns about (RFP No. 32); and personnel and contractors involved in administering elections and conducting audits (RFP No. 33); and documents Respondent relied on in this action (RFP No. 34).

Respondents improperly refused to produce *any* documents in response to these requests. In addition, the materials requested are highly relevant to investigate whether votes have been properly tabulated; that correct software/hardware that has been certified by the State Board of Elections is being used; that appropriate reconciliations are conducted; and whether there are no system vulnerabilities. Any “election security” objections can be addressed by an appropriate protective order.

Furthermore, the recent fraud uncovered in New York City (discussed above) demonstrates the importance of understanding, inter alia, (a) who has access to ballots and/or sensitive systems; (b) whether such individuals are appropriately vetted and trained; and (c) policies concerning employee discipline procedures and other procedures (RFP Nos. 28, 32, and 33).

16. RFP No. 31: This request for production seeks all meeting minutes, transcripts and videos for all meetings and hearings held by Respondent from January 1, 2020 through the present.

Respondents provided only agendas from one meeting each in 2022, 2023, and 2024, and notes from 2022 and 2025. The only year that both the agenda and the minutes of what happened at any given meeting were produced was 2022. The fact that such a basic request as meeting minutes are not being thoroughly provided is disappointing.

One document Respondent provided is entitled, “No. 31 _ Reorganization Meeting 2024 New.” On page 2 of the agenda under the term "Warehouse" - it says "Passwords." Respondent should produce all emails, documents, and procedures about passwords and the notes from this meeting detailing what was discussed.

On page 1 of the meeting minutes of document entitled, “No. 31_1.7.2025 Reorg,” it says that there were supply shortages, challenges with mail-in voting, concerns about updating poll pads, concerns about mapping, and discussion of the shredding process. All emails, documents, procedures and other notes about these issues should be produced.

17. RFP No. 35: This request for production seeks all documents concerning Respondent’s document destruction and/or document retention policies, and that should include records of implementation, not just policies, manuals or instructions. Respondent produced one retention document, but produced no records of how this policy is implemented.

Note that the policy allows for the “destruction of sealed packages of unused ballots 4 months after the election”—but this can only happen at the “completion of investigation and litigation.” Hence all ballots, both used and unused, for the 2024 General Election must be preserved due to this ongoing litigation. In addition, all documents and e-mails related to the implementation of this policy should be provided.

18. RFP No. 36: This request for production seeks any communications between or among Respondent, its agents, or anyone else, including third parties, concerning this lawsuit. Respondent produced only a public statement. At a minimum, Respondent should produce all emails, and internal documents used to create this public-facing message; to the extent that Respondent claims that an applicable attorney-client privilege or other protection applies, Respondent should produce a privilege log forthwith.

19. RFP Nos. 37, 38, 39, 41, and 42: These requests for production seek documents concerning experts or witnesses the Board may have contacted to defend itself in this case, (RFP Nos. 37 and 38); documents that could support or refute the allegations in this case (RFP No. 41); and documents that support the Respondent's defense (RFP No. 42). Respondent produced nothing to satisfy these requests, although they are very straightforward; Respondent should not be able to rely on a technicality that there may not be a “trial” in connection with this action. Plaintiff is entitled to have documents and information concerning these requests, so that they may be fully abreast of the Respondent's claims and any materials that may be relevant to this action.

B. Respondent's Improper Refusal to Answer Interrogatory No. 1

The Court should also require Respondent to answer Interrogatory No. 1, which reads as follows:

INTERROGATORY NO. 1:

Describe in detail the nature and extent of the aspects of any election systems (including voting machines, scanners, ballot processors, and all other systems) that are connected or have ever been connected to any type of modem, router, wireless or wired network, and include in your description (a) how any such connections are secured from endpoint to endpoint; (b) the time periods during which these systems are connected; and (c) Identify all individuals and vendors involved in the set-up, management, security, and maintenance of any such connections and systems.

Just as the Board did in connection with their responses to many of the RFPs, Respondent refused to answer this Interrogatory and interposed an "election security" objection. As with the document requests, this objection can be readily overcome by a protective order. Furthermore, as with similar document requests, this interrogatory seeks highly relevant information concerning machines, networking and systems which are integral to an accurate vote count. These are topics of discovery to which Petitioner is readily entitled to receive both responsive documents and relevant information.

C. Respondent's Incomplete Answer to Interrogatory No. 4

With respect to Interrogatory No. 4, Respondent was posed the following question and answered as follows:

INTERROGATORY NO. 4:

Identify each individual or organization who made any type of complaint (written, verbal, formal, informal), or who expressed any concern, about possible inaccuracies in election results from January 1, 2020 to the present. Include in your response the date the complaint was made, or concern expressed, the contact information for the individual or organization who made the complaint, whether it was made in writing, the individual(s) to whom the complaint was made, and a description of any responses made or actions taken by the Respondent to each complaint.

RESPONSE: No such complaint has been made to Respondent other than by Petitioners herein.

Specifically, Interrogatory No. 4 asked Respondent to identify any "complaint" or "concern" about "possible inaccuracies in election results from January 1, 2020 to the present." Respondent answered Interrogatory No. 4 by stating that "[n]o such complaint has been made to Respondent other than by Petitioners herein."

This response is misleading at best—because on or about May 9, 2022, the New York Citizens Audit PAC (“NYCA”) submitted a petition to the New York State Board of Elections that raised concerns about inaccurate election results in Rockland County. Critically, the Interrogatory seeks a response related to any such concerns/complaints concerning possible inaccuracies in election results, not just those that were submitted to Respondent directly.

A copy of a version of this complaint filed by NYCA is attached hereto as **Exhibit E**. This complaint filed by NYCA contends that there were a number of discrepancies in Rockland County. *See especially* Ex. E. at 4-5. For example, the petition contends that there are various discrepancies of 559 votes, 679 votes, and 120 votes, between various tabulations by the New York State Board of Elections, on one hand, and the Rockland County Board of Elections, on the other. *Id.* at 4.⁶ Among other things, the complaint also identifies “the total number of irregular votes in Rockland County [as] 2,176 votes.” *Id.*

This Complaint, a version of which was filed with the New York State Board of Elections, plainly qualifies as responsive to Interrogatory No. 4, which calls for the identification of any “complaint” or “concern” about “possible inaccuracies in election results.”

Respondent’s incomplete interrogatory response is emblematic of Respondent’s failure to provide careful, accurate responses and complete sets of responsive documents in response to Petitioner’s discovery requests in this action. The Court should now require Respondent to fully cooperate in providing accurate interrogatory responses and complete sets of documents in connection with each and every RFP and Interrogatory propounded by Petitioner in this action.

* * *

On behalf of Petitioner SMART Legislation, thank you for your consideration of this request. We look forward to the Court’s direction so that discovery can proceed in this action.

Sincerely,

/s/ Aaron Foldenauer

Aaron Foldenauer

cc: Counsel of Record for Respondent (via NYSCEF)

⁶ The NYCA Complaint states as follows: “Rockland County voter rolls maintained by the New York State Board of Elections demonstrate that a 559 voter discrepancy exists between the Rockland County precinct vote tabulation count and the New York State Board of Elections, and a 679 voter discrepancy exists between the Rockland County precinct vote tabulation count and the New York Secretary of State certified results. Additionally, a 120 vote discrepancy exists between the New York State Board of Elections and the Secretary of State regarding Rockland County.” Ex. E at 4.